

No. S 23

**MERCHANT SHIPPING ORDER, 2002
(S 27/02)**

MERCHANT SHIPPING (REPATRIATION) REGULATIONS, 2007

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
2. Interpretation.
3. Application.
4. Return of seamen left behind or shipwrecked.
5. Relief of seamen left behind or shipwrecked.
6. Particulars of seamen left behind and of shipwrecked seamen.
7. Information on arrangements made.
8. Place of return.
9. Conveyance orders and directions.
10. Recording of conveyance orders and directions.
11. Work by seamen being conveyed.
12. Delivery of wages.
13. Applicable agreement.
14. Delivery of wages in other instances.
15. Other records and accounts.
16. Property of seamen left behind and of shipwrecked seamen.
17. Official log-book entries.
18. Penalty.

MERCHANT SHIPPING ORDER, 2002
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In exercise of the powers conferred by sections 88 and 213 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 (Repatriation) Regulations, 2007.

Interpretation.

2. (1) In these Regulations, unless the context otherwise requires —

"country" includes a territory;

"employer", in relation to a seaman, means the person who last employed him as a seaman before he was left behind or shipwrecked;

"master" means the master of the ship in which a seaman was last employed immediately before he was left behind or shipwrecked;

"time for payment" means the time at which wages due to a seaman under a crew agreement would have become payable to the seaman in accordance with the provisions of the crew agreement —

(a) if the seaman had continued to be employed under the agreement and neither the employer nor the seaman had given notice to terminate the seaman's employment; and

(b) where the agreement relates to more than one ship, as if it related only to the ship from which the seaman was left behind or shipwrecked.

(2) A reference in these Regulations, except in regulations 14 and 15, to a seaman shall include a reference to the master of a ship.

Application.

3. These Regulations shall apply to any seaman employed in a Brunei Darussalam ship who is left behind in any country or is taken to any country on being shipwrecked.

Return of seamen left behind or shipwrecked.

4. (1) The employer of a seaman to whom these Regulations apply shall make such provision as is necessary for the return of the seaman in accordance with regulation 8 —

(a) if the seaman is available for return immediately after he is left behind or brought ashore after shipwreck, as soon as practicable; or

(b) if for any reason the seaman is not available for return immediately after he is left behind or brought ashore after being shipwrecked, when he presents himself either to his employer or to his employer's agent and asks to be returned.

(2) The employer shall continue to make the provision referred to in sub-regulation (1) until the seaman is returned, unless the seaman —

(a) being fit and able to undertake employment in a ship, fails to comply with a reasonable request made of him by his employer that he should enter into an agreement for employment in any ship, except any such ship as is mentioned in regulation 9(1)(a), in which he is, in accordance with the provision made by his employer, to be carried in the course of his return; or

(b) without reasonable cause, fails to comply with any other reasonable arrangement made for him by his employer in relation to the provision for his return.

(3) In deciding whether the seaman is to be returned by land, sea or air, or by a combination of any of those means, his employer shall have regard to all circumstances including the personal circumstances of the seaman and of any requirement special to him.

Relief of seamen left behind or shipwrecked.

5. (1) The employer of a seaman to whom these Regulations apply shall —

(a) from the time when the seaman is left behind or when the seaman is brought ashore; or

(b) if the employer did not know or could not reasonably have known the whereabouts of the seaman during the first 48 hours from that time, from the time the seaman informs the employer or the employer's agents of his whereabouts and asks to be returned,

make provision for the seaman's food and lodging and such other relief and maintenance as is necessary, having regard to the personal circumstances of the seaman and of any requirement special to him.

(2) The employer shall continue the provision referred to in sub-regulation (1) until the seaman is returned to a place in accordance with regulation 8 or until the employer is no longer required to continue the provision by reason of any arrangement made in accordance with regulation 4.

(3) Without prejudice to the generality of sub-regulation (1), the provision for relief and maintenance to be made in accordance with that sub-regulation shall include —

(a) clothing;

(b) toilet and other personal necessities;

(c) surgical or medical treatment and such dental or optical treatment, including the repair or replacement of any appliance, as cannot be postponed without impairing efficiency; and

(d) sufficient money to meet any minor ancillary expenses necessarily incurred or likely to be so incurred by the seaman for his relief and maintenance.

(4) The provisions to be made by an employer in accordance with this regulation shall include —

(a) the repayment of expenses incurred in bringing a shipwrecked seaman ashore and maintaining him until he is brought ashore; and

(b) the payment of the expenses of the burial or cremation of a seaman who dies before he can be returned to a place in accordance with regulation 8.

Particulars of seamen left behind and of shipwrecked seamen.

6. (1) The employer of a seaman to whom these Regulations apply shall, within 48 hours after the seaman is left behind or it has come to his notice that the seaman has been brought ashore after being shipwrecked, as the case may be, or if it is not practicable within that time, as soon as practicable thereafter, make

provision to ensure that the Director is informed of the particulars specified in sub-regulation (2).

- (2) The particulars referred to in sub-regulation (1) are —
- (a) the name of the seaman;
 - (b) his home address as stated in the crew agreement;
 - (c) the name and address of his next of kin as stated in the crew agreement;
 - (d) in the case of a seaman left behind —
 - (i) the name of the ship from which he was left behind;
 - (ii) the date on which he was left behind;
 - (iii) the place where he was left behind and, if known to the employer, the present whereabouts of the seaman;
 - (iv) the reason, if known to the employer, for his being left behind; and
 - (v) the name and address of the employer and the name and address of the employer's agents, if any, at or nearest to the place where the seaman was left behind; and
 - (e) in the case of a shipwrecked seaman —
 - (i) the name of the ship from which he was shipwrecked;
 - (ii) the dates on which he was shipwrecked and on which he was brought ashore;
 - (iii) the place where he was brought ashore and, if known to the employer, the name and address of the person by whom he was brought ashore and the present whereabouts of the seaman; and
 - (iv) the name and address of the employer and the name and address of the employer's agent, if any, at or nearest to the place where the seaman was brought ashore.

Information on arrangements made.

7. The employer shall ensure that the Director is kept informed of the arrangements he has made, including any changes in those arrangements, in pursuance of his obligation to make provision for the seaman's return, relief and maintenance specified in regulations 4 and 5.

Place of return.

8. A seaman who is to be returned in pursuance of these Regulations shall be returned —

(a) in the case of a seaman who is resident in Brunei Darussalam, to Brunei Darussalam;

(b) in the case of a seaman who is not resident in Brunei Darussalam, to the place where he was employed or joined the ship; or

(c) to any other place which may be agreed between the seaman and his employer.

Conveyance orders and directions.

9. (1) Where a seaman is in distress and is willing to enter into an undertaking to work on board any ship for his conveyance in lieu of pay, the Director may —

(a) by means of a conveyance order in writing require the master or owner of a ship to convey the seaman from any place specified in the order to such other place so specified as lies on a reasonable route between the place specified in the order and the place ascertained under regulation 8 to which he is to be returned; and

(b) give to the master or owner of that ship such directions as may be necessary for the purpose of that requirement,

and more than one such order may be made in the course of the seaman's return.

(2) A master shall not be required under sub-regulation (1) to convey a person in his ship or obey any direction given for the purpose of the requirement —

(a) if any provision of a written law or an instrument would be infringed by reason of that person being conveyed in his ship in addition to the other persons carried in his ship;

(b) if his ship would be required to go to any place to which it would not otherwise go in the course of the voyage then being undertaken or about to be undertaken;

(c) if, by reason of compliance with such requirement or direction, his ship would be unreasonably delayed; or

(d) if the master has other reasonable cause for objecting to the requirement or direction, as the case may be.

(3) A master or owner who fails to comply with a requirement made of him by a conveyance order under sub-regulation (1)/a) or with a direction given to him under sub-regulation (1)/b) for the purpose of that requirement shall be guilty of an offence and liable on conviction to a fine not exceeding \$2,000.

Recording of conveyance orders and directions.

10. (1) A master shall make entries in the official log-book recording particulars of any requirements made of him under regulation 9 and of any direction given to him by the Director for the purpose of that requirement.

(2) A master who fails to comply with sub-regulation (1) shall be guilty of an offence and liable on conviction to a fine not exceeding \$200.

Work by seamen being conveyed.

11. The duties to be given by the master of the ship to a person being conveyed in accordance with regulation 9 shall be appropriate to his qualifications or vocation and the hours of work to be performed shall not exceed those ordinarily performed by a seaman in that capacity and shall not be more than that which is sufficient as payment for his conveyance.

Delivery of wages.

12. The wages due under a crew agreement to a seaman to whom these Regulations apply shall be paid to him in full and accounts thereof shall be delivered in accordance with sections 60 and 61 as if the reference to the time of discharge in those sections is a reference to the day the seaman is returned or 14 days, whichever is the earlier.

Applicable agreement.

13. The wages due under an agreement, other than a crew agreement, to a seaman to whom these Regulations apply shall be dealt with under the provisions of the agreement under which he is employed.

Delivery of wages in other instances.

14. Where the wages cannot be paid to the seaman in accordance with regulations 12 and 13 and the seaman is not known to be dead, then, notwithstanding anything contained in sections 60 and 61 or in these Regulations, the wages shall be paid and an account thereof delivered to the person named in the crew agreement as the seaman's next of kin, as soon as is practicable after the expiration of 4 months from the time for payment.

Other records and accounts.

15. (1) The employer of a seaman to whom these Regulations apply shall keep records of all expenses incurred and the sums paid by him in the discharge of his obligation under these Regulations.

(2) Where, in respect of any expense incurred or sum paid by him in the discharge of his obligations under these Regulations, the employer of a seaman makes a deduction authorised by regulations made under section 62(a) to be made from the wages due to a seaman under a crew agreement, the employer shall render an account of all such expenses and sums to the seaman or, if the seaman's wages are payable by virtue of regulation 14 to his next of kin as named in the crew agreement, to that next of kin.

Property of seamen left behind and of shipwrecked seamen.

16. (1) Subject to sub-regulation (2), this regulation applies to any property, including money, left on board a ship by a seaman to whom these Regulations apply.

(2) In the case of any such property left on board a ship by a seaman who has been shipwrecked —

(a) if the ship is lost, this regulation shall have no effect; and

(b) if the ship is not lost, but, as a result of the shipwreck, no person is master of the ship, this regulation shall have effect as if the duties and powers thereby imposed on the master were instead imposed on the employer and sub-regulations (3)(b) and (5) were omitted.

(3) The master shall —

(a) take charge of that property; and

(b) enter in the official log-book —

- (i) a list of property so taken into his charge;
- (ii) in the case of a sale under sub-regulation (4)*(a)* of any part of the property, a description of each article sold and the sum received for it; and
- (iii) in the case of the destruction or disposal of any part of the property under sub-regulation (4)*(b)*, a description of each article destroyed or disposed of and the name of any person to whom disposal was made.

(4) The master may at any time —

(a) sell, by auction or otherwise, any part of the property which is of a perishable or deteriorating nature and the proceeds of sale shall form part of the property; and

(b) destroy or otherwise dispose of any part of the property which, in his opinion, endangers or is likely to endanger the health or safety of any person on board the ship.

(5) The master shall, when directed by the employer, cause the property to be delivered to the employer at an address in the country to which the seaman is to be returned in accordance with regulation 8.

(6) Upon receipt of the property, the employer shall cause the property to be delivered —

(a) to the seaman at his last known address; or

(b) if the seaman's wages are payable by virtue of regulation 14 to his next of kin as named in the crew agreement, to that next of kin at the address stated in the crew agreement,

and the expense of such delivery by the employer shall be borne by the person to whom the property is delivered.

(7) The employer, when delivering the property to the seaman or his next of kin in accordance with sub-regulation (6), shall deliver to the seaman or his next of kin, as the case may be, a record of all the property delivered and —

(a) where any property has been sold under sub-regulation (4)*(a)*, a description of each article sold and the sum received for it; and

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

(b) where any property has been destroyed or disposed of under sub-regulation (4)(b), a description of each such article.

(8) A master who fails to comply with —

(a) sub-regulations (3)(a) or (5) shall be guilty of an offence and liable on conviction to a fine not exceeding \$500; or

(b) sub-regulation (3)(b) shall be guilty of an offence and liable on conviction to a fine not exceeding \$200.

Official log-book entries.

17. All entries in the official log-book required to be made by the master under regulations 10 and 16(3)(b) shall be signed by the master and by a member of the crew.

Penalty.

18. An employer who contravenes or fails to comply with regulations 4, 5, 6, 7 or 16 shall be guilty of an offence and liable on conviction to a fine not exceeding \$2,000.

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.