



BERMUDA

MERCHANT SHIPPING (HOURS OF REST) REGULATIONS 2011

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The Minister responsible for Maritime Administration, after consulting the persons referred to in section 94(3) of the Merchant Shipping Act 2002, and in exercise of the powers conferred by sections 3 and 93 of that Act, makes the following Regulations:

Citation

1 These Regulations may be cited as the Merchant Shipping (Hours of Rest) Regulations 2011.

Interpretation

2 In these Regulations—

“the Act” means the Merchant Shipping Act 2002;

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- “collective bargaining agreement” means a written agreement, valid for not more than five years, between a shipowner and an independent trade union which is recognised in its country of domicile;
- “commercial activity” means any activity or employment of the vessel for which a contract or charter party is in force and includes the carriage of any cargo or persons for reward;
- “hours of rest” means time outside hours of work and does not include short breaks from work;
- “hours of work” means time during which the seafarer is required to do work on the business of the ship;
- “independent”, in relation to a trade union, means not under the domination or control of an employer or group of employers or of one or more associations and not liable to interference by an employer or any such group or association (arising out of financial or material support or by any other means) tending towards such control, provided that a shipowner’s contributions to a welfare fund or similar fund shall not be construed as affecting the independence of a trade union;
- “Maritime Labour Certificate” means the certificate issued in accordance with Article V of the Maritime Labour Convention;
- “Maritime Labour Convention” means the Maritime Labour Convention 2006 adopted at a general conference of the International Labour Organization in Geneva on 7 February, 2006;
- “pleasure vessel” means—
- (1) a vessel which, at the time of its use, is—
 - (a) in the case of—
 - (i) a vessel wholly owned by an individual or individuals, used only for the sport or pleasure of the owner or immediate family or friends of the owner; or
 - (ii) a vessel owned by a body corporate, used only for sport or pleasure and on which the passengers are employees or officers of the body corporate, or their immediate family or friends; and
 - (b) on a voyage or excursion from 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 that voyage or excursion, and no other payments are made by or on behalf of users of the vessel other than by the owner; or
 - (2) a vessel which, at the time of its use, is any vessel wholly owned by or on behalf of a member’s club formed for the purpose of sport or pleasure,

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which is used only for the sport or pleasure of members of that club or their immediate family; and

(a) for the use of which, any charges levied are paid into club funds and applied for the general use of the club; and

(b) no other payments are made by or on behalf of users of the vessel other than by the owner;

(3) for the purposes of this definition—

(i) “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

(ii) “relative” means brother, sister, ancestor or lineal descendant;

“port state authority” means the authority in any country assigned the responsibility under Article V of the Maritime Labour Convention for the inspections of ships of other flags in its territory;

“on call” means time when a seafarer is available on board the vessel and nominated to answer any alarm or other call but not otherwise required to be working;

“shipowner” means the owner of the ship or another organisation or person, such as a manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner;

“seafarer” in these Regulations means any person who is employed or engaged or works in any capacity on board a ship and where there is doubt as to whether a person working or engaged on a ship is a Seafarer, the Minister shall make a determination and in doing so he shall be guided by the advice and guidance provided by the International Labour Organization.

Application

3 These Regulations apply to—

(1) Bermuda ships wherever they may be other than—

(i) fishing vessels;

(ii) vessels owned and operated by a Government department or agency for non-commercial purposes; and

(iii) pleasure vessels in which no seafarers are employed; and

(2) to the extent specified in regulation 11, ships that are not Bermuda ships when in a port in Bermuda other than—

(i) fishing vessels;

(ii) pleasure vessels; and

(iii) warships, naval auxiliaries and other ships owned or operated by a state and not engaged in commercial activity.

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Minimum hours of rest

4 (1) Every shipowner and every master of a ship to which these Regulations apply shall ensure that each seafarer is provided with the minimum hours of rest.

(2) Subject to regulation 5, the minimum hours of rest shall be—

- (a) not less than 10 hours in any 24 hour period; and
- (b) not less than 77 hours in any seven day period.

(3) Hours of rest may be divided into not more than two periods, one of which shall be at least six hours in length, and the interval between consecutive rest periods shall not exceed 14 hours.

Watchkeeping officers to be rested before standing watch

5 Notwithstanding the provisions of regulation 4 the master shall ensure that every watchkeeping officer has sufficient rest before starting his watch.

Exceptions to the minimum hours of rest

6 (1) Time when a seafarer is on call shall not be regarded as working time but a seafarer who is on call, and who is required to answer call outs during that time, shall be entitled to a compensatory rest period commensurate with the number of times that he has been called out.

(2) Musters, drills, and emergency exercises shall not be regarded as working time but it shall be the duty of the master to plan and organise such musters, drills and exercises in such a manner that the disturbances to rest for seafarers whose rest time is affected are minimised.

(3) The Minister may authorise a collective bargaining agreement permitting exceptions to the limits specified in regulation 4 provided that the exceptions, so far as possible, follow the provisions in regulation 4.

Provision of information

7 (1) The master of every ship to which these Regulations apply shall ensure that a table of the scheduled hours of work is created and made available to each seafarer on board in an easily accessed location accessible to each seafarer, to any port state authority officer, and to any Bermuda surveyor.

(2) The table referred to in paragraph (1) shall be in the format set out in a Bermuda Shipping Notice or in a format recognisably similar, and shall show for each seafarer at least—

- (a) the schedule of work at sea and in port; and
- (b) the minimum hours of rest required by these Regulations or by any collective bargaining agreement that the Minister has authorised.

(3) Any table of scheduled hours of work made in accordance with this regulation shall be in English.

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Exception for emergencies

8 (1) The master of any ship to which these Regulations apply may require a seafarer to work any hours of work that are necessary for the immediate safety of the ship, persons on board the ship, or for the purpose of giving assistance to another ship or to a person in distress at sea, and a seafarer shall not unreasonably refuse to work those additional hours.

(2) As soon as practicable after the normal situation has been restored following a situation covered by paragraph (1), the master shall ensure that any seafarer who has not had the rest periods defined in regulation 4 during the emergency is provided with an adequate compensatory rest period.

Records and format of records

9 (1) The master, or a person authorised by him, shall maintain records of each seafarer's hours of rest in English and the records shall—

- (a) be completed monthly;
- (b) show for each day in the month a column of hours into which can be recorded whether or not the seafarer was working or resting;
- (c) provide for a column to show a total hours of rest for each 24 hour period;
- (d) provide for a column in which can be recorded the reasons for any hours of rest that are less than the minimum; and
- (e) provide for a column to show the total weekly hours of rest in any seven day period.

(2) The recording format for the hours of rest shall be that as set out in a Bermuda Shipping Notice or a format recognisably similar and may be in electronic format, provided that all the seafarers in the ship have ready access to their records at any reasonable time during working hours.

(3) A shipowner or a master may elect to use a commercially produced system for recording hours of rest, provided that it contains the information in paragraph (1) and is in a format equivalent to that prepared by the International Labour Organization.

(4) At the end of each month each seafarer and the master or a person authorised by him shall endorse the record for each seafarer and each seafarer shall be given a copy of the endorsed record, or shall be provided with access to examine at any time his own records, and where access to the records is electronic, the seafarer shall have access to facilities that permit him to readily obtain, at any reasonable time during working hours, a printed copy of his record since commencing employment on board.

(5) The master or the person authorised by the master to endorse the records for any seafarer shall, when doing so, satisfy himself that any deviations from the minimum hours of rest in regulation 4 are explained and that the seafarer concerned has received compensatory rest, where necessary, and shall bring to the attention of the master any persistent deviations, and the master, if persistent deviations are evident or if they are brought to his attention, shall take steps to ensure that the table referred to in regulation 7 is amended as necessary to avoid them subsequently.

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Offences

10 (1) A master who contravenes regulation 7 commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

(2) A master who contravenes regulation 9 commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

Inspection

11 (1) Any person duly authorised by the Minister may inspect any ship to which these Regulations apply when in a port in Bermuda and if he is satisfied that any seafarer or seafarers are not receiving the minimum hours of rest specified in Regulation 2.3 of the Maritime Labour Convention, he may detain the ship, but shall not in the exercise of these powers detain or delay the ship unreasonably.

(2) Any authorised officer of the Department of Maritime Administration who discovers that a Bermuda ship does not comply with these Regulations may—

- (a) withdraw the vessel's Maritime Labour Certificate until such time as the deficiency is rectified; or
- (b) if the vessel is in a port outside Bermuda, report the deficiency to the port state authority in that port.

Revocations

12 Regulations 26, 27, 28, and 29 of the Merchant Shipping (Training, Certification, Manning and Watchkeeping) Regulations 2005 are revoked.

Made this 20th day of September, 2011

Minister of Transport