Sjøfartsdirektoratet
Norwegian Maritime Authority

Circular - Series R

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In the new Series R, relevant legal amendments and amendments to conventions are also published.

Circular recipients: (check box)

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- ☒ H.i. Bodies or agencies for their comments
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Supersedes:	Regulations of 2 July 2007 No. 852 on the determination and implementation of violation fines pursuant to the Act of 16 February 2007 No. 9 relating to ship safety and security (Ship Safety and Security Act) sections 55 and 56
Reference to:	Regulations of 27 July 2020 No. 1596. on violation fines pursuant to the Ship Safety and Security Act, the Ship Labour Act and the NIS Act

New Regulations on violation fines pursuant to the Ship Safety and Security Act, the Ship Labour Act and the NIS Act

1. Introduction and background

The Ministry of Trade, Industry and Fisheries has laid down new Regulations on violation fines pursuant to the Ship Safety and Security Act, the Ship Labour Act and the NIS Act[1]. The Regulations entered into force on1 August this year. As from the same day, the Regulations on the determination and implementation of violation fines pursuant to the Ship Safety and Security Act were repealed.[2]

The Ministry of Trade, Industry and Fisheries evaluated the use of violation fines pursuant to chapter 9 of the Ship Safety and Security Act and submitted the evaluation for review in the period between 21 November 2018 and 21 February 2019. In the new Regulations on violation fines, the assessment rules have been amended based on experience with the use of violation fines pursuant to the Ship Safety and Security Act. Furthermore, the Ministry of Trade, Industry and Fisheries and the Norwegian Maritime Authority consider it useful to have a common set of rules for the determination and implementation of violation fines to companies that may be fined pursuant to the Ship Safety and Security Act, the Ship Labour Act and the NIS Act[3].

2. Consultation and consultative statements

The proposed new Regulations on violation fines pursuant to the Ship Safety and Security Act, the Ship Labour Act and the NIS Act were circulated for review from 22 May to 6 July 2020.

A total of 13 consultative statements came in, whereof 6 did not include any comments to the proposal. The consultative bodies that replied were the Norwegian Union of Marine Engineers, the Norwegian

[1] Regulations of 27 July 2020 No. 1596 on violation fines pursuant to the Ship Safety and Security Act, the Ship Labour Act and the NIS Act.
[2] Regulations of 2 July 2007 No. 852 on the determination and implementation of violation fines pursuant to the Act of 16 February 2007 No. 9 relating to ship safety and security (Ship Safety and Security Act) sections 55 and 56.
[3] Act of 16 February 2007 No. 9 relating to ship safety section 55, Act of 21 June No. 102 relating to employment protection etc. for employees on board ships section 12-3 and Act of 12 June 1987 No. 48 relating to a Norwegian International Ship Register (NIS) section 13.

Fishing Vessel Owners Association (Fiskebåt), the Ministry of Defence, the Norwegian Directorate of Health/the Ministry of Health and Care Services, the Ministry of Justice and Public Security, the Ministry of Climate and Environment, the Norwegian Coastal Shipowners' Association, LO Norway, the Norwegian Environment Agency, the Norwegian Shipowners' Association, the Norwegian Pelagic Association, the Ministry of Transport and Communications and the Norwegian Public Roads Administration.

Most comments from the consultative bodies were positive. Several agreed that it would be useful to have a common set of rules for the determination and implementation of violation fines pursuant to the Ship Safety and Security Act, the Ship Labour Act and the NIS Act.

The simplification of the terminology for the liable party was expressly supported by one consultative body, and there were no other comments to this part of the proposal.

Most also supported the proposed amendments to the assessment rules. There were no comments to the part of the proposal relating to individuals. The comments on the assessment rules, however, showed some differences of opinion among the consultative bodies concerning the maximum amount for companies. Some considered the amount to be too high, while others considered it, in special cases, to be too low, hence a provision should have been included to allow a higher fine than the maximum amount in exceptional cases. Another party suggested that the upper limit for the violation fine should be determined at 10% of the company's turnover.

Two consultative bodies were of the opinion that information concerning issued violation fines for companies should be public. They based this feedback on increased predictability and non-discrimination. The suggestions also included the making of a public guide for the imposition, determination and implementation of violation fines pursuant to the Regulations.

The consultative statements did not provide a basis to make amendments to the Regulations. Thus, the adopted Regulations on violation fines pursuant to the Ship Safety and Security Act, the Ship Labour Act and the NIS Act are identical to the circulated proposal.

3. Further details on the Regulations

In section 1 of the Regulations, separate assessment rules have been laid down for violation fines imposed on natural persons that may be fined pursuant to the Ship Safety and Security Act section 55. The upper fine limit for individuals of 0.6 times the basic amount (B.a.) of the Norwegian National Insurance Scheme has been continued from the repealed Regulations, while the minimum fine amount of 0.2 times the B.a. of the Norwegian National Insurance Scheme has been removed. The elements included in the assessment of whether a violation fine should be imposed or not have been listed in the same way as in the repealed Regulations.

Common assessment rules for "companies" have been laid down in section 2 of the Regulations. The term "company" is intended to be a collective term for the other liable parties that may be fined pursuant to the Ship Safety and Security Act section 56 ("the shipping company"), the Ship Labour Act Section 12-3 ("the employer" and "the shipping company") and the NIS Act section 13 ("the company").

The minimum amount for companies of 0.8 B.a. of the Norwegian National Insurance Scheme has not been continued. Different organisations and economies make it necessary to differentiate the assessment of the fines. The Ministry of Trade, Industry and Fisheries have assessed that a minimum fine prevents this flexibility.
There was no upper limit for violation fines in the repealed Regulations. This has been included in the new Regulations, and the maximum amount has been set to 15 times the basic amount (B.a.) of the Norwegian National Insurance Scheme for violation fines for companies that may be fined pursuant to

the Ship Safety and Security Act section 56, the Ship Labour Act section 12-3 and the NIS Act section 13. The elements included in the assessment of whether a violation fine should be imposed pursuant to the Ship Safety and Security Act, the Ship Labour Act and the NIS Act and when determining the fine are listed in the provisions.

The rules on implementation of violation fines have been continued from the repealed Regulations, but are now gathered in section 3 of the Regulations.

4. Economic and administrative consequences

A violation fine will have direct financial impact for the company or individual that is fined. The new Regulations will limit the public administration's exercise of discretion by providing an upper limit for the size of the violation fee. Thus, it may provide a somewhat increased predictability for the parties. It also contributes to the fulfilment of section 44 second paragraph of the Public Administration Act. Besides, the creation of regulations stating which aspects should be considered when assessing violation fines may provide predictability in the determination of the fine.

The new Regulations on violation fines are not expected to have significant financial and administrative consequences for the authorities.

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