

MERCHANT SHIPPING SAFETY

The Merchant Shipping (Medical Examination) Regulations 1983¹⁷⁶ *as amended*¹⁷⁷

[The Minister,] in exercise of the powers conferred on him by [section 119 of the Merchant Shipping Act], and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

Citation and Commencement

1. These regulations may be cited as the Merchant Shipping (Medical Examination) Regulations 1983* and [came into operation on 15th March 1984]¹⁷⁸.

Interpretation

2. In these Regulations:

“approved” means approved for the purpose by [the Minister];

[“Bahamian ship” has the same meaning as given it in section 2 of the Merchant Shipping Act].

“chemical” means any liquid chemical listed in [the Index of Dangerous Chemical Carried in Bulk found in the 1998 Edition of the International Maritime Organisation (IMO)] publication “IBC Code”] and any relevant supplement thereto which is considered by [the Minister] to be relevant from time to time and is specified in a Merchant Shipping Notice;

“fishing vessel” means a vessel for the time being employed in sea fishing but does not include a vessel used otherwise than for profit;

“GRT”, in relation to a ship, means its gross register tonnage and the gross register tonnage of a ship having alternative gross register tonnages shall be taken to be the larger of those tonnages;

“medical fitness certificate” means a certificate issued under regulation 7 below (whether or not subject to restrictions) or a certificate deemed to be equivalent thereto under regulation 5 or 6;

“Merchant Shipping Notice” means a Notice described as such, issued by the Secretary of State [of the United Kingdom for Transport];

“offshore installation” means any offshore installation within the meaning of section 1(4) of the Mineral Workings (Offshore Installations) Act 1971^(a);

“pleasure craft” means a vessel primarily used for sport or recreation;

“prescribed fee” means a fee prescribed in regulations made by [the Minister] with the approval of the Treasury;

“seafarer” includes a master and a seaman;

“specified by [the Minister]” means specified in Merchant Shipping Notice No. 1061 and any document amending it which is considered by [the Minister] to be

* These regulations were applied in 1984 from 1983 Regulations.

¹⁷⁶ applied in the Bahamas from UK SI 808/1983 by SI 8 of 1984

¹⁷⁷ by the Merchant Shipping (Medical Examinations)(Amendment) Regulations 1985, applied in the Bahamas from UK SI 512/1985

¹⁷⁸ These regulations were applied in the Bahamas in 1984 by SI 8/1984 which was gazetted on 15 March, 1984.

^(a) [UK] 1971 c.61; section 1 was substituted by section 24 of the [UK] Oil and Gas (Enterprise) Act 1982 [see Appendix III for excerpt and definition]

relevant from time to time and is specified in a Merchant Shipping Notice¹⁷⁹;

Application

3. (a) These Regulations apply to sea-going [Bahamian] ships; and
(b) regulations 13 and 14 of these Regulations apply to sea-going ships other than [Bahamian] ships when they are in a [Bahamian] port or the territorial waters thereof,
being ships which are of 1,600 GRT or over, including sea-going tugs, other than fishing vessels, pleasure craft, and offshore installations whilst on their working stations.

Prohibition on Employment

4.—(1) Subject to paragraph (4) of this regulation, no person shall employ a seafarer in a ship to which these Regulations apply unless that seafarer is the holder of a valid medical fitness certificate:

Provided that:

- (a) [omitted as spent];
(b) any seafarer, the validity of whose certificate expires while he is in a location where medical examination in accordance with these Regulations is impracticable, may continue to be employed without such a certificate for a period not exceeding three months from the date of expiry of such medical certificate.

(2) Subject to paragraph (4) of this regulation, no person shall employ a seafarer in a ship in a capacity or in a geographical area precluded by any restriction in that seafarer's medical fitness certificate.

(3) Subject to paragraph (4) of this regulation, no person shall employ a seafarer in a ship carrying chemicals in bulk unless that seafarer is the holder of a valid medical fitness certificate issued in respect of a medical examination undertaken not more 12 months previously, notwithstanding that the period of validity specified in the medical fitness certificate may exceed 12 months.

- (4) Paragraphs (1), (2) and (3) of this regulation shall not apply to the employment of:—
(i) a pilot (who is not a member of the crew);
(ii) a person employed in a ship solely in connection with the construction, alteration, repair or testing of the ship, its machinery or equipment, and not engaged in the navigation of the ship;
(iii) a person solely employed in work directly related to:
(a) the exploration of the seabed or sub-soil or the exploitation of their natural resources;
(b) the storage of gas in or under the seabed or the recovery of gas so stored;
(c) the laying, inspection, testing, repair, alteration, renewal or removal of any submarine telegraph cable; or
(d) pipe-line works¹⁸⁰ as defined in section 26(2) of the Petroleum and Submarine Pipe-lines Act 1975^(a) (including the assembling, inspection, testing,

¹⁷⁹ at the time of publication the relevant notices are M Notices 1760 and 1746.

¹⁸⁰ "pipe-line works" is defined in section 26(2) of the Petroleum and Submarine Pipe-lines Act 1975^(a) as: "...works of any of the following kinds, namely—

maintaining, adjusting, repairing, altering, renewing, changing the position of, or dismantling a pipe-line or length of pipe-line), and who ¹⁸¹ is not engaged in the navigation of the ship in the deck, engine room, radio, medical or catering department of that ship.

- (iv) a member of the naval, military or air forces of the Crown or of any service administered by the Defence Council, when acting as such a member;
- (v) a person employed in a port who is not ordinarily employed at sea; or
- (vi) a person employed in a ship solely to provide goods, personal services or entertainment on board and who is not employed by the owner or the person employing the master of the ship and who has no emergency safety responsibilities.

Certificates equivalent to a medical fitness certificate

5. [omitted, as spent]

6. Any medical fitness certificate issued to a seafarer in accordance with the provisions of the Medical Examination (Seafarers) Convention 1946 (International Labour Convention 73 of 1946) or the Merchant Shipping (Minimum Standards) Convention 1976 (International Labour Convention 147 of 1976):

- (a) by an authority empowered in that behalf by the laws of a [foreign country¹⁸²] which has ratified the said Convention of 1946 or the said Convention of 1976; or
- (b) by an approved authority empowered in that behalf by the laws of a [foreign country¹⁸²,]

shall be deemed for the purposes of these Regulations to be equivalent to a medical fitness certificate issued under these Regulations:

Provided that any certificate issued by any such authority shall remain in force, unless renewed, only until the expiration of the period of validity specified in that certificate.

Issue of medical fitness certificate

7. Every applicant for a medical fitness certificate shall, on payment of the prescribed fee, be examined by an approved medical practitioner and if the practitioner considers that the applicant is fit, having regard to the medical standards specified by [the Minister], he shall issue the applicant with a medical fitness certificate in an approved form; and such certificate may be restricted to such capacity of sea service or geographical areas as the practitioner considers appropriate.

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- (a) assembling or placing a pipe-line or length of pipe-line;
 - (b) inspecting, testing, maintaining, adjusting, repairing, altering or renewing a pipe-line or length of pipe-line;
 - (c) changing the position of or dismantling or removing a pipe-line or length of pipe-line;
 - (d) opening the bed of the sea for the purposes of works mentioned in the preceding paragraphs, tunnelling or boring of those purposes and other works needed for or incidental to those purposes;
 - (e) works for the purpose of determining whether a place is suitable as part of the site of a proposed pipe-line, and the carrying out of surveying operations for the purpose of settling the route of a proposed pipe-line."

^(a) 1975 [UK] c.74

¹⁸¹ words deleted by regulation 2(1) of the Merchant Shipping (Medical Examinations)(Amendment) Regulations 1985, also applied in the Bahamas, by SI 50/1985 from UK SI 512/1985

¹⁸² words "foreign country" used as defined in section 2 of the Merchant Shipping Act and suggested in substitution for the words "country outside the United Kingdom" (see section 293(3)(c) of the MSA)

Period of validity of certificate

8. An approved medical practitioner who issues a medical fitness certificate under regulation 7 shall specify the period of validity, from the date of the medical examination, for which the certificate is to remain in force, subject to the following maximum periods:

- (a) in respect of a seafarer under 18 years of age, one year;
- (b) in respect of a seafarer 18 years of age and under 40 years of age, five years
- (c) in respect of seafarers 40 years of age and over, two years.

9. If an approved medical practitioner has reasonable grounds for believing that there has been a significant change in the medical fitness of a seafarer during the period of validity of his medical fitness certificate, he shall notify the seafarer concerned and may:

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

Application for a review

10.—(1) A seafarer who is aggrieved by:

- (a) the refusal of an approved medical practitioner to issue him with a medical fitness certificate, or
- (b) any restriction imposed on such a certificate, or
- (c) the suspension for a period of more than three months or cancellation of that certificate by an approved medical practitioner pursuant to regulation 9,

may apply to [the Minister] for the matter to be reviewed by a single medical referee appointed by [the Minister]:

Provided that an application for such a review may be made only by:

- (i) a seafarer who has served at sea at any time during the two years immediately preceding the date on which these Regulations come into operation; or
- (ii) a seafarer who has held a valid medical fitness certificate at any time during the two years immediately preceding that refusal, imposition of a restriction, suspension or cancellation.

(2) Any such application shall:

- (a) be lodged with [the Minister] within one month of the date on which the seafarer is given notice¹⁸³ of the refusal, imposition of a restriction suspension or cancellation (or such longer period as [the Minister] may determine if delay is caused by the seafarer's employment on board ship away from [the Bahamas]); and¹⁸⁴
- (b) include a consent to the approved medical practitioner responsible for the refusal, imposition of a restriction, suspension or cancellation providing a report to the medical referee, and specify the name and address of that practitioner¹⁸⁵.

(3) The medical referee to whom the matter is referred by [the Minister] shall obtain a report from the approved medical practitioner by whom the applicant was examined and

¹⁸³ words inserted by Merchant Shipping (Medical Examinations)(Amendment) Regulations 1985, reg. 2(3)

¹⁸⁴ words inserted by Merchant Shipping (Medical Examinations)(Amendment) Regulations 1985, reg. 2(4)

¹⁸⁵ words deleted by Merchant Shipping (Medical Examinations)(Amendment) Regulations 1985, reg. 2(4)

shall¹⁸⁶ examine the medical condition of the applicant. The medical referee shall, if the applicant so requests, disclose to the applicant the report of the approved medical practitioner and any other evidence not produced by the applicant himself except that if the medical referee considers that such disclosure would be harmful to the applicant's health the referee shall not be required to make such disclosure. The medical referee shall have regard to any relevant medical evidence, whether produced by the applicant, his employer,¹⁸⁷ or otherwise, and whether or not disclosed as aforesaid.

(4) In the light of the medical evidence before him, the medical referee shall, if he considers that the applicant is fit, having regard to the medical standards referred to in regulation 7, issue the applicant with a medical fitness certificate in the approved form. Where the medical referee considers that restrictions as to capacity or geographical area 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, he shall issue to the applicant a revised medical fitness certificate and the former certificate shall thereupon cease to have effect. In any other case he shall notify the applicant of his decision. Any such action by the medical referee shall be taken not later than two months from the date on which the application for review is lodged with [the Minister] (which date shall be notified to the medical referee by him) or within such longer period as [the Minister] may determine.

Records and annual returns

11. Any approved medical practitioner who conducts a medical examination in accordance with these Regulations shall:

- (a) make and retain for six years a record in an approved form of each medical examination which he carries out pursuant to these Regulations; and
- (b) send to [the Minister] at his direction a return of all such examinations in the form approved by [the Minister] (which form so far as [the Minister] considers practicable shall not include medical information which can be identified as applying to a particular person).

Inspection and detention of a [Bahamian] ship

12. Any person duly authorised by [the Minister] may inspect any [Bahamian] ship to which these Regulations apply and if he is satisfied that any seafarer, whose employer is required by regulation 4 of these Regulations to ensure that he is the holder of a medical fitness certificate, is unable to produce a certificate which meets the requirements of that regulation, and the state of his health is such that the ship could not sail without serious risk to the safety and health of those on board, he may detain the ship, but shall not in exercise of these powers detain or delay the ship unreasonably.

Inspection, detention and other measures in respect of ships other than [Bahamian] ships

13.—(1) Any person duly authorised by [the Minister] may inspect any ship to which these Regulations apply other than a [Bahamian] ship when the ship is in a [Bahamian] port and if he is satisfied that any seafarer 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, and a

¹⁸⁶ word substituted by reg. 2(5), Merchant Shipping (Medical Examinations)(Amendment) Regulations 1985

¹⁸⁷ words omitted.

copy thereof to the Director General of the International Labour Office; and
(b) where conditions on board are clearly hazardous to safety or health:

- (i) take such measures as are necessary to rectify those conditions;
- (ii) detain the ship:

Provided that the measures specified in sub-paragraphs (i) and (ii) may be taken only when the ship has called at a [Bahamian] port in the normal course of business or for operational reasons.

(2) If he takes either of the measures specified in paragraph (1)(b), the person duly authorised shall forthwith notify the nearest maritime, consular or diplomatic representative of the State whose flag State of the ship.

(3) The person duly authorised shall not in the exercise of his powers under this Regulation unreasonably detain or delay the ship.

Compensation and Enforcement of Detention

14. *[Regulation 14 is not reproduced here as it is unlikely that it is applied under the MSA. For compensation provisions please see section 211, MSA.]*

Penalties

15.—(1) Contravention of regulation 4 by an employer shall be an offence punishable on summary conviction by a maximum fine of an amount not exceeding level 5 on the standard scale, as defined in section 75 of the Criminal Justice Act 1982^(b).

(2) In any proceedings for an offence under these Regulations it shall be a defence for the employer to show that all reasonable steps had been taken by him to ensure compliance with the Regulations.

^(b) 1982 [UK] c.48

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations give effect in part to the Merchant Shipping (Minimum Standards) Convention 1976 (International Labour Organisation Convention 147)¹⁸⁸ which requires provisions to be made substantially equivalent to those of (amongst other Conventions) the Medical Examination (Seafarers) Convention 1946 (International Labour Organisation Convention 73 Article 4)¹⁸⁹ which is in force internationally¹⁹⁰.

These Regulations apply to sea-going [Bahamian] ships of 1,600 GRT and over, other than fishing vessels, pleasure craft and offshore installations (regulation 3); and [require (subject to specified exceptions) a seafarer¹⁹¹ to be the holder of a valid medical fitness] certificate (regulation 4). Certain other medical certificates are to be treated as equivalent to the certificates prescribed by the Regulations (regulation 5 and 6). Medical fitness certificates are to be issued by medical practitioners approved by [the Minister]; the certificates may be restricted to certain capacities of sea service or geographical areas (regulation 7) and are to specify the period of validity of the certificate (regulation 8). An approved medical practitioner may in specified circumstances suspend or cancel a certificate (regulation 9). Any seafarer aggrieved by the refusal of a medical fitness certificate, or a restriction on a certificate, or the suspension or cancellation of a certificate, who has either served at sea at any time before these Regulations came into operation or has held a valid certificate at any time in the two years before the refusal or other action of the medical practitioner, may apply to [the Minister] for the matter to be reviewed by a medical referee (regulation 10). Approved registered medical practitioners who conduct medical examinations are required to keep records and to send returns to the [the Minister] when directed so to do (regulation 11).

Provision is made for a [Bahamian] ship to be detained if a seafarer cannot produce a valid medical fitness certificate, and the ship cannot sail without serious risk to the safety or health of those on board (regulation 12). Ships other than [Bahamian] ships are subject to inspection when in a [Bahamian] port and may also be detained (regulation 13).

An employer who employs a seafarer who does not hold the required certificate commits an offence punishable on summary conviction [by a fine].

¹⁸⁸ words omitted.

¹⁸⁹ words omitted.

¹⁹⁰ words omitted.

¹⁹¹ includes a master