



BERMUDA

MERCHANT SHIPPING (REPATRIATION) REGULATIONS 2013

BR 108 / 2013

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The Minister responsible for Maritime Administration, in exercise of the power conferred by sections 3 and 84 of Merchant Shipping Act 2002, makes the following Regulations:

[Preamble amended by BR 54 / 2014 reg. 2 effective 30 June 2014]

Citation

1 These Regulations may be cited as the Merchant Shipping (Repatriation) Regulations 2013.

Interpretation

2 In these Regulations—

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“Collective Bargaining Agreement” means a written agreement, valid for not more than 5 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;

“independent”, in relation to a trade union, means not under the influence or control of an employer, group of employers, or one or more employers’ associations, and not subject to interference or control, by way of financial or material support, or by any other means, from an employer or any such group or association;

“Loadline Convention” means the International Convention on Load Lines 1966 as amended;

“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;

“Minister” means the Minister responsible for Maritime Administration;

“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, 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

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(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 2006 for the inspections of ships of other flags in its territory;

“repatriation” means travel and support from the place where a seafarer leaves a ship to his repatriation destination in accordance with Regulation 6;

“repatriation destination” means either:

- (a) the place where the seafarer entered into the employment agreement;
- (b) a place stipulated in an applicable Collective Bargaining Agreement;
- (c) the seafarer’s country of residence; or
- (d) a place as may be mutually agreed between the seafarer and the employer at the time of entering into the employment agreement;

“seafarer” in these Regulations means any person, including a master, who is employed or engaged or works in any capacity on board a ship, on the business of the 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 Organisation.

“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;

“SOLAS” means the International Convention for the Safety of Life at Sea 1974 and its Protocol of 1988 and includes any subsequent amendments.

Application

3 (1) These Regulations apply to—

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

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- (iv) harbour tugs operating in Bermuda waters.
- (b) To the extent specified in regulation 10, other 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 on commercial activity.

Financial security

4 (1) Every shipowner with responsibility for a Bermuda ship shall make arrangements for financial security to cover the possible costs of repatriation of any of the seafarers in its employ, and that financial security may be a policy of insurance or other arrangements, but in every case shall be effective to provide for repatriation of any or all of the seafarers on the ship in accordance with these Regulations in the event that the shipowner is insolvent or otherwise unable to meet his obligations for repatriation.

(2) Every ship to which these Regulations apply shall carry on board evidence of the financial security required by paragraph (1), which may be a copy of the policy of insurance or other certification, by which it may be established with certainty that a seafarer employed on that ship will be repatriated, in accordance with these Regulations, and that the security shall be effective even if the shipowner ceases to trade or becomes insolvent.

(3) Any authorised officer of the Maritime Administration shall, on request, be provided with the evidence of financial security provided on board any Bermuda ship.

(4) Where it is considered appropriate the Minister may exempt a pleasure vessel from the requirements of this regulation on such terms and conditions as he sees fit.

Entitlement to repatriation

5 (1) A seafarer shall be entitled to repatriation whenever his seafarer's employment agreement ends in a place outside his repatriation destination.

(2) A seafarer shall additionally be entitled to repatriation on any occasion when—

- (a) a seafarer gives notice in accordance with the seafarer's employment agreement when the ship has ceased to hold valid safety certificates as required by SOLAS or the Loadline Convention, or is arrested and remains so for a period of 30 days;
- (b) a seafarer's employment agreement is terminated on the loss or sale of the ship, or its change in registration;
- (c) a shipowner is no longer able to fulfil his legal or contractual obligations to the seafarer as a consequence of insolvency, sale of the ship, change in registry or similar cause;

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- (d) a seafarer is unable, as a result of illness or injury arising from his work on board the ship, to continue to perform his duties on board; or
- (e) the seafarer's employment agreement is terminated by the seafarer, after giving notice in accordance with the employment agreement, in the event that the ship is bound for a war zone to which the seafarer does not consent to go.

(3) The right to repatriation in paragraph (1) shall lapse in the event that a seafarer does not claim that right within 3 months of termination of the employment agreement.

[Regulation 5 paragraph (2) amended by BR 54 / 2014 reg. 3 effective 30 June 2014]

Scope of repatriation

6 (1) The costs of repatriation to which the shipowner shall be liable under these Regulations include—

- (a) passage by air from the place where the employment agreement is terminated to the seafarer's repatriation destination, but where passage by air cannot be provided from that place where the agreement is terminated, or where other means of transport are available that will return the seafarer to his repatriation destination expeditiously the passage may be by other means to the nearest airport from where the seafarer can be repatriated by air or to the repatriation destination;
- (b) accommodation and food from the time a seafarer leaves the ship until the seafarer arrives at the repatriation destination, provided that the shipowner shall only be liable for the costs of food and accommodation to the extent necessary between the time the seafarer leaves the ship and the time he starts travelling by such means as arranged by the shipowner and the shipowner shall not be liable for any accommodation and food in excess of that time, or for food and accommodation that is not necessary for the purposes of repatriation;
- (c) pay and allowances in accordance with the employment agreement or any Collective Bargaining Agreement that applies from the time that the seafarer leaves the ship until his arrival at the repatriation destination, provided that—
 - (i) time spent by the seafarer in excess of the minimum time arranged by the shipowner between leaving the ship and arrival at the repatriation destination shall not be payable; and
 - (ii) time spent waiting for repatriation shall not be deducted from paid leave periods earned in accordance with the seafarer's employment agreement.;
- (d) transport of up to 30 kg of personal baggage from the ship to the repatriation destination; and

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- (e) in the case of a seafarer whose employment agreement is terminated through injury or illness, medical treatment when necessary until the seafarer is medically fit to travel.

Seafarer's liability for costs of repatriation

7 (1) A shipowner shall not require any seafarer to make a contribution towards the cost of repatriation at any time before, during or following the seafarer's employment on the ship.

(2) Notwithstanding the prohibition in sub-paragraph (1) contributions towards repatriation that are agreed and fully explained in any Collective Bargaining Agreement that applies shall be permitted but contributions requested at the commencement of employment, even if agreed in a Collective Bargaining Agreement, are not permitted.

(3) Except as provided in paragraph (2) a shipowner shall not recover the cost of repatriation from a seafarer's wages or any other entitlements before, during or following their employment on the ship.

(4) Where a seafarer is justifiably dismissed from employment on a ship on grounds of serious misconduct, as defined in the Merchant Shipping (Seafarer's Employment) Regulations 2013, the shipowner may deduct from any wages due to the seafarer the costs of repatriation.

Failure of shipowner to provide repatriation

8 (1) Where a shipowner fails to make arrangements for repatriation as required by these Regulations and any seafarer employed in a Bermuda ship who is entitled to repatriation is left in a port outside the seafarer's repatriation destination, the Minister shall arrange for the seafarer to be repatriated and shall have the right to recover the costs of such repatriation whether it is incurred directly by the Minister or by the State or country from which he was repatriated or by the State or country of which the seafarer is a national or resident, from the shipowner including such other costs of arrangement as the Minister may determine.

(2) In exercising his right to recover costs from a shipowner in accordance with paragraph (1), the Minister may request the arrest of any or all of the ships of the shipowner until reimbursement has been made.

(3) In the event that a foreign shipowner or the competent authority of the Member whose flag the ship flies fails to make arrangements for or to meet the cost of repatriation of seafarers who are entitled to be repatriated, and the ship is in Bermuda waters, the Minister shall arrange for their repatriation and recover the cost from the Member whose flag the ship flies.

[Regulation 8 paragraph (2) amended and paragraph (3) inserted by BR 54 / 2014 reg. 4 effective 30 June 2014]

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Provision of information

9 The shipowner responsible for every ship to which these Regulations apply shall ensure that information on the entitlement to repatriation in these regulations is available to every seafarer on board the ship.

Penalty

9A (1) A shipowner who contravenes regulation 4 or does not comply with the requirements of regulations 6, 7(1), 7(2), or 9, commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

(2) A master who contravenes regulation 9 commits an offence and is liable on summary conviction to a fine not exceeding \$3,000.

[Regulation 9A inserted by BR 54 / 2014 reg. 5 effective 30 June 2014]

Inspection

10 (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 the arrangement for repatriation is not in accordance with the requirements stated in the Declaration Part 1 to the ship's Maritime Labour Certificate, or in the case of a ship to which a Maritime Labour Certificate is not issued, the requirements 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 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

11 The Merchant Shipping (Repatriation) Regulations 1980 are revoked.

Commencement

12 These Regulations shall come into operation on the same date on which the Merchant Shipping (ILO) Amendment Act 2012 comes into operation.

[Regulations 11 and 12 originally erroneously numbered 12 and 13, respectively. Correction made under s.11(n) of the Computerization and Revision of Laws Act 1989 on 19 August 2015]

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Made this 12th day of December 2013

Minister of Tourism Development and Transport

[Amended by:
BR 54 / 2014]