

# **New regulations and amended regulations for the implementation of the MLC, 2006**

**The Norwegian Maritime Authority hereby lay down three new regulations and amendments to two regulations for the implementation of the MLC, 2006.**

## **1. Introduction**

The Norwegian Maritime Authority (NMA) hereby lay down three new regulations and amendments to two regulations for the implementation of the MLC, 2006. The regulations are as follows:

- Regulations on employment agreement and pay statement, etc.
- Regulations on the use of recruitment and placement services on ships
- Regulations on the right to lodge complaints for persons working on board ship
- Regulation concerning amendments to Regulations of 15 June 1987 No. 506 concerning survey for the issue of certificates to passenger ships, cargo ships and lighters, and concerning other surveys, etc.
- Regulation concerning amendments to Regulations of 30 December 2010 No. 1849 concerning the control of foreign ships and mobile offshore units in Norwegian ports, etc. (Port State Control Regulations)

In February 2006 the International Labour Organization (ILO) of the UN adopted a new convention for seafarers' working and living conditions. The convention was named the Maritime Labour Convention, 2006 (hereafter referred to as the MLC, 2006). Norway ratified the Convention in 2009. The MLC, 2006 fulfilled the conditions for entry into force on 20 August 2012, and the Convention will consequently enter into force on 20 August 2013. The Convention will be applicable to Norway as flag State and port State from the same date.

Since Norway has ratified the Convention, it is necessary to implement the Convention in Norwegian legislation. In this regard it is also necessary to amend the existing set of regulations for the shipping area. The existing Norwegian legislation safeguards, for the most part, the rights pursuant to the Convention. In the form of laws, the MLC, 2006 is mainly implemented in the Ship Safety and Security Act and the Ship Labour Act. To ensure that any person working on board a Norwegian ship is granted all the rights pursuant to the Convention, it is however necessary to lay down new regulations and amendments to existing regulations in Norwegian legislation. The new and amended regulations are explained below, and the regulations have been included as attachments at the end of the document.

## **2. Regulations on the use of recruitment and placement services on ships**

The Regulations on the use of recruitment and placement services on ships are attached. The Regulations implement MLC chapter 1.4 on recruitment and placement. It is set out in section 3-9 of the Ship Labour Act that employers using recruitment and placement services shall document that those services conform to requirements laid down in or pursuant to the Act of 10 December 2004 No. 76 relating to labour market services (Labour Market Act). The "see to" duty of the shipowner (hereafter referred to as the company) is set out in section 2-4 of the Ship Labour Act. In other words, if the employer is someone other than the company, the company has a duty to see to that such documentation exists. The Regulations do not include the parts of chapter 1.4 directed at the recruitment and placement service as the obligated party.

## **2.1 The need for new legislation**

The Labour Market Act shall contribute to achieving inclusive working conditions through an efficient labour market, cf. section 1 of the Act. Chapters 1 to 7 of the Labour Market Act apply to any person with legal residence in the kingdom and to any person running a legitimate business in Norway. Chapter 8 of the Labour Market Act regulates the private recruitment, placement and hiring out of employees, and regulations may be issued concerning special rules for services engaged in the recruitment and placement of seafarers with legal basis in section 26 third paragraph. In the Regulations concerning the private recruitment, placement and hiring out of employees, which entered into force on 1 July 2000, special rules for seafarers were originally included. This was done to meet the obligations under ILO Convention No. 179. Subsequently, however, the Ministry of Labour found that section 26 of the Act of 27 June 1947 No. 9 respecting measures to promote employment (Employment Act) did not provide the legal basis for issuing regulations with special rules for the recruitment and placement of particular occupational groups. The regulatory provision was therefore repealed. This is explained in Ot.prp. No. 62 (2003-2004) regarding the Act relating to labour market services (Labour Market Act).

Section 3-9 of the Ship Labour Act provides the legal basis for issuing regulations containing further provisions on the employer's duty to ensure that documentation exists when using recruitment and placement services on ships.

New regulations are in the first place necessary in order to implement the employer's and the company's duties pursuant to MLC Regulation 1.4 paragraph 3. This rule lays down that the flag State shall require that a company, such as the company (shipowner) is defined in the MLC, 2006, which uses recruitment and placement services that are based in countries or territories in which the MLC, 2006 does not apply, shall ensure that those services conform to the requirements set out in in the Convention. It should be noted that in Norwegian legislation the employer has been given a duty to ensure conformance to this rule, whereas the company has been given a duty to see to this conformance, as set out in section 2-4 of the Ship Labour Act.

It is furthermore necessary to lay down in regulations the requirements applicable to employers using recruitment and placement services that are based in Norway, as well as such services operating in other countries which have ratified the MLC, 2006 or ILO Convention No. 179. In this respect as well the company has a "see to" duty pursuant to section 2-4 of the Ship Labour Act.

## **2.2 On the Regulations**

A short explanation of the terms used in the Regulations

The terms "recruitment and placement" and "recruitment and placement services" in MLC chapter 1.4 have been translated into Norwegian as "arbeidsformidling" and "arbeidsformidlingsvirksomhet", respectively. The term "arbeidsformidlingsvirksomhet" (recruitment and placement services) is furthermore used in section 3-9 of the Ship Labour Act. The term also comprises services which recruit and place a significant number of seafarers even if this is not the primary purpose of the services.

### **Remarks to certain provisions in the Regulations**

*To section 2 Definitions*

Subparagraph a): It is considered necessary to define what is meant by the term

"arbeidsformidling" (recruitment and placement). The definition is taken from section 25 of the Labour Market Act.

Subparagraph b): It is considered necessary to define what is meant by the term "arbeidsformidlingsvirksomhet" (recruitment and placement services). The definition is from MLC Standard A1.4 point 2.

Subparagraph c): A definition of the MLC, 2006 ("ILO Convention No. 186") has been added.

Subparagraph d): A definition of ILO Convention No. 179 has been added.

#### *To section 3 Employer's duties*

First paragraph: This provision implies a duty for the employer to have documentation demonstrating that the recruitment and placement service has procedures showing that they conform to the requirements of MLC chapter 1.4. If employers use recruitment and placement services operating in a country which has ratified neither the MLC, 2006 nor ILO Convention No. 179, it is sufficient that the employer upon inspection produces a confirmation from the recruitment and placement service that they have procedures in place complying with the requirements of section 3 first paragraph of the Regulations, which implements MLC chapter 1.4.

Second paragraph: If employers use recruitment and placement services that are based in Norway or in another country which has ratified the MLC, 2006 or ILO Convention No. 179, it is sufficient that the employer has confirmation that the recruitment and placement service is based in such a country.

ILO Convention No. 179 on the recruitment and placement of seafarers has in the Regulations been given equal status as the MLC, 2006. The reason for this is that ILO Convention No. 179 contains requirements which are comparable to the requirements of MLC chapter 1.4. Practical considerations also favour such a solution, as member States providing labour to Norwegian ships have ratified ILO Convention No. 179, but they may not necessarily ratify the MLC, 2006.

### **Entry into force**

These Regulations enter into force on 20 August 2013.

## **3. Regulations on employment agreement and pay statement, etc.**

New Regulations on employment agreement and pay statement, etc. are attached. MLC Standard A2.1 paragraph 4 implies new requirements for employment agreements for employees on board ships, and the Regulations implement these new requirements.

### **3.1 The need for new legislation**

Section 3 of the Seaman's Act contains rules about the seaman's employment agreement.

The Regulations of 3 February 1986 No. 230 concerning the employment agreement and settlement of wages form contain supplementary rules about the employment agreement.

The Seaman's Act will be replaced by the Ship Labour Act on 20 August 2013. In this connection the NMA will lay down new regulations with a title and terminology consistent with the Ship

Labour Act. The Ship Labour Act uses, *inter alia*, the term "pay statement" instead of "settlement of wages form".

The Regulations are necessary in order to implement the rules on the content of the employment agreement pursuant to MLC Standard A2.1 paragraph 4(f), (h) and (i). Subparagraphs (f), (h) and (i) require that the employment agreement shall contain points about the extent of paid leave or the formula used to calculate it, health and social security protection benefits and the entitlement to repatriation.

In addition, a requirement has been introduced for information about the employee's birthplace to be included in the employment agreement, in addition to information about the nationality of the employee, since it is set out in MLC Standard A2.1 paragraph 4(a) that the employment agreement shall contain information about this.

### **3.2 About the Regulations and new form of employment agreement**

MLC Standard A2.1 paragraph 4(a), (f), (h) and (i) are implemented in section 2 first paragraph of the new Regulations on employment agreement and pay statement, etc.

As a consequence of new regulatory requirements, four new points are added to the NMA's form of employment agreement. Section 3 of the Regulations refers to this form. "Birthplace" is included in box 4, "annual paid holiday or the formula used to calculate it" is included in box 13, "health and social security protection benefits" is included in box 14 and "entitlement to repatriation" is included in box 15. Numbered guidelines and comments for the completion of the employment agreement, found on the back of the form, have been correspondingly renumbered.

It should be noted, however, that the NMA may upon application approve other forms of employment agreement. This solution may be relevant for employers wishing to develop a form of employment agreement for use in their own systems.

### **Remarks to certain provisions in the Regulations**

*To section 2 The employment agreement's content, etc.*

Second paragraph: The employee and the employer shall sign the employment agreement. This is a solution which is considered to be substantially equivalent to the requirements of the MLC, 2006 for the signing of the employment agreement. The solution is substantially equivalent because it is considered sufficient that the employer signs the employment agreement even when the employer is someone other than the company, whereas MLC Standard A2.1 paragraph 1(a) sets forth that the company, such as the company (shipowner) is defined in the MLC, 2006, shall sign the employment agreement.

This regulatory provision is considered to be substantially equivalent to the regulation in the MLC, 2006 since it is set out in section 2-4 first paragraph of the Ship Labour Act that the company has the duty to see to that employers fulfil their obligations set forth in or pursuant to the Ship Labour Act and that the employment agreement is complied with. The NMA inform thereof in the Declaration of Maritime Labour Compliance part I (DMLC Part I) under the point "Substantial Equivalences" as regards the Seaman's Act, but this information will be changed to the Ship Labour Act as soon as possible. DMLC Part I is also a part of the Maritime Labour Certificate.

Third paragraph: If the employer is someone other than the company, the employer shall, in connection with the entering into of the employment agreement, inform the employee in writing as

to who the company is. If, at the time of the entering into of the agreement, it is not clear who the company is, the employer shall inform the employee in writing as soon as this information is known to the employer. This is set out in section 2-2 third paragraph second sentence of the Ship Labour Act and section 2 third paragraph of the Regulations on employment agreement and pay statement, etc. It is furthermore set out in section 2-4 of the Ship Labour Act that the company has a duty to see to that the employer complies with the provisions of the employment agreement, and this is stated in box 11 in the form of employment agreement.

#### *To section 3 Form of employment agreement*

Third paragraph: The NMA have chosen to continue the exemption for fishing vessels as regards the use of the NMA's form of employment agreement due to the industry's need for special adaptation of the agreement. The content of the employment agreement shall nevertheless at least include the points listed in section 2 of the Regulations, and it should also be noted that section 3-1 first paragraph of the Ship Labour Act implies a requirement for a written contract of employment irrespective of the size of the vessel.

#### *To section 6 Transitional provision*

This provision implies a transitional arrangement for the use of the form of employment agreement, where the employer and employee need not write the employment agreement on the new form where the agreement has already been entered into, provided that the employer in these cases can provide evidence that the employee is granted the rights set out in the Regulations. This can be done either by a reference in the employment agreement to a collective bargaining agreement containing the rights pursuant to section 2 first paragraph h), i) and j) on holiday, health and social security protection benefits and repatriation, or by the preparation of an appendix to the employment agreement which sets forth that the employee shall have these rights. A possible appendix to the employment agreement shall be attached to the employment agreement, and shall be kept on board together with the employment agreement.

### **Entry into force**

These Regulations enter into force on 20 August 2013.

## **4. Regulations on the right to lodge complaints for persons working on board ship**

New Regulations on the right to lodge complaints for persons working on board ship are attached. The Regulations implement MLC chapter 5.1.5 regarding the right to lodge complaints for persons working on board.

The Regulations do not, however, include MLC chapter 5.2.2 regarding the right to lodge complaints for persons working on board foreign ships. See point 6 below regarding amendment to the Regulations of 30 December 2010 No. 1849 concerning the control of foreign ships and mobile offshore units in Norwegian ports, etc. (Port State Control Regulations) for the implementation of this requirement.

### **4.1 The need for new legislation**

Section 9-7 of the Ship Labour Act regarding the right to lodge complaints and new section 71a of the Ship Safety and Security Act regarding the right to lodge complaints and protection against

retaliation implement the rules of MLC chapter 5.1.5 regarding the right to lodge complaints for persons working on board.

Section 9-7 of the Ship Labour Act and new section 71a of the Ship Safety and Security Act grant any person working on board the right to lodge complaints about conditions covered by these Acts. There is no prohibition against lodging complaints under the current legislation, but the MLC, 2006 also requires that ships establish complaint procedures with a further specified content, which implies a new requirement in Norwegian legislation.

New regulations are necessary in order to implement the specified rules on the right to lodge complaints and complaint procedures pursuant to MLC chapter 5.1.5.

The Regulations must moreover be seen in connection with section 2-6 of the Ship Labour Act regarding notification. Whereas section 2-6 first and foremost is aimed at public notification, section 9-7 applies to internal conditions in the undertaking.

## **4.2 On the Regulations**

In order for there to be a real possibility to lodge complaints in practise, it is important that further provisions regarding procedures which ensure a just, efficient and expedient treatment of complaints are laid down in regulations. Complaints shall according to the Regulations as a main rule be lodged with the nearest superior.

In Prop. 115 L (2012–2013) regarding the Act relating to employment protection etc. for employees on board ships (Ship Labour Act) on page 221, it is specified that the right to lodge complaints pursuant to section 9-7 of the Act is granted to all persons on board, whereas the company has been made the obligated party. It is furthermore specified that it is natural for the complainant to first address matters pertaining to the service on the ship to the master or the nearest superior, in line with MLC Standard A5.1.5 which states that complaints shall be resolved on the lowest level possible. It is also stated that the company has the opportunity to leave it to the master or others on board to treat a complaint lodged with the company, but that complainants must be able to refer their complaint to the company if they are not satisfied with the master's decision. It is also specified that in the case where the company is not the employer of the employee in question, the provision provides for the possibility that the company, to the extent necessary, shall consult the employer and possibly leave it to the employer to treat and decide the complaint. This also applies if the company in this situation is the obligated party. It is assumed that such complaints in practise are raised, treated and decided directly between the employer and employee, without involving the company. The company's duty is in that case to ensure that good procedures are in place, to stay informed through the employer and their own representative, the master, and to intervene and possibly treat the complaint themselves if established procedures are not complied with.

### **Remarks to certain provisions in the Regulations**

#### *To section 1 Scope of application*

It is necessary to limit the scope of application of the Regulations to Norwegian ships in order to exclude foreign ships from the scope of application of the Ship Safety and Security Act. "Norwegian ships" means vessels registered in the Norwegian Ordinary Ship Register (NOR) and ships registered in the Norwegian International Ship Register (NIS).

#### *To section 2 The right to lodge complaints*

The right to lodge complaints pursuant to the first paragraph of the provision repeats the wording of section 9-7 first paragraph first sentence of the Ship Labour Act. Normally the text of a statute will not be repeated in regulations, but it has been included here because it seems user-friendly that the Regulations themselves specify which complaints they regulate.

### *To section 3 Complaint process*

First paragraph: It is specified that the complaint shall be sought to be resolved on the lowest level possible, cf. Prop 115 L page 221.

Second paragraph: Employees may lodge complaints directly with their employer. In order to give the company the possibility to stay oriented on the complaint, and to intervene and possibly treat the complaint themselves, the employer is required to send a copy of the received complaint to the company.

Third paragraph: The recipient of the complaint shall seek to resolve the complaint as expediently as possible. In Prop. 115 L page 221 it is specified that complaints must be given priority, and that a decision must be reached quickly. This implies that as soon as the necessary inquiries have been conducted, it should be decided how the complaint should be followed up. The NMA find it impractical to impose specific time limits on the company in this respect, but the provision presupposes that the companies themselves consider establishing relevant time limits in the complaint procedures. In MLC Guideline B5.1.5 paragraph 2(b) it is recommended that the matter should be sought to be resolved within the prescribed time limits appropriate to the seriousness of the issues involved.

Seventh paragraph: Any person working on board may also lodge a complaint directly with the supervisory authorities, pursuant to section 9-7 fifth paragraph of the Ship Labour Act. In the Regulations it is specified that the "supervisory authorities" will normally be the NMA, but that complaints may also be lodged with whoever is authorised by the NMA in connection with an ongoing inspection carried out by whoever is authorised. The term "whoever is authorised by the Norwegian Maritime Authority" will in practise be one of the 7 recognised classification societies in Norway. The reason for this rule is that it seems natural that the classification societies can receive complaints in connection with their supervisory activities. Reference is also made to the clarification of this question in the letter dated 3 November 2008 from the Ministry of Trade and Industry by the cabinet minister to the Standing Committee on Business and Industry. In the absence of objective evidence, it is appropriate that the classification societies forward the complaint to the NMA.

In connection with the preparation of section 9-7, the law committee appointed to draw up the Ship Labour Act ("Sjømannslovutvalget") came to a different solution than the solution specified in Ot.prop. No. 70 (2007-2008) where it is presupposed that the supervisory authorities shall resolve complaints from persons working on board as a last instance. The law committee appointed to draw up the Ship Labour Act reached the conclusion that the complaint regulations in the MLC, 2006 should be implemented in a way that corresponds better with the system of the Ship Safety and Security Act. The solution in section 9-7 of the Ship Labour Act and new section 71a of the Ship Safety and Security Act is in accordance with this, so that the supervisory authority shall investigate complaints lodged according to one or both of these Acts, whereas the enforcement jurisdiction will depend on whether the complaint regards conditions related to public law or private law. This way the NMA will not act as a sort of administrative tribunal, and instead

the principles of enforcement of supervisory authority, known from the supervision system in the Ship Safety and Security Act, will be applied.

In other words, the provisions on the right to lodge complaints do not give the supervisory authority the legal basis to issue decisions as a reaction to a complaint. The provisions on supervision and sanctions of the Ship Labour Act and the Ship Safety and Security Act are decisive for the reactions which might be issued, and it is clear that the supervisory authority itself must carry out a control on board before it can impose orders, coercive fines, etc. In other words, the enforcement jurisdiction of the supervisory authority is connected to official legal requirements, and does not apply to all provisions of the Ship Labour Act. Complaints related to private law matters regulated by the Ship Labour Act, will instead trigger the supervisory authority's duty to provide guidance about how the person working on board may proceed in order to pursue his or her claim.

It is furthermore specified in the Public Administration Act that individual decisions made by the NMA may be appealed to the Ministry of Trade and Industry. It is not deemed practical to repeat the rules of the Public Administration Act in regulations issued under the Ship Labour Act and the Ship Safety and Security Act.

#### *To section 4 Complaint procedures*

First paragraph: Complaint procedures shall be established for each individual ship, so that the contact information in the complaint procedure is correct and in accordance with the sixth paragraph of this provision.

Third paragraph: As regards the implementation of the main rule that complaints shall be lodged with the nearest superior, it has been decided that the level considered the lowest possible level for each occupational group on board shall be specified in the procedures.

It is otherwise recommended that complaints are coordinated with the system for treatment of non-conformities included in the ship's safety management system. For ships required to have an international safety management system, it is set out in Regulation 9 of the ISM Code that non-conformities shall be investigated and analysed, and that necessary corrective action shall be implemented. The requirement for safety management system is laid down in section 7 of the Ship Safety and Security Act.

### **Entry into force**

These Regulations enter into force on 20 August 2013.

## **5. Regulation concerning amendment to Regulations of 15 June 1987 No. 506 concerning survey for the issue of certificates to passenger ships, cargo ships and lighters, and concerning other surveys, etc.**

Regulation concerning amendment to Regulations of 15 June 1987 No. 506 concerning survey for the issue of certificates to passenger ships, cargo ships and lighters, and concerning other surveys, etc. is attached. The amended Regulations implement MLC chapter 5.1.3 regarding Maritime Labour Certificate.

### **5.1 The need for new legislation**

The Ship Safety and Security Act contains rules about the supervision of Norwegian ships in chapter 7.

The Ship Labour Act has rules about supervision in chapter 12. The Regulations of 15 June 1987 No. 506 concerning Survey for the Issue of Certificates to Passenger Ships, Cargo Ships and Lighters, and concerning other Surveys, etc. have supplementary rules about surveys.

The regulatory amendments are necessary in order to implement the rules of MLC chapter 5.1.3 on the certification requirement for ships of 500 gross tonnage or over engaged in international voyages or operating from a port, or between ports, in another country, as well as the rules of MLC chapter 5.1.4 on the inspection and enforcement of the requirements of the Convention.

## **5.2 On the regulatory amendments**

MLC chapters 5.1.3 and 5.1.4 are implemented in the following sections of the Regulations of 15 June 1987 No. 506 concerning Survey for the Issue of Certificates to Passenger Ships, Cargo Ships and Lighters, and concerning other Surveys, etc.: Section 12 on survey for passenger certificates, etc., section 22 on survey for trading certificate, etc., and chapter 14 on survey for issuance of Maritime Labour Certificate and the right for persons working on board to demand survey. The existing chapter 14 on entry into force is renumbered to new chapter 15.

Section 67 lays down a continuance of the right for persons working on board to demand a survey, a right which earlier was set out in the repealed section 42 of the Seaman's Act. The legal basis of this regulatory provision is section 43 fifth paragraph c) of the Ship Safety and Security Act. The provision concerning the right to demand survey was presupposed continued in regulations when section 42 of the Seaman's Act was repealed in connection with the entry into force of the Ship Safety and Security Act, but this was not done. See Ot.prop. NO. 87 (2005-2006) page 126, where the following is stated under the explanation of section 43 of the Ship Safety and Security Act: "Subparagraph c) provides the legal basis for continuing section 42 of the Seaman's Act regarding the right to demand examination for seaworthiness".

## **Remarks to certain provisions in the Regulations**

### *To section 2 Definitions*

Subparagraph a): Two new classification societies, RINA and Class NK, have become recognised classification societies in Norway, and have therefore been added to the definition. The definition of "administration" in the former subparagraph a) is considered superfluous and has been removed.

Subparagraph j): A definition of the MLC, 2006 ("ILO Convention No. 187") has been added, since there are several references to the Convention in the Regulations.

Subparagraph å): A definition of "anniversary date" has been added, in accordance with MLC Standard A5.1.3 second paragraph third sentence. The term is used in section 12 first paragraph c) fifth sentence and section 63 third paragraph second sentence of the Regulations.

### *To section 12 Survey for passenger certificates, etc.*

First paragraph a) point 3: The survey of passenger ships not required to have Maritime Labour Certificate is related to the passenger certificate. Control of whether the ship is manned in

accordance with the rules and regulations of the NMA is included in the control of the working and living conditions on board.

First paragraph b) first sentence: The term "safety equipment certificate" has been replaced by "vessel instructions" in accordance with current terminology. Fishing vessels which already have a valid trading certificate or vessel instructions for fishing vessels are not covered by the MLC, 2006.

*To section 22 Survey for trading certificate, etc.*

First paragraph a) point 3:

The survey of passenger ships not required to have Maritime Labour Certificate is related to the trading certificate. Control of whether the ship is manned in accordance with the rules and regulations of the NMA is included in the control of the working and living conditions on board.

*To section 62 Certificate*

Second paragraph: This provision applies to the voluntary certification of Norwegian ships for which certification is not required pursuant to the first paragraph.

*To section 67 The right of persons working on board to demand survey.*

After the repeal of section 42 of the Seaman's Act, the terms "examination for seaworthiness" and "unseaworthiness" were not continued in the Ship Safety and Security Act. The term "examination for seaworthiness" is replaced by the term "survey". The term "unseaworthiness" has furthermore been reworded in accordance with section 9-5 first paragraph a) of the Ship Labour Act, where the term is phrased as follows: "(...) if the ship does not meet the requirements laid down in the Ship Safety and Security Act or in regulations issued pursuant to the Act concerning technical, operational and personal safety, and the deficiencies clearly constitute a danger to the ship or to those persons working on board." An equivalent rewording of the term has been added to section 67 first paragraph of the Regulations.

## **Entry into force**

These Regulations enter into force on 20 August 2013.

## **6. Regulation concerning amendment to Regulations of 30 December 2010 No. 1849 concerning the control of foreign ships and mobile offshore units in Norwegian ports, etc. (Port State Control Regulations)**

Regulation concerning amendment to the Port State Control Regulations is attached.

The Regulation implements MLC chapter 5.2.2 concerning the right to lodge complaints when in port for persons working on board foreign ships, as well as the port State's follow-up of such complaints.

In connection with these amended Regulations, attention is drawn to the latest draft by the Paris MOU regarding instructions for Port State Control pursuant to the MLC, 2006, which will be made

mandatory. It shall furthermore be noted that unlike MLC chapter 5.2.2, the EU's Port State Control Directive imposes a duty to carry out Port State Control without preceding complaint.

## **6.1 The need for new legislation**

The Ship Safety and Security Act contains rules about the supervision of Norwegian ships in chapter 7.

The Ship Labour Act has rules about supervision in chapter 12. The Port State Control Regulations contain supplementary rules on port State control.

The regulatory amendments are necessary in order to implement rules on the right to lodge complaints pursuant to MLC chapter 5.2.2.

## **6.2 On the regulatory amendments**

MLC chapter 5.2.2 is implemented in chapter 8 of the Port State Control Regulations. It is considered practical to place the rules on the right to lodge complaints pursuant to the MLC, 2006 in a separate chapter in order to indicate the distinctive character of the rules. The existing chapter 8 on concluding provisions is renumbered to new chapter 9.

The new provisions of the Regulations are to a large extent directed at the inspectors from the NMA, which is in accordance with the other provisions in the Regulations.

## **Remarks to certain provisions in the Regulations**

### *To section 2 Definitions*

Subparagraph d): It is necessary to add a definition of the International Labour Organization (ILO) to the Regulations, since reference is made to the organisation in section 36 third paragraph.

Subparagraph f) new point 9: A definition of the MLC, 2006 ("ILO Convention No. 186") has been added in order for the term "conventions" in the Regulations to include the MLC, 2006 as well.

### *To section 34 The right to lodge complaints*

The right to lodge complaints is limited to claims about non-compliance with the MLC, 2006. Since the MLC, 2006 does not apply to mobile offshore units, it is specified that the right to lodge complaints applies to persons working on board foreign cargo or passenger ships.

### *To section 35 Investigation of complaints*

Third paragraph:

A reference to the instructions currently in force from Paris MOU, which shall be complied with in the same way as the MLC, 2006, has been added.

### *To section 36 first paragraph:*

A reference to the instructions currently in force from Paris MOU, which shall be complied with in the same way as the MLC, 2006, has been added.

## **Entry into force**

These Regulations enter into force on 20 August 2013.

Olav Akselsen  
Director General of Shipping and Navigation  
Bjørn Pedersen  
Head of Department

# **Regulations of 19 August 2013 No. 1000 on employment agreement and pay statement, etc.**

Laid down by the Norwegian Maritime Authority on 19 August 2013 under the Act of 21 June 2013 No. 102 relating to employment protection etc. for employees on board ships (Ship Labour Act) sections 2-1, 3-1 and 4-2, cf. Formal Delegation of 3 July 2013 No. 974.

## **Section 1**

### *Scope of application*

With the exceptions set out in these Regulations and in the Regulations concerning the scope of application of the Ship Labour Act, these Regulations shall apply to any employee working on board Norwegian ships and mobile offshore units.

## **Section 2**

### *The employment agreement's content, etc.*

The employment agreement shall contain information about:

- a) the employee's full name, place of residence, nationality, birthplace and birth number or, if the employee does not have a birth number; year and date of birth;
- b) the employer's name and address;
- c) the name of the vessel if the employee is to serve on one vessel;
- d) the capacity in which the employee is to be employed;
- e) any agreements concerning:
  - i. employment involving the right and duty to serve on several vessels;
  - ii. employment for a specified period;
  - iii. employment for a specified voyage;
  - iv. work of a temporary nature;
  - v. trial period, if any;
  - vi. period of notice on either side;
  - vii. earliest date of notice of termination, if applicable;
  - viii. port of departure upon termination of employment, if applicable;
- f) any collective bargaining agreement applicable to the employment, or, if such collective bargaining agreement does not exist, the agreed monthly salary and overtime payment per hour;
- g) the day from which the salary shall be payable, as well as the expected duration of the voyage insofar as the salary is established for a specified voyage;
- h) the amount of paid annual leave, or the formula used to calculate it;
- i) the health and social security protection benefits to be provided to the seafarer by the employer;
- j) the employee's entitlement to repatriation;
- k) other engagement conditions, if any;
- l) the place and date of the entering into of the employment agreement.

The employment agreement shall be signed by the employee and the employer or whoever authorised by the employer. The parties to the agreement shall each keep an original of the employment agreement.

If the employer is someone other than the company, the employer shall, in connection with the entering into of the employment agreement, inform the employee in writing as to who the company is. If it at the time of the entering into of the agreement is not clear who the company is, the employer shall inform the employee in writing as soon as this information is known to the employer.

## **Section 3**

### *Form of employment agreement*

The employment agreement shall be entered into using the form prescribed by the Norwegian Maritime Authority. The Norwegian Maritime Authority may, upon application, approve other forms of employment agreement. This provision shall not apply to employees on fishing vessels.

## **Section 4**

### *Payment of salary*

The employee may require payment of salary to be made in cash if there is a particular need for it.

## Section 5

### *Written pay statement*

The pay statement shall, in addition to the information set forth in section 4-2 second paragraph of the Ship Labour Act, contain personal data and the vessel's name.

Upon termination of the employment the pay statement shall be signed by the employee and the employer or whoever authorised by the employer.

Section 4-2 second paragraph of the Ship Labour Act and this provision shall not apply to employees on fishing vessels unless running time wages have been agreed.

## Section 6

### *Transitional provisions*

The requirement to use the form of employment agreement containing the points of section 2 first paragraph, subparagraphs h), i) and j), applies to employment agreements entered into on 20 August 2013 or later. The same applies to the requirement for information about birthplace pursuant to section 2 first paragraph, subparagraph a).

The employer shall in every case ensure that the rights pursuant to section 2 first paragraph are fulfilled, and these rights shall be specified in the employment agreement or in an appendix thereto.

## Section 7

### *Entry into force*

These Regulations enter into force on 20 August 2013.

As from the same date the Regulations of 3 February 1986 No. 230 concerning the employment agreement and settlement of wages form are repealed.

# **Regulations of 19 August 2013 No. 999**

## **on the use of recruitment and placement services on ships**

**Legal basis:** Laid down by the Norwegian Maritime Authority on 19 August 2013 under the Act of 21 June 2013 No. 102 relating to employment protection etc. for employees on board ships (Ship Labour Act) section 3-9, cf. Formal Delegation of 3 July 2013 No. 974.

### **Section 1**

#### *Scope of application*

These Regulations shall apply to any employee on board ship who is employed using recruitment and placement services.

### **Section 2**

#### *Definitions*

For the purposes of these Regulations, the following definitions shall apply:

- a) *Recruitment and placement:* All active connection between job-seeker and employer carried out by other than the Norwegian Labour and Welfare Administration for the purpose of establishing an employer/employee relationship.
- b) *Recruitment and placement service:* Any person, company, institution, agency or other organisation whose primary purpose is the recruitment and placement of employees or which recruits and places a significant number of employees even if this is not the primary purpose of the service.
- c) *ILO Convention No. 186:* The Maritime Labour Convention, 2006.
- d) *ILO Convention No. 179:* The international convention concerning the recruitment and placement of seafarers.

### **Section 3**

#### *Employer's duties*

Employers using recruitment and placement services operating in a country which has ratified neither ILO Convention No. 186 nor ILO Convention No. 179 shall ensure that they have documentation demonstrating that the recruitment and placement services' procedures show that those services:

- a) are not using means, mechanisms or lists intended to prevent or deter employees from gaining employment for which they are qualified;
- b) are not requiring payment from the employees for their recruitment and placement activities;
- c) verify that employees are qualified and hold the documents necessary for the job concerned;
- d) verify that employees are given an employment agreement which is in accordance with applicable laws, regulations and collective bargaining agreements, if any;
- e) make sure that employees are informed of their rights and duties under their employment agreement prior to or during the process of engagement, and that proper arrangements are made for employees to examine their employment agreements before and after they are signed;
- f) make sure that employees are given a copy of their employment agreement;
- g) ensure that the employer has the means to protect seafarers from being stranded in a foreign port;
- h) maintain an up-to-date and complete register of all employees recruited and placed through the service;
- i) have established a system for the treatment of complaints concerning the service's activities;
- j) have routines in place for advising the competent authority in the country in which the service operates of any unresolved complaint;
- k) have a system of protection, by way of insurance or an equivalent appropriate measure, to compensate employees for monetary loss that they may incur as a result of the failure of a recruitment and placement service or the employer under the employment agreement to meet its obligations to them.

The requirement of the first paragraph is considered satisfied when the employer has documentary evidence that the following recruitment and placement service is used:

- a) recruitment and placement service operating in Norway; or
- b) recruitment and placement service operating in a country which has ratified ILO Convention No. 186 or ILO Convention No. 179.

### **Section 4**

#### *Entry into force*

These Regulations enter into force on 20 August 2013.

# **Regulations of 19 August 2013 No. 998**

## **on the right to lodge complaints for persons working on board ship**

**Legal basis:** Laid down by the Norwegian Maritime Authority on 19 August 2013 under the Act of 16 February No. 9 relating to Ship Safety and Security (Ship Safety and Security Act) section 2 second paragraph, section 6 and section 71a, cf. Formal Delegation of 16 February 2007 No. 171, Formal Delegation of 31 May 2007 No. 590 and Formal Delegation of 19 August 2013 No. 1002, and Act of 21 June 2013 No. 102 relating to employment protection etc. for employees on board ships (Ship Labour Act) sections 2-4 and 9-7, cf. Formal Delegation of 3 July 2013 No. 974.

### **Section 1**

#### *Scope of application*

These Regulations shall apply to any person working on board a Norwegian ship.

### **Section 2**

#### *The right to lodge complaints*

Any person working on board has the right to lodge complaints about the service on the ship and the employment in general.

### **Section 3**

#### *Complaint process*

The complaint shall, as a main rule, be lodged with the immediate superior, but the complaint may also be lodged with the master or the company.

If the employer is someone other than the company, the complaint may also be lodged with the employer. The employer shall send a copy of the received complaint to the company.

The recipient of the complaint shall seek to resolve the matter as expediently as possible.

If the complaint was first received by the immediate superior without the person concerned being able to resolve the matter, the complainant may require the matter to be referred to the master.

If a complaint cannot be resolved on board, the person who last received the complaint shall refer the complaint to the company.

The company shall ensure that the complaint and the decision on the complaint are recorded in a report, and that the complainant is given a copy of the report.

If the complainant finds it necessary, the complaint may be lodged directly with the Norwegian Maritime Authority. A complaint may also be lodged directly with whoever is authorised by the Norwegian Maritime Authority in connection with an ongoing inspection carried out by whoever is authorised.

### **Section 4**

#### *Complaint procedures*

The company shall for each individual ship establish procedures taking into account the requirements of these Regulations.

The procedures shall ensure that the complainant is not subjected to acts of retaliation for having lodged the complaint.

To ensure an efficient and expedient treatment, the procedures shall facilitate that complaints may be resolved on the lowest possible level. The procedures shall specify the level considered the lowest possible level for the various occupational groups on board.

The procedures shall ensure that a person working on board is given the right to be accompanied or represented during the complaint process.

One or more contact persons shall be appointed on each individual ship, who, on a confidential basis, may give neutral advice on the right to lodge complaints, and who may participate in meetings or inquiries in connection with the treatment of the complaint. The complainant may also choose to be represented by another person working on board.

The procedures shall contain the contact information for the Norwegian Maritime Authority and the name of the contact person(s) appointed in accordance with the fifth paragraph. Where there are persons working on board with country of residence other than Norway, the procedures shall also contain the contact information of these persons' maritime authorities. Information regarding contact persons and other maritime authorities than the Norwegian Maritime Authority may be included in the procedure or in an appendix to the procedure.

Persons working on board shall be given a copy of the procedures with appendices, if any, which are applicable to the ship.

**Section 5**  
*Entry into force*

These Regulations enter into force on 20 August 2013.

# **Regulation concerning amendments to Regulations concerning survey for the issue of certificates to passenger ships, cargo ships and lighters, and concerning other surveys, etc.**

**Legal basis:** Laid down by the Norwegian Maritime Authority on 19 August 2013 under the Act of 16 February No. 9 relating to Ship Safety and Security (Ship Safety and Security Act) sections 22a, 28a, 43 and 45, cf. Formal Delegation of 16 February 2007 No. 171, Formal Delegation of 31 May 2007 No. 590 and Formal Delegation of 19 August 2013 No. 1002, and Act of 21 June 2013 No. 102 relating to employment protection etc. for employees on board ships (Ship Labour Act) section 12-1, cf. Formal Delegation of 3 July 2013 No. 974.

## **I**

The Regulations of 15 June 1987 No. 506 concerning survey for the issue of certificates to passenger ships, cargo ships and lighters, and concerning other surveys, etc. are amended as follows:

In the following provisions the name "the Norwegian Directorate for Fire and Electrical Safety" shall be changed to "the Directorate for Civil Protection and Emergency Planning".

1. Section 57 subparagraph a) and c)
2. Section 58 subparagraph b)
3. Section 59 subparagraph a)
4. Section 61 first and second paragraph

Section 1 first paragraph subparagraph a) first sentence should read:

- a) Chapters 1, 4, 8, 13 and 14 of these Regulations shall apply to any new or existing ship which carries passengers and which is required to hold a passenger certificate, a passenger ship safety certificate, or a trading permit for passenger ships.

Section 1 third paragraph subparagraph a) should read:

- a) Chapters 1, 4, 6, 8, 11, 12, 13 and 14 shall apply to new and existing cargo ships of 50 gross tonnage and upwards or 24 metres or more in length, as set out in the relevant provisions herein.

Section 1 fourth paragraph should read:

- (4) Chapters 1, 4, 8, 10, 11, 13 and 14 shall apply to new and existing ships as set out in the relevant provisions herein.

Section 2 should read:

### **Section 2 Definitions**

- a) "*Recognised classification society*":
  1. Det Norske Veritas (DNV).
  2. Lloyd's Register of Shipping (LRS).
  3. Bureau Veritas (BV).
  4. Germanischer Lloyd (GL).
  5. American Bureau of Shipping (ABS).
  6. Registro Italiano Navale (RINA).
  7. Nippon Kaiji Kyokai (ClassNK).
- b) "*Bulk carrier*": Any vessel carrying solid cargoes in bulk, as defined in SOLAS, Chapter IX, Regulation 1, paragraph 6.
- c) "*Gross tonnage*": The numeric value entered as gross tonnage in the Tonnage Certificate. If safety tonnage is entered in the remarks column of the Tonnage Certificate, this tonnage shall be used as gross tonnage.
- d) "*DSC Code*": Code of Safety for Dynamically Supported Craft adopted by IMO Resolution A 373 (X) on 14 November 1977, as amended by Resolution MSC.37(63) of 19 May 1994.
- e) "*Existing ship or lighter*": A ship or lighter which is not a new ship or lighter.
- f) "*EEA Agreement*": Agreement on the European Economic Area (EEA) between the European Economic Community (EC) and the European Free Trade Association (EFTA).
- g) "*Fishing vessel*": A vessel used commercially for catching fish, including whale, seal, seaweed and sea tangle or other living resources in the sea.

- h) “*Supply vessel*”: A ship which is designed and equipped to carry out supply services, anchor handling and other similar services in connection with exploration for and production of hydrocarbons, minerals, etc. on the sea bed.
- i) “*Approved, type-approved or accepted*”:
  1. In respect of equipment covered by the Regulations of 29 December 1998 No. 1455 concerning marine equipment: Type-approved by a Notified Body and marked in accordance with said Regulations.
  2. In respect of other equipment:
    - *Approved*: A single piece of equipment approved by the Norwegian Maritime Authority (excluding radio installations which is approved by the Norwegian Post and Telecommunications Authority).
    - *Type-approved*: Prototype approved by the Norwegian Maritime Authority with or without sampling inspection of mass production.
    - *Accepted*: Equipment accepted by the Norwegian Maritime Authority on the basis of its approval or type-approval by a recognised classification society, another public or private institution, or the administration of a country which has ratified the SOLAS Convention.
- j) “*ILO Convention No. 186*”: Maritime Labour Convention, 2006.
- k) “*IMO*”: International Maritime Organization.
- l) “*Classed ship (vessel) or lighter*”: A ship with class in a recognised classification society.
- m) “*Load Line Convention*”: International Convention on Load Lines signed in London on 5 April 1966, as amended, including amendments by the Protocol of 1988 relating to the Load Line Convention.
- n) “*Cargo ship*”: Any ship which is not a passenger ship, fishing vessel or lighter.
- o) “*Lighter*”: A hull or ship without propulsion machinery intended to be moved by towing or pushing and which is used for the carriage of cargo.
- p) “*Mile*”: Nautical mile = 1,852 metres.
- q) “*New ship or lighter*”: A ship or lighter the keel of which is laid on or after the date on which these Regulations enter into force. A ship which is converted to a lighter on or after the date on which these Regulations enter into force is considered to be a new lighter.
- r) “*Oil tanker*”: Any vessel carrying liquid petroleum products in bulk, as defined in MARPOL Annex I, Chapter I, Regulation 1(4).
- s) “*Passenger*”: Every person on board other than: the master and members of the crew, or other persons employed or engaged in any capacity on board a ship in the service of that ship; and children under the age of one year.
- t) “*Passenger ship*”: A ship that can carry more than 12 passengers or which is required to have official permission to carry passengers.
- u) “*SOLAS Convention (SOLAS 74)*”: International Convention for the Safety of Life at Sea, 1974, as amended.
- v) “*Tow*”: One or more tugs connected by a tow connection to one or more towed objects.
- w) “*Tug*”: A ship which is constructed and equipped for towing or pushing.
- x) “*Tow connection*”: The connection between the tug and the towed object, such as wire, hawser, etc.
- y) “*Towing permit*”: The permit to carry out a tow within a certain specified area.
- z) “*Towing operation*”: An operation where the purpose is to tow or push one or more towed objects.
- aa) “*Towed object*”: Lighter, floating dock, floating crane, floating wharf, drilling vessel, ship, ship’s section, pontoon, dracon, plastic hose or other floating objects.
- bb) “*Ship of historical importance*”: A ship or vessel which has been given such status in accordance with approval by the Directorate for Cultural Heritage or whoever is authorised by the Directorate for Cultural Heritage. This status is maintained for as long as the Directorate for Cultural Heritage, through a separate agreement with the owner, finds the antiquarian conditions to be sustained.
- cc) “*Anniversary date*”: The day and month of each year which will correspond to the date of expiry of the certificate.

Section 3 should read:

The company, *employer*, platform manager and other persons working on board shall perform their duties in accordance with the Ship Safety and Security Act and with the supplementary provisions laid down in these Regulations.

Section 8 new fourth paragraph should read:

- (4) A maritime labour certificate, also when issued on an interim basis, shall cease to be valid if:
  - a) The relevant inspections are not completed within the periods specified in section 63 third paragraph.

- b) The certificate is not endorsed in accordance with section 63 third paragraph.
- c) The ship changes flag.
- d) The company ceases to assume the responsibility for the operation of the ship.
- e) Substantial changes have been made to the structure or equipment covered by the rules of the Regulations of 15 September 1992 No. 707 concerning the accommodation and catering service on ships.

Section 8 new fifth paragraph should read:

(5) In the cases referred to in the fourth paragraph (c), (d) or (e), a new certificate shall only be issued when the Norwegian Maritime Authority or recognised classification society are fully satisfied that the ship is in compliance with the requirements of section 63 first paragraph.

Section 8 fourth and fifth paragraphs become new sixth and seventh paragraphs.

Section 12 first paragraph subparagraph a) point 3 should read:

- 3. the working and living conditions on board for the implementation of ILO Convention No. 186 comply with the requirements of the regulations currently in force related to these conditions.

Section 12 first paragraph subparagraph b) first sentence should read:

Vessels which already have valid trading certificates *or vessel instructions* for fishing vessels, and which are to be used for purposes described in section 43 (c) may be surveyed for the issue of new passenger certificates independently of the provisions of subparagraph a) above.

Section 12 first paragraph subparagraph c) fifth and sixth sentence should read:

Inspection of working and living conditions in accordance with subparagraph a) point 3 shall be carried out upon renewal of the passenger certificate, as well as between the second and third anniversary date of the certificate. For ships which have a safety management certificate this inspection may instead be carried out in connection with an audit of the safety management system.

Section 22 first paragraph subparagraph a) point 3 should read:

- 3. the working and living conditions on board for the implementation of ILO Convention No. 186 comply with the requirements of the regulations currently in force related to these conditions.

The title of chapter 14 should read:

#### **Inspection for the issue of maritime labour certificate and the right for persons working on board to demand survey**

New section 62 should read:

##### **Section 62 Certificate**

(1) New and existing passenger and cargo ships of 500 gross tonnage or over which are registered in a Norwegian ship register and which are engaged in international voyages or operating from a port, or between ports, in another country, shall have a valid maritime labour certificate.

(2) The company may request the issue of such a certificate to other ships registered in a Norwegian ship register by submitting a request for survey pursuant to section 6. Chapters 1 and 4, as well as this chapter, apply correspondingly for this voluntary certification.

New section 63 should read:

##### **Section 63 Inspection for maritime labour certificate**

(1) An inspection for the issue of a maritime labour certificate shall be carried out in accordance with the Ship Safety and Security Act with appurtenant regulations and the Ship Labour Act with appurtenant regulations, and includes, *inter alia*, the inspection of:

1. minimum age;
2. medical certification;
3. qualifications;
4. employment agreements;
5. use of private recruitment and placement services;
6. hours of work and rest;
7. manning levels;
8. on-board accommodation;
9. on-board recreational facilities;
10. food and catering;
11. health and safety and accident prevention;
12. on-board medical care;
13. on-board complaint procedures;
14. payment of wages.

(2) When the period of validity set forth in the maritime labour certificate has expired, a new certificate shall be issued when a renewal inspection has been carried out in accordance with the first paragraph. The inspection may take place within three months before the date stated in the certificate without the date of the next renewal inspection being changed. The inspection must always be completed within the date stated in the certificate. The date for a new inspection is calculated in connection with the initial inspection based on the date of completion of the inspection. At subsequent inspections, the date stated in the certificate shall be taken as a basis for the calculation.

(3) During the period of validity of the certificate, an intermediate inspection shall be carried out including inspection to ascertain that the matters referred to in the first paragraph above are in compliance with the regulations currently in force. This intermediate inspection shall be carried out between the second and third anniversary date of the certificate. The certificate shall be endorsed following satisfactory intermediate inspection.

(4) After completed inspection no changes shall be made in the matters covered by the inspection, unless approved.

(5) The results of all subsequent inspections of the ship and any significant deficiencies found during any such inspection shall be recorded, together with the date when the deficiencies were found to have been remedied. This record shall be inscribed upon or appended to the declaration of maritime labour compliance, or made available in some other way to any person working on board, flag State inspectors, port State inspectors and any employers' or employees' organisations concerned. On ships engaged in international voyages the record shall be accompanied by a translation into English where it is not written in English.

New section 64 should read:

#### **Section 64** Issue and duration of certificates

(1) Certificates shall be issued by the Norwegian Maritime Authority or recognised classification society. The text of the certificates shall be as prescribed by the Norwegian Maritime Authority.

(2) The maritime labour certificate is issued for a period which shall not exceed five years. The date for renewal inspection shall be entered on the certificate. Upon request from the company the validity of the certificate may be harmonised with the validity of the ship's safety management certificate, if the date of the intermediate inspection during the validity period of the certificate, in accordance with section 63 third paragraph, is not exceeded.

(3) The maritime labour certificate consists of a certificate part and a declaration of maritime labour compliance. The declaration of maritime labour compliance consists of two parts:

- a) Part I of the declaration of maritime labour compliance is drawn up by the Norwegian Maritime Authority, and includes:
  1. a list of matters to be inspected in accordance with section 63 first paragraph;
  2. the provisions implementing ILO Convention No. 186, with information about any ship-type specific requirements;
  3. provisions which are substantially equivalent, and which are adopted pursuant to paragraph 3 of Article VI of ILO Convention No. 186;
  4. exemptions, if any, from Title 3 of ILO Convention No. 186, which have been laid down by the Norwegian Maritime Authority pursuant to the Regulations of 15 September 1992 No. 707 concerning the accommodation and catering service on ships.
- b) Part II of the declaration of maritime labour compliance is drawn up by the company, and shall identify the measures adopted by the company in order to see to and ensure ongoing compliance between inspections with the requirements listed in Part I of the declaration of maritime labour compliance and the measures adopted by the company to ensure that there is continuous improvement of the working and living conditions on board the ship. The measures identified in Part II of the declaration of maritime labour

compliance shall in particular indicate the occasions on which the ongoing compliance with the particular requirements of acts and regulations shall be verified, the persons responsible for verification, the records to be taken, as well as the procedures to be followed where non-compliance is noted. Part II of the declaration of maritime labour compliance shall be drawn up in the form approved by the Norwegian Maritime Authority or equivalent form.

(4) Where procedures in the ship's safety management system cover the items of section 63 first paragraph, it will for these items be sufficient to refer to those procedures in the safety management system in Part II of the declaration of maritime labour compliance.

(5) The Norwegian Maritime Authority shall issue Part I of the declaration of maritime labour compliance. The Norwegian Maritime Authority or recognised classification society shall issue the maritime labour certificate when the items of section 63 first paragraph have been inspected and found satisfactory. Part I and Part II of the declaration of maritime labour compliance shall be attached to the certificate.

New section 65 should read:

#### **Section 65** Availability of the certificate on board

A valid maritime labour certificate shall at any time be available on board. A copy shall be posted in a conspicuous place where it is available to any person working on board. A copy shall upon request be made available to any person working on board, flag State inspectors, port State inspectors and any employers' or employees' organisations concerned.

New section 66 should read:

#### **Section 66** Interim certificate

(1) An interim maritime labour certificate may be issued for a period not exceeding six months by the Norwegian Maritime Authority or recognised classification society:

- a) to new ships on delivery;
- b) when a ship changes flag; or
- c) when a company assumes responsibility for the operation of a ship which is new to that company.

(2) An interim maritime labour certificate may only be issued when:

- a) the ship has been inspected, as far as reasonable and practicable, for the matters listed in section 63 first paragraph;
- b) the company has demonstrated to the Norwegian Maritime Authority or recognised classification society that the ship has adequate procedures to comply with the requirements of the Ship Safety and Security Act with appurtenant regulations and of the Ship Labour Act with appurtenant regulations implementing ILO Convention No. 186;
- c) the master is familiar with the requirements of the Ship Safety and Security Act with appurtenant regulations and of the Ship Labour Act with appurtenant regulations implementing ILO Convention No. 186, as well as with the responsibilities for implementation;
- d) relevant information has been submitted to the Norwegian Maritime Authority or recognised classification society to produce a declaration of maritime labour compliance.

(3) A full inspection in accordance with section 63 first paragraph shall be carried out prior to the expiry of the interim certificate to enable issue of the full-term maritime labour certificate. No further interim certificates may be issued following the initial six months referred to in the first paragraph. The ship shall not be required to have a declaration of maritime compliance in accordance with section 64 for the period of validity of the interim certificate.

New section 67 should read:

#### **Section 67** The right of persons working on board to demand survey

(1) The master shall request survey in accordance with these Regulations if:

- a) more than half of the persons working on board lodge a complaint with the master that the ship does not meet the requirements laid down in the Ship Safety and Security Act or in regulations issued pursuant to the Act concerning technical, operational and personal safety;
- b) the deficiencies clearly constitute a hazard to the ship or to those persons working on board; and
- c) the ship is in a Norwegian port or in a foreign port where there is a foreign service mission.

(2) The master and officers shall not be considered persons working on board pursuant to the first paragraph.

(3) The first paragraph applies correspondingly when the chief engineer officer or chief mate lodges such a complaint with regard to the parts of the ship, the ship's fittings or equipment which are under his or her supervision.

(4) In foreign ports where there is no foreign service mission, the master shall contact the local authorities in order to have persons appointed who can carry out a survey.

(5) If, during the survey, the complaint is found to lack reasonable grounds, the damage shall be compensated according to the rules of the Norwegian Compensation Act.

(6) If a survey pursuant to this provision is carried out outside of Norway, the foreign service mission shall, without delay, notify the Norwegian Maritime Authority. When the foreign service mission has not been involved in the case, the master shall instead send the notification.

The existing chapter 14 becomes new chapter 15, and the existing section 62 becomes new section 68.

The title of chapter 15 should read:

**Entry into force, etc.**

## **II**

### **Entry into force**

These Regulations enter into force on 20 August 2013.

# Regulation concerning amendments to Regulations concerning the control of foreign ships and mobile offshore units in Norwegian ports, etc. (Port State Control Regulations)

**Legal basis:** Laid down by the Norwegian Maritime Authority on 19 August 2013 under the Act of 16 February No. 9 relating to Ship Safety and Security (Ship Safety and Security Act) sections 44, 45, 52 and 71a, cf. Formal Delegation of 16 February 2007 No. 171, Formal Delegation of 31 May 2007 No. 590 and Formal Delegation of 19 August 2013 No. 1002, and Act of 21 June 2013 No. 102 relating to employment protection etc. for employees on board ships (Ship Labour Act) section 9-7, cf. Formal Delegation of 3 July 2013 No. 974.

## I

Regulations of 30 December 2010 No. 1849 concerning the control of foreign ships and mobile offshore units in Norwegian ports, etc. are amended as follows:

Section 2 should read:

### Section 2 Definitions

For the purpose of these Regulations, the following definitions shall apply:

- a) “*Recognised organisation*”: a classification society or other private body, carrying out statutory tasks on behalf of a flag State.
- b) “*Ship at anchorage*”: a ship in a port or another area within the jurisdiction of a port, but not at berth, when the ship is directly and immediately affected by actions involving the movement of persons or goods or the provision of port services to or from the ship.
- c) “*The White, Grey and Black list*”: lists published by Paris MOU based on the performance of a flag State over a 3-year period. White listed flags are flags with a consistently low detention record. Grey listed flags are flags with an average performance. Black listed flags are flags that have performed worse than average.
- d) “*ILO*”: International Labour Organization.
- e) “*Initial inspection*”: a visit on board a ship by an inspector, in order to check compliance with the relevant Conventions and regulations.
- f) “*Conventions*”: the following Conventions, with the Protocols and amendments thereto, and related codes of mandatory status, in their up-to-date version.
  1. International Convention on Load Lines, 1966 (LL 66);
  2. International Convention for the Safety of Life at Sea, 1974 (SOLAS 74);
  3. International Convention for the Prevention of Pollution from Ships, 1973, and the 1978 Protocol relating thereto (MARPOL 73/78);
  4. International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW 78/95);
  5. Convention on the International Regulations for Preventing Collisions at Sea, 1972 (Colreg 72);
  6. International Convention on Tonnage Measurement of Ships, 1969 (ITC 69);
  7. Merchant Shipping (Minimum Standards) Convention, 1976 (ILO No. 147) ;
  8. International Convention on Civil Liability for Oil Pollution Damage, 1992 (CLC 92);
  9. Maritime Labour Convention, 2006 (ILO Convention No. 186).
- g) “*Statutory certificate*”: a certificate issued by or on behalf of a flag State in accordance with Conventions.
- h) “*More detailed inspection*”: an inspection where the ship, its equipment and crew as a whole or, as appropriate, parts thereof are subjected to an in-depth examination covering the ship’s construction, equipment, manning, living and working conditions and compliance with on-board operational procedures.
- i) “*Paris MOU*”: The Paris Memorandum of Understanding on Port State Control.
- j) “*Expanded inspection*”: an inspection, which covers at least the items listed in Annex 5. An expanded inspection may include a more detailed inspection whenever there are clear grounds in accordance with section 6 third paragraph.

Section 32 new second paragraph should read:

Special rules on the right to lodge complaints alleging breaches of the requirements of ILO Convention No. 186 are provided in chapter 8 of these Regulations.

New Chapter 8 should read:

### Chapter 8 The right to lodge complaints for any person working on board foreign cargo or passenger ships

### **Section 34** *The right to lodge complaints*

Any person working on board foreign cargo or passenger ships may lodge complaints alleging breaches of the requirements of ILO Convention No. 186 with a port State inspector in the port at which the ship has called. In such cases the port State inspector shall undertake an investigation.

### **Section 35** *The complaint investigation*

If a complaint investigation pursuant to section 34 is initiated, the port State inspector shall seek to resolve the matter at the ship-board level. The port State inspector shall first check whether the complaint is of a general nature which concerns all persons working on board, or categories of persons working on board, or whether the complaint relates only to the complainant. If the complaint relates to an individual case, an examination of the results of any on-board complaint procedures for the resolution of the complaint concerned should be undertaken.

If the complaint relates to an individual case, and the on-board complaint procedures have not been explored, the port State inspector should suggest that the complainant take advantage of any such procedure available to the complainant. There shall be good reasons for considering a complaint before the on-board complaint procedures have been explored. Such reasons may be the inadequacy of, or undue delay in, the internal procedures or the complainant's fear of reprisal for lodging a complaint.

The port State inspector shall also consider whether a more detailed inspection shall be undertaken in accordance with ILO Convention No. 186 Standard A5.2.1 and the instructions currently in force from Paris MOU.

In any investigation of a complaint, the port State inspector shall give the master, the company and any other person involved in the complaint a proper opportunity to make known their views.

The complaint shall be handled pursuant to the Public Administration Act of 10 February 1967.

### **Section 36** *Measures*

If the more detailed inspection reveals that requirements of ILO Convention No. 186 are not complied with, and this implies that the conditions on board constitute a clear hazard to the safety, health or security of the seafarers, or the breach constitutes a serious or repeated breach of the requirements of the Convention, the port State inspector shall take steps in accordance with Standard A5.2.1 sixth paragraph and the instructions currently in force from Paris MOU.

For non-conformities of such a nature that they do not fall within the scope of the first paragraph, the port State inspector shall forthwith notify the flag State if the case is not resolved at the ship-board level. The port State inspector shall also request the flag State to submit a suggestion for the resolution of the case, along with a plan of action for rectification of the conditions on board, to the Norwegian Maritime Authority within a prescribed deadline. If the flag State replies that it will handle the case according to an acceptable plan of action which it has submitted, the port State inspector may refrain from any further involvement with the complaint.

If the case is still not resolved by the expiry of the prescribed deadline given to the flag State according to the second paragraph, the Norwegian Maritime Authority shall transmit a copy of the port State inspector's report to the Director-General of the ILO. The report shall be accompanied by any reply received from the flag State. Appropriate employers' and employees' organisations in Norway shall be similarly informed.

The existing chapter 8 becomes new chapter 9, and the existing sections 34 and 35 become new sections 37 and 38, respectively.

Annex 3, new No. forty-five should read:

45. Maritime Labour Certificate. This certificate shall have a Declaration of Maritime Labour Compliance attached.

## **II**

### *Entry into force*

These Regulations enter into force on 20 August 2013.