

Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 19,248, 9 ta' Mejju, 2014

Taqsimha B

L.N. 156 of 2014

**MERCHANT SHIPPING ACT
(CAP. 234)**

**Merchant Shipping (Port State Control)
(Amendment No. 2) Regulations, 2014**

IN exercise of the powers conferred by articles 154 and 374 of the Merchant Shipping Act, the Minister for Transport and Infrastructure has made the following regulations:-

1. (1) The title of these regulations is the Merchant Shipping (Port State Control) (Amendment No. 2) Regulations, 2014, and these regulations shall be read and construed as one with the Merchant Shipping (Port State Control) Regulations, hereinafter referred to as the "principal regulations".

Citation and scope.

S.L. 234.38

(2) These regulations adopt the measures contained in Directive 2013/38/EC of the European Parliament and of the Council of 12 August 2013.

2. In regulation 2 of the principal regulations, the definition "the Directive" shall be substituted by the following definition:

Amends regulation 2 of the principal regulations.

" "the Directive" means Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009, on Port State control, in its up-to-date version;"

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

Amends regulation 3 of the principal regulations.

(a) sub-regulation (4) thereof shall be substituted by the following:

"(4) When inspecting a ship flying the flag of a State which is not a party to a Convention, the treatment given to such ship and her crew shall be no more favourable than that given to a ship flying the flag of a State which is a party to that Convention or to the crew of such a ship. Such ship shall be subject to a more detailed inspection in accordance with procedures established by the Paris Memorandum of Understanding."; and

(b) immediately after sub-regulation (4) thereof, as substituted, there shall be added the following new sub-regulation:

"(5) If the competent authority becomes aware of a clear violation of Community law on board ships flying the flag of a Member State, it shall in accordance with national law and practice, forthwith inform any other relevant competent authority in order for further action to be taken as appropriate.".

Amends
regulation 12 of
the principal
regulations.

4. In regulation 12 of the principal regulations, for the words "shall be provided to the ship's master." there shall be substituted the words "shall be provided to the ship's master:", and immediately thereafter there shall be added the following:

S.L. 234.51

"Provided that where, following a more detailed inspection, the living and working conditions on the ship are found not to conform to the requirements of the Merchant Shipping (Maritime Labour Convention) Rules, the inspector shall forthwith bring the deficiencies to the attention of the master of the ship, with required deadlines for their rectification.

In the event that the inspector considers such deficiencies to be significant, or if they relate to a possible complaint under point 19 of Part A of Annex V of the Directive, the inspector shall also bring the deficiencies to the attention of the appropriate seafarers' and shipowners' organisations in Malta, and may:

- (a) notify a representative of the flag State;
- (b) provide the competent authorities of the next port of call with the relevant information."

Amends
regulation 13 of
the principal
regulations.

5. Regulation 13 of the principal regulations shall be amended as follows:

- (a) immediately after paragraph (d) of sub-regulation (2) thereof, there shall be added the following paragraph:

S.L. 234.51

"(e) In the case of living and working conditions on board which are clearly hazardous to the safety, health or security of seafarers or deficiencies which constitute a serious or repeated breach of the Merchant Shipping (Maritime Labour Convention) Rules, requirements, the competent authority shall detain the ship or shall stop the operation in the course of which the deficiencies are revealed.

The detention order or stoppage of an operation shall not be lifted until those deficiencies have been rectified or if the competent authority has accepted a plan of action to rectify those deficiencies and it is satisfied that the plan will be implemented in an expeditious manner. Prior to accepting a plan of action, the competent authority may consult the flag State."; and

(b) sub-regulation (6) thereof shall be substituted by the following:

"(6) Without prejudice to any other requirement in the Convention enactments, in the event of detention, the competent authority shall immediately inform, in writing and including the report of inspection, the flag State administration or, when this is not possible, the Consul or, in his absence, the nearest diplomatic representative of that State, of all the circumstances in which intervention was deemed necessary. In addition, nominated surveyors or recognised organizations responsible for the issue of classification certificates or statutory certificates in accordance with Conventions shall also be notified where relevant.

S.L. 234.51 Moreover, if a ship is prevented from sailing due to serious or repeated breach of the requirements of the Merchant Shipping (Maritime Labour Convention) Rules or due to the living and working conditions on board being clearly hazardous to the safety, health or security of seafarers, the competent authority shall forthwith notify the flag State accordingly and invite a representative of the flag State to be present, if possible, requesting the flag State to reply within a prescribed deadline. The competent authority shall also inform forthwith the appropriate seafarers' and shipowners' organisations in Malta."

Amends
regulation 14 of
the principal
regulations.

6. Regulation 14 of the principal regulations shall be amended as follows:

(a) sub-regulation (3) thereof shall be substituted by the following:

"(3) The identity of the complainant shall not be revealed to the master or the shipowner of the ship concerned. The inspector shall take appropriate steps to safeguard the confidentiality of complaints made by seafarers, including ensuring confidentiality during any interviews of seafarers."; and

(b) immediately after sub-regulation (3) thereof, as substituted, there shall be added the following:

S.L. 234.51 "(4) A complaint by a seafarer alleging a breach of the requirements of the Merchant Shipping (Maritime Labour Convention) Rules may be reported to the competent authority in Malta. In such cases, the competent authority shall undertake an initial investigation.

S.L. 234.51 (5) Where appropriate, given the nature of the complaint, the initial investigation shall include consideration of whether the on-board complaint procedures provided for in the Merchant Shipping (Maritime Labour Convention) Rules have been pursued. The competent authority may also conduct a more detailed inspection in accordance with regulation 8.

(6) The competent authority shall, where appropriate, seek to promote a resolution of the complaint at the ship-board level.

(7) In the event that the investigation or the inspection reveals non-conformities that fall within the scope of regulation 13, that regulation shall apply.

S.L. 234.51

(8) Where sub-regulation (7) does not apply and a complaint by a seafarer related to matters covered by the Merchant Shipping (Maritime Labour Convention) Rules has not been resolved at the ship-board level, the competent authority shall forthwith notify the flag State, seeking, within a prescribed deadline, advice and a corrective plan of action to be submitted by the flag State.

(9) Where the complaint has not been resolved following action taken in accordance with sub-regulation 8, the competent authority shall transmit a copy of the report to the Director-General of the International Labour Office. The report shall be accompanied by any reply received within the prescribed deadline from the competent authority of the flag State. The appropriate seafarers' and shipowners' organisations in Malta shall be similarly informed. In addition, statistics and information regarding complaints that have been resolved shall be regularly submitted by Malta to the Director-General of the International Labour Office.

Such submissions are provided in order that, on the basis of such action as may be considered appropriate and expedient, a record is kept of such information and brought to the attention of parties, including seafarers' and shipowners' organisations, which might be interested in availing themselves of relevant recourse procedures."

