L.N. 213 of 2002

MERCHANT SHIPPING ACT
(CAP. 234)
Merchant Shipping (Hours of Work) Regulations, 2002

IN exercise of the powers conferred by articles 122C and 374 of the Merchant Shipping Act, the Minister for Transport and Communications has made the following regulations:–

PART 1

General

Citation and commencement.

1. (1) The title of these regulations is the Merchant Shipping (Hours of Work) Regulations, 2002.

(2) These regulations shall come into force on the 1st December 2002, other than regulations 17 to 19, which shall come into force on the 10th January, 2003, and regulations 12, 14 and 20, which shall come into force on such date as the Minister responsible for shipping may by notice in the Gazette appoint, and different dates may be so appointed for different provisions and different purposes of the said regulations.

Interpretation.

2. (1) In these regulations, unless the context otherwise requires–

"the Act" means the Merchant Shipping Act;

"appropriate inspector" means a person so charged in terms of article 154 of the Act;

"company", in relation to a ship, means the owner or any other organisation or person such as the manager, or the bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner;

"complaint" means any information or report submitted by a member of the crew, a professional body, an association, a trade

union or, generally, any person with an interest in the safety of the ship, including an interest in safety or health hazards to its crew;

"duly qualified medical practitioner" shall have the same meaning as is assigned to it by article 108(5) of the Act;

"employer", in relation to a seafarer, means the person by whom the worker is (or, where the employment has ceased, was) employed;

"employment", in relation to a seafarer, means employment under his contract, and "employed" shall be construed accordingly;

"hours of rest" means time outside hours of work and does not include short breaks;

"hours of work" means time during which a seafarer is required to do work on account of the ship;

"night" means a period -

(a) the duration of which is not less than nine consecutive hours; and

(b) which includes the period between midnight and 5 a.m.;

"relevant requirements" means the requirements of regulations 5,8,9(3),10 and 11 hereof;

"seafarer" means any person who is employed or engaged in any capacity on board a sea-going ship, on the business of the ship.

(2) The Registrar-General is designated as the competent authority for Malta for the purposes of these regulations.

(3) In relation to any other State, "competent authority" means the national maritime Administration maintained by that State for the inspection of ships.

Purpose of regulations

3. The purpose of these regulations is to implement the majority of the provisions of the Seafarer's Hours of Work and the Manning of Ships Convention, 1996 (ILO Convention No. 180), and also to give effect in part to the Merchant Shipping (Minimum Standards) Convention, 1976 (ILO Convention No. 147) and its Protocol of 1996.

Application.

4. (1) These regulations shall not apply to-

(a) fishing vessels;

(b) pleasure yachts;

(c) oil rigs and drilling platforms when engaged in navigation; and

(d) any seafarer who is subject to the provisions of the Seamen Wages Council Wage Regulation Order, 1977. L.N. 100 of 1977.

(2) Subject to sub-regulation (1) hereof, -

(a) these regulations other than regulations 17 to 19 hereof apply to sea-going Maltese ships; and

(b) regulations 17 to 19 hereof apply to sea-going ships other than Maltese ships, when they are in a Maltese port and the territorial waters thereof.

PART 2

Hours of Work and Annual Leave

General duties of person employing a seafarer, master, etc..

5. Subject to regulation 9 hereof, it shall be the duty of an employer of a seafarer and a master of a ship to ensure that a seafarer is provided with at least the minimum hours of rest.

Minimum hours of rest.

6. (1) Subject to regulations 7 and 9, the minimum hours of rest shall be not less than-

(a) ten hours in any 24-hour period; and

(b) 77 hours in any seven-day period.

(2) Hours of rest may be divided into no more than two periods, one of which shall be at least six hours in length, and the interval between such consecutive periods shall not exceed 14 hours.

(3) Musters, fire-fighting and lifeboat drills shall be conducted in a manner which minimises the disturbances of rest periods and does not induce fatigue.

(4) A seafarer who is on call shall have adequate compensatory rest period if his normal period of rest is disturbed by call-outs of work.

Minimum hours of rest: further provision.

7. The Registrar-General may authorise collective agreements permitting exceptions to the limits in sub-regulations 6(1) and (2) but shall have due regard for the general principles of the protection of the health and safety of seafarers.

Posting-up of table.

8. (1) The master of a ship, or a person authorised by the master, shall ensure that a table with the shipboard working arrangements complying with sub-regulations (2) and (3) hereof is posted-up in a prominent and accessible place in the ship.

(2) A table under sub-regulation (1) hereof shall contain for every position at least:

(a) the schedule of service at sea and service in port; and

(b) the minimum hours of rest as required by these regulations or any collective agreements in force.

(3) A table under sub-regulation (1) hereof shall be in the format appearing in Schedule I to these regulations and shall be in English and in the working language of the ship if that is not English.

Exception for emergencies

9. (1) The master of a ship may require a seafarer to work any hours of work necessary for the immediate safety of the ship, persons on board ship or cargo or for the purpose of giving assistance to another ship or to a person in distress at sea.

(2) For the purposes of sub-regulation (1) hereof, the master may suspend the hours of rest scheduled in the table under regulation 8 hereof and require a seafarer to perform any hours of work necessary until the normal situation has been restored.

(3) As soon as practicable after the normal situation has been restored the master shall ensure that any seafarer who has performed work in a rest period scheduled in the table under regulation 9 hereof is provided with an adequate rest period.

Records.

10. (1) A record of a seafarer's daily hours of rest shall be maintained by the master or a person authorised by the master.

(2) The record kept under sub-regulation (1) hereof shall -

(a) be in the format appearing in Schedule II to these regulations;

(b) be in English and in the working language of the ship if that is not English;

(c) be completed monthly in arrears;

(d) reflect all deviations from the scheduled hours of rest as per the provisions of regulation 9 hereof;

(e) be endorsed by the master or a person authorised by the master, and by the seafarer in question, and a copy thereof shall be given to the seafarer by the master or the person authorised by the master;

(f) be kept for a period of two years and shall be available for inspection and endorsement by the Registrar-General or an appropriate inspector.

(3) The company and the master shall ensure that a copy of these regulations and any collective agreements referred to under regulation 7 hereof are carried at all times on board ship and are easily accessible to the seafarers on board.

Young Persons. L.N. 91 of 2000.

11. (1) Notwithstanding the provisions of regulation 5 of the Protection of Young Persons at Work Places Regulations, 2000 and subject to sub-regulation (2) hereof, no seafarer under the age of 18 years shall work at night.

(2) A seafarer of the age of 16 years and 17 years may work at night if the work forms part of an established programme of training the effectiveness of which would be impaired by the prohibition in sub-regulation (1) hereof.

Health assessment and transfer of seafarers on watchkeeping duties to day work.

12. Where-

(a) a duly qualified medical practitioner has certified that a seafarer engaged on watchkeeping duties is suffering from health problems which the practitioner considers to be due to the fact that the seafarer performs night work, and

(b) it is possible for the employer to transfer the seafarer to work-

(i) to which the seafarer is suited, and

(ii) which is to be undertaken during periods such that the seafarer will cease to perform night work,

the seafarer shall be transferred accordingly.

Power to require information.

13. A company shall provide the Registrar-General with such information on watch-keepers and other seafarers working at night as may be specified by the Registrar-General.

Entitlement to annual leave.

14. (1) Subject to sub-regulation (3) hereof, a seafarer is entitled in each leave year to a period of leave of at least four weeks.

(2) For the purposes of this regulation, a seafarer's leave year, begins-

(a) on such date during the calendar year as may be agreed in writing by the employer and the seafarer; or

(b) in absence of such agreement-

(i) if the seafarer's employment began on or before the coming into force of this regulation, on that date and each subsequent anniversary of that date; or

(ii) if the seafarer's employment begins after the coming into force of this regulation, on the date on which that employment begins and each subsequent anniversary of that date.

(3) Where the date on which a seafarer's employment begins is later than the date on which, by agreement as described in sub-regulation (2)(a) hereof , his first leave year begins, the leave to which he is entitled in that leave year shall be a proportion of the period of four weeks equal to the proportion of that leave year remaining on the date on which his employment begins.

(4) Where by virtue of sub-regulation (3) hereof the period of leave to which a seafarer is entitled is or includes a proportion of a week, the proportion shall be determined in days and any fraction of a day shall be treated as a whole day.

(5) Leave to which a seafarer is entitled under this regulation may not be replaced by a payment in lieu except where the seafarer's employment is terminated.

(6) Subject to sub-regulation (5) hereof a seafarer shall be paid at the rate of a week's pay in respect of each week of leave to which he is entitled under this regulation.

Entitlements under other provisions.

15. Where during any period a seafarer is entitled to hours of rest or annual leave both under a provision of these regulations and under a

separate provision (including a provision of his contract), he may exercise the two rights separately, but may, in taking hours of rest or annual leave during that period, take advantage of whichever right is, in any particular respect, the more favourable.

PART 3

Enforcement

Inspection and detention of Maltese ship.

16. The Registrar-General, or an appropriate inspector, may inspect any Maltese ship to which these regulations apply and if satisfied that there has been a failure to comply in relation to that ship with the relevant requirements the Registrar-General may:

(i) take such measures as are necessary to rectify those conditions and any expenses incurred therefor shall be a charge on the ship;

(ii) detain the ship.

Reports on ships other than Maltese Ships

17. (1) Where-

(a) the Registrar-General receives a complaint which is not considered manifestly unfounded, or obtains evidence that a ship, which is not a Maltese ship and is in a Maltese port does not comply with the relevant requirements; and

(b) the ship has called voluntarily at that port in the normal course of its business or for operational reasons,

the Registrar–General shall prepare a report addressed to the government of the country in which the ship is registered and copied to the Director-General of the International Labour Office.

(2) The identity of the person lodging the complaint must not be revealed to the master of the ship concerned or the company in respect of the ship.

Inspections of ships other than Maltese Ships.

18. (1) When carrying out an inspection in order to obtain evidence that a ship does not comply with the relevant requirements the Registrar-General, or an appropriate inspector shall determine whether-

(a) a table complying with sub-regulation 8(2) is posted-up in a prominent and accessible place on the ship; and

(b) records are being maintained in compliance with regulation 10; and

(c) there is proof such records have been endorsed by the competent authority of the country in which the ship is registered.

(2) Where-

(a) a complaint has been received, or

(b) the Registrar-General, or an appropriate inspector, from own observations on board believes that seafarers may be unduly fatigued,

the Registrar-General, or the inspector shall carry out a more detailed inspection, in accordance with sub-regulation (1) hereof, to determine whether the hours of rest recorded comply with the standards laid down in regulation 6 hereof and that they have been duly observed, and shall inspect and take into account other records relating to the operation of the ship.

Rectification of deficiencies.

19. (1) If the inspection or more detailed inspection in accordance with regulation 18 hereof reveals that the ship does not comply with the relevant requirements the Registrar-General shall, in the case of deficiencies which are clearly hazardous to the safety or health of seafarers, take such measures as are necessary to ensure that such deficiencies are rectified and any expenses incurred therefor shall be a charge on the ship, and may detain the ship until deficiencies have been rectified or the seafarers in question have been sufficiently rested.

(2) If there is clear evidence that watchkeeping personnel for the first watch, or subsequent relieving watches, are unduly fatigued the Registrar-General shall detain the ship until the deficiencies found have been rectified or the seafarers in question have been sufficiently rested.

(3) If the Registrar-General takes either of the measures specified in sub-regulations (1) and (2) hereof, the Registrar-General shall forthwith notify -

(a) the master of the ship;

(b) the company in respect of the ship; and

(c) the maritime Administration and the nearest maritime, consular or diplomatic representative of the flag State of the ship,

and shall inform them of the results of any inspection in accordance with regulation 18 hereof, of any decisions taken and of any corrective actions required.

(4) The Registrar-General shall not in exercise of his power under this regulation detain or delay the ship unreasonably.

Release of information.

20. The Registrar-General shall ensure the publication, at least every month, of the information specified in Schedule III to these regulations concerning ships to which regulations 17 to 19 apply which during the previous month have been detained in a port in Malta.

PART 4

Penalties

Penalties.

21. (1) Any contravention by-

(a) the master of a ship of regulation 5, sub-regulations 8(1), 9(3) or 10(1), (2)(e) or (3);

(b) an employer of regulation 5;

(c) a person authorised by the master of a ship of sub-regulation 8(1) or 10(1) or (2)(e); or

(d) a company of sub-regulation 10(3) or regulation 13

shall be liable to a fine *(multa)* of not more than Lm 1,000 for each offence.

(2) Where there is a contravention of sub-regulation 6(3) or (4) the master of the ship shall for each offence be liable to a fine *(multa)* of not more than Lm 500.

(3) Where there is a contravention of sub-regulation 11 (1) the employer of the seafarer under the age of 18 years shall be liable to a fine *(multa)* of not more than Lm500.

(4) Where there is a contravention of regulation 14 the employer of the seafarer shall be liable to a fine *(multa)* of not more than Lm 1,000.

SCHEDULE I
(Regulation 8)

Model format for a table of shipboard working arrangements[1]

me of ship:_____ Flag of ship:_____ IMO number (if any):_____ Latest update of table:_____ ( ) of ( ) pages

e maximum hours of work or minimum hours of rest are applicable in accordance with: _____ (national law or regulation) issued in conformity with ILO's Seafarers' urs of Work and the Manning of Ships Convention, 1996 (No. 180), and with any applicable collective agreement registered or authorized in accordance with that Convention and th the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW Convention).[2]

aximum hours of work or minimum hours of rest:[3] _____

her requirements:_____

osition/Rank[4]	Scheduled daily work hours at sea		Scheduled daily work hours in port		Comments	Total daily work/rest[3] hours	
	Watchkeeping (from – to)	Non-watchkeeping duties (from – to)[5]	Watchkeeping (from – to)	Non-watchkeeping duties (from – to)[5]		At sea	In port

Signature of master _____

The terms used in this model table are to appear in the working language or languages of the ship and in English.

See overleaf for selected extracts from ILO Convention 180 and the STCW Convention.

Delete as applicable.

For those positions/ranks that are also listed in the ship's safe manning document, the terminology used should be the same as in that document.

For watchkeeping personnel, the comments section may be used to indicate the anticipated number of hours to be devoted to unscheduled work and any such hours should be included in the appropriate total daily work hours column.

Selected texts from ILO Convention 180 and the STCW Convention

ILO Convention 180

Art. 5 paragraph 1 — The limits on hours of work or rest shall be as follows: (a) maximum hours of work shall not exceed: (i) 14 hours in any 24-hour period; and (ii) 72 hours in any 7-day period; or (b) minimum hours of rest shall not be less than: (i) 10 hours in any 24-hour period; and (ii) 77 hours in any 7-day period.

Art. 5 paragraph 2 — Hours of rest may be divided into no more than two periods, one of which shall be at least 6 hours in length, and the interval between consecutive periods of rest shall not exceed 14 hours.

Art. 5 paragraph 6 — Nothing in paragraphs 1 and 2 shall prevent the Member from having national laws or regulations or a procedure for the competent authority to authorize or register collective agreements permitting exceptions to the limits set out. Such exceptions shall, as far as possible, follow the standards set out but may take account of more frequent or longer leave periods or the granting of compensatory leave for watchkeeping seafarers or seafarers working on board ships on short voyages.

Art. 7 paragraph 1 — Nothing in this Convention shall be deemed to impair the right of the master of a ship to require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to other ships or persons in distress at sea.

Art. 7 paragraph 3 — As soon as practicable after the normal situation has been restored, the master shall ensure that any seafarers who have performed work in a scheduled rest period are provided with an adequate period of rest.

STCW Convention

Section A-VIII/1 of the STCW Code (mandatory)

1. All persons who are assigned duty as officer in charge of a watch or as a rating forming part of a watch shall be provided a minimum of 10 hours rest in any 24-hour period.

2. The hours of rest may be divided into no more than two periods, one of which shall be at least 6 hours in length.

3. The requirements for rest periods laid down in paragraph 1 and 2 need not be maintained in the case of an emergency or drill or in other overriding operational conditions.

4. Notwithstanding the provisions of paragraphs 1 and 2, the minimum period of 10 hours may be reduced to not less than 6 consecutive hours provided that any such reduction shall not extend beyond 2 days and not less than 70 hours of rest are provided each 7-day period.

5. Administrations shall require that watch schedules be posted where they are easily accessible.

Section B-VIII/1 of the STCW Code (guidance)

3. In applying regulation VIII/1, the following should be taken into account.

.1 provisions made to prevent fatigue should ensure that excessive or unreasonable overall working hours are not undertaken. In particular, the minimum rest periods specified in section A-VIII/1 should not be interpreted as implying that all other hours may be devoted to watchkeeping or other duties;

.2 that the frequency and length of leave periods, and the granting of compensatory leave, are material factors in preventing fatigue from building up over a period of time; and

.3 the provisions may be varied for ships on short-sea voyages, provided special safety arrangements are put in place.

SCHEDULE II
(Regulation 10)

Model format for record of hours of work or hours of rest of seafarers[1]

Name of ship: _____ IMO number (if any): _____ Flag of ship: _____

Seafarer (full name): _____ Position / rank: _____

Month and year: _____ Watchkeeper:[2] yes ☐ no ☐

Record of hours of work/rest[3]

Please mark periods of work or rest, as applicable, with an X, or using a continuous line or arrow.

COMPLETE THE TABLE ON THE REVERSE SIDE

The following national laws, regulations and/or collective agreements governing limitations on working hours or minimum rest periods apply to this ship:

_____

I agree that this record is an accurate reflection of the hours of work or rest of the seafarer concerned.

Name of master or person authorized by master to sign this record _____

Signature of master or authorized person _____ Signature of seafarer _____

A copy of this record is to be given to the seafarer. This form is subject to examination and endorsement under procedures established by _____
(name of competent authority)

_____

[1] The terms used in this model table are to appear in the working language or languages of the ship and in English.

[2] Check ✓ as appropriate.

[3] Delete as appropriate.

Please mark periods of work or rest as applicable with an "X" or using a continuous line or arrow

Hours / Date	00 01 02 03 04 05 06 07 08 09 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Hours of rest in 24-hour period	Comments	NOT TO BE COMPLETED BY THE SEAFARER[1]	
				Hours of work or rest as applicable, in any 24-hour period[2]	Hours of work or rest as applicable, in any 7-day period[2]

SCHEDULE III
(Regulation 20)

Publication of information related to detentions and inspections in accordance with regulation 20

- name of the ship,
- IMO number,
- type of ship,
- tonnage (gt),
- year of construction as determined on the basis of the date indicated in the ship's safety certificates,
- name and address of the shipowner or operator of the ship,
- in the case of ships carrying liquid or solid cargoes in bulk, the name and address of the charterer responsible for the selection of the vessel and the type of charter,
- flag State,
- the classification society or classification societies, where relevant, which has/have issued to this ship the class certificates, if any,
- the classification society or classification societies and/or any other party which has/have issued to this ship certificates in accordance with the applicable conventions on behalf of the flag State, stating the certificates delivered,
- port and date of the last expanded inspection stating, where appropriate, whether a detention was ordered,
- port and date of the last special survey and the name of the organisation which carried out the survey,
- number of detentions during the 24 previous months,
- country and port of detention,
- date when the detention was lifted,
- duration of detention, in days,
- number of deficiencies found and the reasons for detention, in clear and explicit terms,
- description of the measures taken by the competent authority and, where relevant, by the classification society as a follow-up to detention,
- if the ship has been refused access to any port, the reasons for such measure in clear and explicit terms,
- indication, where relevant, of whether the classification society or any other private body that carried out the survey has a responsibility in relation to the deficiencies which, alone or in combination, led to detention,
- description of the measures taken in the case of a ship which has been allowed to proceed to the nearest appropriate repair yard, or which has been refused access to any port.