

No. S 21

MERCHANT SHIPPING ORDER, 2002
(S 27/02)

MERCHANT SHIPPING (DISCIPLINARY OFFENCES) REGULATIONS, 2007

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
2. Interpretation.
3. General disciplinary offences.
4. Disciplinary offences on board certain ships.
5. Disciplinary offences dealt with by master or authorised officer.
6. Disciplinary offences to be dealt with speedily.
7. Procedure for disciplinary offences.
8. Fines imposed for disciplinary offences.
9. Remission of fines imposed.
10. Fine imposed pending appeal.
11. Place of hearing for appeals.
12. Time limit for notice of appeal.
13. Duties of master in relation to appeals.
14. Alternate place of hearing for appeals.
15. Arrangement for hearing of appeals.

16. Furnishing of entries to Director.
 17. Procedure relating to appeals.
 18. Further arrangements for hearing of appeals.
 19. Entries in official log-book.
 20. Penalties.
-

MERCHANT SHIPPING ORDER, 2002

(S 27/02)

MERCHANT SHIPPING (DISCIPLINARY OFFENCES) REGULATIONS, 2007

In exercise of the power conferred by section 83 of the Merchant Shipping Order, 2002, the Minister of Communications, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Regulations —

Citation.

1. These Regulations may be cited as the Merchant Shipping (Disciplinary Offences) Regulations, 2007.

Application.

2. These Regulations shall apply to any seaman employed in a Brunei Darussalam ship other than in a ship —

(a) whose ordinary course of navigation does not extend beyond the limits of any port in Brunei Darussalam, if and so long such ship is engaged in the service for which it is intend; or

(b) 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.

General disciplinary offences.

3. It is a disciplinary offence on board a Brunei Darussalam ship for a seaman to whom these Regulations apply —

(a) to wilfully strike any person on board the ship;

(b) to wilfully disobey a lawful command;

(c) to use insolent or contemptuous language to the master or any seaman;

(d) without reasonable cause —

(i) to fail to be available for duty at a time when he is required by the master, or by a person authorised by the master, to be so available;

(ii) to fail to report or to remain at his place of duty at a time when he is so required to be at that place; or

(iii) while on duty, to be asleep at his place of duty;

(e) to be under the influence of alcohol or a drug, whether alone or in combination, to such an extent that he behaves in a disorderly manner or is unfit to be entrusted with his duty or with any duty which he might be called upon to perform, unless the drug was taken by him for medical purposes and either —

(i) he took it on medical advice and complied with any direction given as part of that advice; or

(ii) he had no reason to believe that the drug might have the influence it had;

(f) without the consent of the master or of any other person authorised to give it, to bring on board the ship or to have in his possession on board any offensive weapon or offensive instrument; or

(g) wilfully and without reasonable cause —

(i) to damage the ship or any property on board the ship; or

(ii) to throw any such property overboard.

Disciplinary offences on board certain ships.

4. (1) It is a disciplinary offence on board a Brunei Darussalam ship described in sub-regulation (3) for a seaman to whom these Regulations apply —

(a) to smoke;

(b) to use a naked light or mechanical lighter; or

(c) to use an electric torch which is not of a type approved by the master,

in any part of the ship in which smoking or the use of such a light, mechanical lighter or torch is prohibited by the master or the employer.

(2) It is a disciplinary offence on board a Brunei Darussalam ship described in sub-regulation (3) for a seaman to whom these Regulations apply, without the consent of the master or of any other person authorised to give it, to bring on

board the ship or to have in his possession on board any matches or a mechanical lighter.

{3} The description of a Brunei Darussalam ship referred to in sub-regulations {1} and {2} is any Brunei Darussalam ship in which —

(a) by reason of the cargo or stores which are or have been carried in the ship, there is a special risk of fire or explosion; and

(b) the master or the employer has given notice to seaman in the ship, whether by means of notices displayed in the ship or otherwise, that the act mentioned in sub-regulations {1}{a}, {b}, {c} or {2}, as the case may be, is prohibited, either in all or specified parts of the ship.

{4} In this regulation, "mechanical lighter" includes any mechanical, chemical or electrical contrivance designed or adapted for or capable of causing fire or explosion.

Disciplinary offences dealt with by master or authorised officer.

5. {1} A disciplinary offence may be dealt with by the master of the Brunei Darussalam ship on board where the offence is alleged to have occurred and the master may impose a fine, not exceeding such amount as is specified in regulation 8, on the seaman whom he finds has committed the offence.

{2} The powers and duties of the master in relation to a disciplinary offence under these Regulations may be exercised or performed by any officer authorised for the purpose by the master, and the name of the officer so authorised shall be entered by the master in the official log-book.

Disciplinary offences to be dealt with speedily.

6. {1} A disciplinary offence shall be dealt with within 24 hours from the time it comes to the notice of the master, unless it is not practicable to deal with it within that time, in which case, it shall be dealt with as soon as practicable thereafter.

{2} If a disciplinary offence is not dealt with within 24 hours from the time it comes to the notice of the master, the reason for the delay shall be recorded in the official log-book.

Procedure for disciplinary offences.

7. In dealing with a disciplinary offence, the following procedure shall be followed —

(a) a seaman charged with a disciplinary offence shall, if he so requests, be permitted at the hearing before the master to be accompanied by any person for the purpose of advising him and that person may speak on behalf of the seaman;

(b) the charge shall be entered by the master in the official log-book and shall be read and explained to the seaman by the master, who shall record therein that it has been so read and explained and a copy of the charge shall be given to the seaman;

(c) the seaman shall then be asked whether or not he admits the charge and —

- (i) if he admits it, the admission shall be recorded by the master in the official log-book; or
- (ii) in all other cases, an entry to the effect that the seaman does not admit the charge shall be recorded therein;

(d) the evidence of any witness called by the master shall be heard in the presence of the seaman, who shall be afforded reasonable opportunity to question the witness on his evidence;

(e) the seaman shall be given an opportunity to make a statement in answer to the charge, including any comments on the evidence produced against him and particulars of the statement, or a record that the seaman declined to make one, if such should be the case, shall be entered by the master in the official log-book or contained in a separate document annexed to, and referred to in an entry made by the master in, the official log-book;

(f) the seaman shall be permitted to call witnesses to give evidence on his behalf, and any such witness may be questioned by the master on his evidence;

(g) the master shall, after consideration of all the evidence given before him, give his decision in the presence of the seaman as to whether he finds the seaman has committed the offence charged and —

- (i) if he finds that the seaman has not committed the offence, he shall dismiss the charge; or
- (ii) if he finds that the seaman has committed the offence, he shall, after having regard to any mitigating circumstances brought to his notice, give his decision either as to the amount of the fine he is imposing or that he is imposing no fine,

and the master shall record his decisions in the official log-book; and

(h) the master shall —

- (i) inform the seaman on whom a fine has been imposed, of his right of appeal under section 84 and of the time within which notice of intended appeal must be given in accordance with these Regulations; and
- (ii) if the seaman so requests, supply to him copies of all entries in the official log-book, including any annexes thereto, referring to the disciplinary offence to which the fine relates.

Fines imposed for disciplinary offences.

8. (1) The fine that may be imposed on a seaman for a disciplinary offence under regulation 3 shall be an amount not exceeding \$50 or, in the case of a second or subsequent commission of the offence before the seaman is discharged from the ship, an amount not exceeding \$100.

(2) The fine that may be imposed on a seaman for a disciplinary offence under regulation 4 shall be an amount not exceeding \$100.

Remission of fines imposed.

9. A fine imposed on a seaman for a disciplinary offence may be remitted in whole or in part by the master —

(a) if the master is of the opinion that the seaman's conduct, since the fine was imposed, has been such as to justify the remission; or

(b) if new evidence has been discovered which was not known to the master at the time he dealt with the offence and which, in his opinion, justifies the remission,

and a record of every such remission shall be entered in the official log-book by the master.

Fine imposed pending appeal.

10. A fine imposed on a seaman for a disciplinary offence and against which an appeal is pending at the time mentioned in section 86 may be provisionally deducted from the seaman's wages pending the appeal.

Place of hearing for appeals.

11. Subject to regulation 14, an appeal by a seaman against a fine for a disciplinary offence shall be heard by the Director in Brunei Darussalam.

Time limit for notice of appeal.

12. If a seaman on whom a fine has been imposed for a disciplinary offence wishes to appeal against the decision to the Director, he shall give notice of intended appeal to the master within 2 days of the decision, provided that if the decision is given within 2 days of the ship's expected time of arrival in Brunei Darussalam, the notice shall be given before the ship's arrival.

Duties of master in relation to appeals.

13. Upon receipt of a notice of intended appeal from the seaman, the master shall —

(a) make an entry in the official log-book recording the date of receipt of the notice; and

(b) give notice of appeal to the Director not later than 7 days after the receipt of the notice, provided that if it is not practicable to give notice within that period, it shall be given as soon as practicable thereafter and the reason for the delay shall be recorded in the official log-book.

Alternate place of hearing for appeals.

14. (1) Notwithstanding anything contained in regulation 11, if the Director, having regard to all the circumstances of the case, is of the opinion that it is expedient that the appeal shall be heard outside Brunei Darussalam, the appeal shall be heard at such place as the Director may direct and before such person as the Director may appoint.

(2) For the purposes of an appeal heard under this regulation, regulations 15 to 18 shall apply as if any reference to the Director in those regulations includes a reference to the person appointed by the Director under sub-regulation (1).

Arrangement for hearing of appeals.

15. (1) The Director shall make arrangements as to the place, date and time at which the appeal is to be heard and shall inform the master or employer of those arrangements.

{2} The master or employer shall, upon being informed by the Director of the arrangements which have been made for hearing the appeal, inform the seaman of those arrangements.

{3} The master shall supply to the seaman copies of all entries in the official log-book, including annexes thereto, referring to the disciplinary offence to which the appeal relates, unless he has already supplied those copies in accordance with regulation 7(h)(ii).

Furnishing of entries to Director.

16. The master shall supply the Director with copies of all entries in the official log-book, including any annexes thereto, referring to the disciplinary offence to which the appeal relates and produce to him the official log-book.

Procedure relating to appeals.

17. (1) In hearing an appeal, the following procedure shall be followed —

(a) the seaman shall, if he so requests, be permitted at the hearing to be accompanied by any person for the purpose of advising him and that person may speak on behalf of the seaman;

(b) the seaman shall be given an opportunity to state the grounds of his appeal, to produce supporting evidence and to call witnesses to give evidence on his behalf;

(c) subject to sub-regulation (2), the master shall be given an opportunity to call witnesses and to give evidence himself;

(d) the evidence of any witness, whether called by the Director or otherwise, shall be heard in the presence of the seaman;

(e) subject to sub-regulation (2), both the seaman and the master shall be afforded reasonable opportunity to question any witness on his evidence and to comment upon it; and

(f) the Director shall notify the seaman, and the master or employer, of his decision regarding the appeal and shall record the decision in the official log-book.

(2) If the master is absent from the hearing of the appeal and the Director is satisfied that no injustice will result, the appeal may, notwithstanding sub-regulations (1)(c) and (e), be heard and determined by the Director in the absence of the master.

Further arrangements for hearing of appeals.

18. (1) Where a seaman is not present at the place, date and time arranged for the hearing of his appeal —

(a) if the seaman so requests within one month from that date; and

(b) if the seaman had not been informed of those arrangements or had other reasonable excuse for not being present,

the Director shall make further arrangements for the appeal to be heard.

(2) If the Director makes further arrangements for the appeal to be heard, he shall notify the seaman and the employer.

(3) It shall be sufficient compliance with the requirements of sub-regulation (2) for the notification to be sent by registered post to the last known address of the seaman and to the last known address of the employer.

Entries in official log-book.

19. All entries in the official log-book, including annexes thereto, required to be made by the master under these Regulations shall be signed by the master and by a member of the crew.

Penalties.

20. The master, or the officer authorised by him under regulation 5(2) to exercise the powers of the master and to perform his duties in relation to a disciplinary offence, who fails to make an entry in an official log-book required to be made by the master under these Regulations or who fails to comply with an obligation imposed upon him under regulations 7(h)(i), 13(b), 15(2) or (3) or regulation 16 shall be guilty of an offence and liable on conviction to a fine not exceeding \$500.

Made this 21st. day of Rabiulawal, 1428 Hijriah corresponding to the 9th. day of April, 2007.

PEHIN ORANG KAYA SERI KERNA DATO SERI
SETIA HAJI AWANG ABU BAKAR BIN HAJI APONG
Minister of Communications,
Brunei Darussalam.