

L.N. 117 of 2014

**AUTHORITY FOR TRANSPORT IN MALTA ACT
(CAP. 499)**

**PORTS AND SHIPPING ACT
(CAP. 352)**

Commercial Vessels (Amendment) Regulations, 2014

IN exercise of the powers conferred by article 43(1) and (3) of the Authority for Transport in Malta Act and article 4(3) of the Ports and Shipping Act, the Minister for Transport and Infrastructure, in consultation with the Authority for Transport in Malta has made the following regulations:-

1. (1) The title of these regulations is the Commercial Vessels (Amendment) Regulations, 2014, and these regulations shall be read and construed as one with the Commercial Vessels Regulations, hereinafter referred to as "the principal regulations".

Citation and commencement.

S.L. 499.23

(2) These regulations shall come into force after two months from the publication of the said regulations.

2. In regulation 2 of the principal regulations, for the word "ply" there shall be substituted the words "be used or operated".

Amends regulation 2 of the principal regulations.

3. Regulation 3 of the principal regulations shall be amended as follows:

Amends regulation 3 of the principal regulations.

(a) immediately after the definition "Authority" there shall be added the following new definition:

	" "authorised commercial premises"
Cap. 441.	means any commercial premises as defined by the Trading Licences Act and which is
S.L. 441.07.	licensed to carry out any commercial activity in terms of the Trading Licences Regulations;
	and for the purpose of these regulations includes also any building, premises or other establishment which is licensed in terms of
Cap. 409.	the Malta Travel and Tourism Services Act;"

(b) in the definition "commercial vessel", immediately after the words "means a vessel" there shall be added the words ", whether power-driven or not,"; and for the word "plying" there shall be substituted the word "operating";

(c) the definitions "commercial vessel boatman", "commercial vessel boatmaster", "commercial vessel engineer", "commercial vessel engine driver" "commercial vessel general purpose hand", "commercial vessel master" and "commercial vessel mate" shall be deleted;

(d) the definitions "commercial vessel assignment for freeboard certificate", "commercial vessel minimum safe manning document", "commercial vessel oil pollution prevention certificate", "commercial passenger vessel safety certificate", "commercial cargo vessel safety construction certificate" and "commercial cargo vessel safety equipment certificate" shall be deleted;

(e) immediately after the definition "effective" there shall be added the following new definition:

" "enforcement officer" means a member of the Police or of the Armed Forces of Malta, or an official authorised by the Authority to enforce these regulations;"

(f) immediately after the definition "gross tonnage" there shall be added the following new definition:

" "hire" shall include bareboat chartering, whether skippered or not;"

(g) immediately after the definition "passenger" there shall be added the following new definition:

" "passenger transport services" means the carriage of passengers using commercial vessels for hire or reward, and shall include sightseeing tours and any other commercial activity involving the carriage of passengers;"

(h) for the definition "pleasure craft" there shall be substituted the following:

" "pleasure craft" means any ship which is only and exclusively used and operated for private pleasure and recreational purposes and not operated for or otherwise used in any commercial activity;" and

(i) immediately after the definition "territorial and internal waters" there shall be added the following new definition:

Cap. 490. " "Tribunal" means the Administrative Review Tribunal established in terms of article 5 of the Administrative Justice Act;"

4. In paragraph (b) of regulation 4 of the principal regulations, immediately after the words "fishing boat" there shall be added the following: Amends regulation 4 of the principal regulations.

Cap. 425. "when engaged, operated and used solely in licensed fishing activities in terms of the provisions of the Fisheries Conservation and Management Act"

5. Regulation 6 of the principal regulations shall be substituted by the following: Substitutes regulation 6 of the principal regulations.

"6. No person shall use or operate a vessel, nor shall its owner cause or permit the use or operation of such vessel, for hire or reward within the ports, internal and territorial waters of Malta, unless it is certified in terms of the Code of Practice and is covered by a valid commercial vessel certificate."

6. In sub-regulation (1) of regulation 9 of the principal regulations, for the word "ply" there shall be substituted the words "be used or operated". Amends regulation 9 of the principal regulations.

7. Immediately after regulation 10 of the principal regulations there shall be added the following new regulation: Adds new regulation 10A to the principal regulations.

"Commercial vessel certificate, etc. 10A. The provisions of regulations 13, 14, 15 16, 17, 20, 21, 23, 24, 25, 26, 27 and 28 shall *mutatis mutandis* apply to any commercial vessel certificate and other certificates, licences or permits issued under the provisions of these regulations and the Code of Practice."

8. In paragraph (a) of regulation 12 of the principal regulations, immediately before the words "in the opinion of the Authority" there shall be added the words "eighteen years of age and". Amends regulation 12 of the principal regulations.

9. Regulation 15 of the principal regulations shall be substituted by the following: Substitutes regulation 15 of the principal regulations.

"15. The Authority may suspend, cancel, revoke or refuse the renewal of any licence previously granted or renewed by it under these regulations for any breach of any provision of

these regulations or of any other laws and regulations or lawful directives of the Authority that the holder thereof is bound to observe during the carrying out of commercial operations and activities."

Amends
regulation 18 of
the principal
regulations.

10. In regulation 18 of the principal regulations, for the words "officer authorised by the Authority" there shall be substituted the words "enforcement officer".

Amends
regulation 19 of
the principal
regulations.

11. In paragraph (f) of sub-regulation (3) of regulation 19 of the principal regulations, for the word "ply" there shall be substituted the word "operated".

Amends
regulation 20 of
the principal
regulations.

12. Regulation 20 of the principal regulations shall be renumbered as sub-regulation (1) thereof and immediately after sub-regulation (1), as renumbered, there shall be added the following new sub-regulation:

"(2) The Authority may at any time prohibit the use and operation of any commercial vessel if such commercial vessel is considered by it, in its absolute discretion, as not being seaworthy or constituting a danger to life, health, safety or property."

Amends
regulation 23 of
the principal
regulations.

13. In regulation 23 of the principal regulations, for the words "from the date of issue.", there shall be substituted the words "from the date of issue:", and immediately thereafter there shall be added the following new proviso:

"Provided that the Authority may establish different validity periods for different licences from time to time."

Amends
regulation 27 of
the principal
regulations.

14. In sub-regulation (4) of regulation 27 of the principal regulations, the words "within twenty-one days" shall be deleted.

Substitutes the
title after
regulation 33 of
the principal
regulations.

15. For the title immediately after regulation 33 of the principal regulations, there shall be substituted the title "Operations of Commercial Vessels and Passenger Transport Services".

Amends
regulation 35 of
the principal
regulations.

16. In regulation 35 of the principal regulations, for the word "ply" there shall be substituted the words "be used or operated".

Substitutes
regulation 37 of
the principal
regulations.

17. Regulation 37 of the principal regulations shall be

substituted by the following:

"Fares, etc.

37. (1) Tariffs shall be established either in accordance with regulation 34 or by the operator of the commercial vessel. All tariffs must be published by the operator.

(2) It shall not be lawful for a Master, operator or owner or of a commercial vessel to charge or demand a fare higher than the established and published tariff, whether such fare is established in terms of regulation 34 or not, or, if a lesser sum is agreed upon, more than such agreed sum.

(3) A printed form of the tariff of fares shall be displayed conspicuously at all times in the interior of every commercial vessel and the Authority may direct the operator of a commercial vessel to display other information from time to time.

(4) Tariff of fares of commercial vessels shall include the full charges applicable and whether such charges are computed by distance or by time.

(5) The Master, operator or owner of a commercial vessel shall provide the passenger with a receipt showing the date, the amount paid and the origin and destination of the trip.

(6) A passenger may be requested by an enforcement officer to produce his receipt in order to examine and inspect the receipt and its validity on embarking on or disembarking from a commercial vessel.

(7) The owner or operator of a commercial vessel let out on hire shall not permit any person or things to be carried in, on or with such vessel, whilst on hire, without the consent of the hirer."

18. Immediately after regulation 37 of the principal regulations there shall be added the following new regulations:

Adds new regulations 37A to 37D to the principal regulations.

"Passenger transport services.

37A. (1) Passenger transport services may only be sold from authorised commercial premises, from the operator's offices or operating centre, online, by telephone or by mail, from the commercial vessel for which the transport services are being sold, from the operator's authorised and licensed stand or within five metres of the established pick-up and, or drop-off points:

Provided that the said five metres do not interfere with the rights of, or cause any kind of nuisance to, a neighbouring operator.

(2) The sale of any transport services within five metres of the established pick-up and, or drop-off points shall be subject to any authorisation, certificate, permit or licence that is required from any competent authority for the setting up, placing, affixing or installation of the street furniture required.

(3) The sale of passenger transport services shall not take place within five metres of any bus stop, taxi stand or horse cab stand, or any other stop or stand used exclusively for land transport services.

Persons selling passenger transport services to wear identification tag.

37B. Any person selling passenger transport services from within five metres of the established pick-up and, or drop-off points shall wear, at all times and in a conspicuous manner, an identification tag issued to him by the operator of those services which shall contain a photograph of the person in respect of whom it is issued, his name and his Identity Card number and the name of the operator.

No soliciting or importuning.

37C. (1) The Master, operator or owner of a commercial vessel, while standing or operating for hire, shall not call, request, solicit or otherwise importune any person to hire such commercial vessel and shall not make use of the services of any other person for such purposes.

(2) No person shall call, request, solicit or otherwise importune, whether directly or indirectly, any person in any location for any passenger transport service and shall not make use of the services of any other person for such purposes.

Breach of regulations.

37D. No person shall -

(a) sell; or

(b) cause or permit another person to sell

passenger transport services in breach of regulations 37A, 37B and 37C."

19. Regulation 38 of the principal regulations shall be amended as follows:

Amends regulation 38 of the principal regulations.

(a) in sub-regulation (1) thereof, for the word "public" there shall be substituted the word "enforcement"; and

(b) in sub-regulation (4) thereof, for the word "public" there shall be substituted the word "enforcement"; and for the words "not less than one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69) and not more than eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87)", there shall be substituted the words "not less than one thousand and five hundred (1,500) euro and not more than twelve thousand (12,000) euro".

20. In the first proviso to regulation 51 of the principal regulations, immediately after the words "commercial vessel engine driver certificate" there shall be added the words "according to the Code of Practice".

Amends regulation 51 of the principal regulations.

21. Sub-regulation (1) of regulation 52 of the principal regulations shall be amended as follows:

Amends regulation 52 of the principal regulations.

(a) for the words "If any Master" there shall be substituted the words "Subject to the provisions of these regulations, if any Master"; and

(b) in paragraph (b) thereof, for the words "not more than two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37)" there shall be substituted the words "not more than three thousand (3,000) euro".

Amends
regulation 58 of
the principal
regulations.

22. In regulation 58 of the principal regulations, immediately after the words "by the Authority" there shall be added the words "or an enforcement officer".

Amends
regulation 60 of
the principal
regulations.

23. Sub-regulation (1) of regulation 60 of the principal regulations shall be amended as follows:

(a) for the words "If any owner" there shall be substituted the words "Subject to the provisions of these regulations, if any owner"; and

(b) in paragraph (b) thereof, for the words "not more than two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37)" there shall be substituted the words "not more than three thousand (3,000) euro".

Amends
regulation 62 of
the principal
regulations.

24. In sub-regulation (1) of regulation 62 of the principal regulations, for the words "not exceeding two thousand and three hundred and twenty-nine euro and thirty-seven cents (2,329.37), for each such offence, and in the case of a continuing offence or offences, to a further fine not exceeding one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69)" there shall be substituted the words "not exceeding seven thousand (7,000) euro, for each offence, and in the case of a continuing offence or offences, to a further fine not exceeding one thousand and five hundred (1,500) euro".

Renumbers
regulations 62
to 68 of the
principal
regulations.

25. Regulations 62 to 68 of the principal regulations shall be renumbered as regulations 66 to 72 thereof respectively.

Adds new
regulations 62
to 65 to the
principal
regulations.

26. Immediately after regulation 61 of the principal regulations there shall be added the following new regulations:

"Administrative
penalties, etc.

62. (1) The administrative penalties established by these regulations shall be imposed by the Authority without recourse to a court hearing and may be imposed either as a one-time penalty or on a daily cumulative basis until compliance, provided in the latter case the accumulated penalty shall not exceed three thousand (3,000) euro.

(2) The Authority shall not impose administrative penalties on a person for breach of these regulations where criminal proceedings have already been instituted in court against such person with respect to the said breach.

(3) The Authority shall, before imposing an administrative penalty in terms of these regulations, inform the person on whom the penalty is imposed of its intentions to do so by giving him a notice in writing. Every such notice shall state that the person concerned has a right to make representations in writing within not less than fourteen days to the Authority, giving reasons why the administrative penalty should not be imposed; and the Authority shall consider any such representations before arriving at a final decision. The Authority shall notify in writing its final decision to the person concerned.

(4) Where any person contravenes the same provision of these regulations more than once within a period of six consecutive months, the administrative penalty imposed shall be increased by a further five hundred euro (500).

(5) For the purposes of this regulation, administrative penalties shall not apply where an offence is committed under regulations 38 and 65.

(6) The procedure laid down in sub-regulation (3) shall also apply in those cases where the Authority refuses to grant or renew a licence, certificate or permit, or suspends or revokes such licence, certificate or permit, or imposes any conditions, limitations or exclusions therein, according to the provisions of these regulations.

Right of appeal
before the
Tribunal.

63. (1) Any person aggrieved by any decision of the Authority not to grant or renew a licence, certificate or permit, or to suspend or revoke such licence, certificate or permit, or to impose any conditions, limitations or exclusions therein, or to impose any administrative penalty on such person, may, within twenty days from when such decision is communicated to him, lodge an appeal therefrom before the Tribunal.

Cap. 12.

(2) The Tribunal may confirm, revoke or alter the decision of or the administrative penalty imposed by the Authority. The administrative penalty, if any, as confirmed or modified by the Tribunal, and, or by the Court of Appeal, where an appeal on a point of law is lodged in terms of the Act, shall be recoverable by the Authority as a civil debt and the decision of the Tribunal or the Court of Appeal, as the case may be, shall constitute an executive title for all intents and purposes of the Code of Organisation and Civil Procedure.

(3) If upon renewal of a licence, certificate or permit granted in terms of these regulations the person in whose name such licence, certificate or permit is granted owes the Authority a civil debt in terms of sub-regulation (2), such licence, certificate or permit may not be renewed unless and until such debt is settled in full.

(4) If at the moment that a check on compliance is carried out by the Authority a civil debt in terms of sub-regulation (2) is due by any person to the Authority, the relative licence, certificate or permit may be suspended without the need of recourse to the Tribunal until such debt is settled in full.

No criminal action when an administrative penalty has been paid or an appeal is pending.

64. (1) In the event that the Authority imposes an administrative penalty in accordance with the provisions of these regulations, and the person on whom such penalty is imposed pays such penalty to the Authority within the time indicated in the notice, no criminal proceedings may be instituted against such person in relation to the relative breach.

(2) Where a licence, certificate or permit has been suspended or revoked, or their issue or renewal has been refused, no criminal proceedings may be instituted against such person in relation to the relative breach.

(3) No criminal proceedings for the prosecution of a breach of these regulations shall be instituted while an appeal therefrom is pending in front of the Tribunal.

Forgery of licences, etc.

65. (1) No person shall deface or mutilate any licence, certificate or permit issued under these regulations, or alter or obliterate any entry made therein.

(2) Any person who, either by writing, drawing or in any other manner, alters, defaces or mutilates any licence, certificate or permit issued under these regulations, or adds or removes anything therein, or uses any licence, certificate or permit which has been altered, defaced, mutilated or added to or removed from as aforesaid, shall be guilty of an offence.

(3) Any person who, with the intent to deceive, forges, alters, uses, produces or sends any document required under the provisions of these regulations, or makes a statement or declaration which he knows to be false, shall be guilty of an offence.

(4) A person who is found guilty of an offence under sub-regulations (1), (2) and (3) shall be liable, on conviction, to a fine (*multa*) not exceeding five thousand (5,000) euro, or to imprisonment for a term not exceeding twelve months, or to both such fine and imprisonment, unless a higher punishment is applicable under any other law, in which case the Court shall apply that other punishment or this punishment increased by one or two degrees, whichever the higher."

