

CAYMAN ISLANDS



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**THE MERCHANT SHIPPING (REPATRIATION) (CAYMAN ISLANDS)
REGULATIONS 1989**

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THE MERCHANT SHIPPING ACT 1970

THE MERCHANT SHIPPING (REPATRIATION) (CAYMAN ISLANDS) REGULATIONS 1989

The Governor in Council, in exercise of power conferred by sections 9(d), 62 and 68(2) and (5) of the Merchant Shipping Act 1970 and of all other powers enabling him in that behalf, hereby makes the following Regulations:-

1. (1) These regulations may be cited as the Merchant Shipping (Repatriation) (Cayman Islands) Regulations, 1989, and shall come into operation on 1st January 1990.

(2) In these regulations-

"the Act" means the Merchant Shipping Act 1970 as extended to Cayman islands by the Order in Council;

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

"Governor" means the Governor in Council;

"master" means (except in regulation 8, 9 and 10) the master of the ship in which the seaman was last employed immediately before he was left behind or shipwrecked;

"the Order in Council" means the Merchant Shipping Act 1970 (Cayman Islands) Order 1988:

"seaman" (except in regulations 11 to 14) includes the master of a ship,;

"ship" means a ship (including a fishing vessel) registered in the Cayman Islands;

"shipping master" includes, when a ship is in a port in the United Kingdom, a superintendent appointed by Department of Transport of the United Kingdom to assist in the general superintendence of matters relating to merchant shipping and seaman undertaken by the Department pursuant to section 713 of the Merchant Shipping Act 1894: ,

"standard scale" means the standard scale of lines set out in paragraph 14 of the Schedule to the Order in Council.

2. (1) Subject to paragraph (1) of this regulation, these Regulations apply to

(a) any seaman employed in a ship registered in the Cayman Islands who is left behind in 'my place or country outside the Cayman Islands or is taken to such a place or country on being shipwrecked;

(b) any seaman who became so employed. under an agreement entered into outside the Cayman Islands and who is left behind in the Cayman Islands or is taken to the Cayman Islands on being shipwrecked.

(2) Regulations 11 to 14 shall also apply to any seaman who became so employed under an agreement entered into in the Cayman Islands and who leaves his ship in the Cayman Islands, otherwise than on being discharged therefrom.

3. (1) The employer of a seaman to whom these. Regulations apply shall. if his obligation to return the seaman has arisen under paragraph (2) of this

(a) as soon as practicable after the seaman is left behind or brought ashore after shipwreck.

make such provision as is necessary for his return to a place ascertained under regulation 6: and

(b) from the time when the seaman is left behind or brought ashore after shipwreck and until he is returned or until the employer's obligation to return him ceases in accordance with paragraph (3) of this regulation. make such provision for the seaman's food and lodging and such other relief and maintenance as may be necessary having regard to the personal circumstances of the seaman and of any requirement special to him:

Provided that the employer shall not be under any obligation to return or make provision for any seaman who is absent for a period of more than three months, from the date when he was left behind if, during that period, the employer did not know and could not reasonably have known of the seaman's whereabouts.

Citation,
Commencement
and interpretation

Application

Return and relief of
seamen left behind
or shipwrecked

- (2) The obligation of the employer to return a seaman under sub-paragraph (1)(a) of this regulation shall arise:
- (a) as soon as the seaman is available for return; or
 - (b) as soon as the seaman informs his employer, his employer's agent, a Shipping master or a proper officer of his whereabouts and asks to be returned by his employer; or
 - (c) if the seaman is unable by reason of illness, incapacity or other cause beyond his control so to inform any of the persons mentioned in sub-paragraph (b), as soon as one of those persons obtains from him confirmation that he wishes to be returned by his employer.
- (3) The obligation to return a seaman under paragraph (1)(a) of this regulation shall cease if the seaman:
- (a) being fit and able to undertake employment in a ship. fails to comply with a reasonable request made of him by his employer that he should enter into an agreement for employment -in any ship (including any such ship as is mentioned in regulation 8(1)(a) in which he is, in accordance with provision made by his employer, to be carried in the course of his return; or
 - (b) without reasonable cause, fails to comply with any other reasonable arrangement made for him by his employer in relation to the provision for his return; or
 - (c) informs his employer in writing that he does not wish to be returned by him.
- (4) In deciding whether the seaman is to be returned by land. sea or air (or by which combination of any of those means). his employer shall have regard to all the circumstances including the personal circumstances of the seaman and of any requirement special to him.
- (5) Without prejudice to the generality of sub-paragraph (1)(b) of this regulation. the provision for relief and maintenance to be made in accordance with that paragraph shall include
- (a) clothing;
 - (b) toilet and other personal necessities;
 - (c) surgical or medical treatment and such dental or optical treatment (including the repair or replacement of any appliance) as cannot be postponed without impairing efficiency;
 - (d) in cases where the seaman is not entitled to legal aid, or legal aid is insufficient, reasonable costs for the defence of the seaman in any criminal proceedings in respect of any act or omission within the scope of his employment, being proceedings where neither the employer nor the employer's agent is a party to the prosecution; and
 - (e) sufficient money to meet any minor ancillary expenses necessarily incurred or likely to be so incurred by the seaman for his relief and maintenance.
- (6) The provisions to be made by an employer in accordance with the foregoing paragraphs shall include -
- (a) the repayment of expenses incurred in bringing a shipwrecked seaman ashore and maintaining him until he is brought ashore; and
 - (b) the payment of the expenses of the burial or cremation of a seaman who dies before he can be returned to a place ascertained under regulation 6.
- (7) An employer who fails to comply with an obligation imposed on him by or under paragraph (1) of this regulation shall be guilty of an offence and shall be punishable on summary conviction with a fine not exceeding level 3 on the standard scale.

Other provisions relating to seamen left behind and shipwrecked seamen

4. (1) Except where, if the seaman has been discharged from his ship, notice of his discharge has been given to a shipping master or proper officer in accordance with regulations made under section 3 of the Act, the employer of a seaman to whom these Regulations apply shall, within 48 hours after the seaman is left behind or it has come to his notice that the seaman has been brought ashore after being shipwrecked (as the case may be), or if it is not practicable within that time, as soon as practicable thereafter, make provision to ensure that the shipping master or proper officer for the place where the seaman is left behind or brought ashore is informed of the particulars specified in paragraph (2) of this regulation.

(2) The particulars referred to in paragraph (1) of this regulation are -

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

(3) The master shall make entries, in relation to any seaman left behind, recording-

- (a) both in the official log book and in the list of crew, the date on which and the place at which the seaman was left behind and the reason (if known to the master) for his being left behind;
- (b) in the official log book, any provision which he has made on the employer's behalf to ensure that the shipping master or proper officer is informed of the matters referred to in paragraph (1) of this regulation.

(4) (a) An employer who fails to comply with an obligation imposed on him by or under paragraph (1) of this regulation shall be guilty of an offence and shall be punishable on summary conviction with a fine not exceeding level 3 on the standard scale;

(b) A master who fails to comply with an obligation imposed on him by or under paragraph (3) of this regulation shall be guilty of an offence and shall be punishable on summary conviction with a fine not exceeding level I on the standard scale.

5. (1) The employer shall ensure that the shipping master or proper officer specified in paragraph (2) of this regulation is kept informed of the arrangements he has made (including any changes in those arrangements) in pursuance of his obligation to make provision for the seaman's return, relief and maintenance specified in regulation 3.

(2) The shipping master or proper officer referred to in paragraph (1) of this regulation is the shipping master or proper officer for the place where the seaman is at the time any of the arrangements mentioned in that paragraph are made.

(3) An employer who fails to comply with an obligation imposed on him by or under paragraph (1) of this regulation shall be guilty of an offence and shall be punishable on summary conviction with a fine not exceeding level 3 on the standard scale.

Employer to notify shipping master or proper officer of arrangements for return of seamen

Place for return

6. A seaman who is to be returned in pursuance of these Regulations shall be returned-

- (a) in the case of a seaman who is resident in the Cayman Islands, to his home in the Cayman Islands; or
- (b) in the case of a seaman who is not resident in the Cayman Islands, to a place in the country in which he is resident being -
 - (i) if he joined the ship from which he was left behind or shipwrecked in that country, the place where he joined the ship: or
 - (ii) if he did not join the ship in that country, the place in that country at which he was engaged to join the ship: or
- (c) to any other place which may agreed between the seam," and his employer.

Provisions for a seaman's return, relief and maintenance by shipping masters and proper officers

7. Where it appears to a shipping master or proper officer for any place where a seaman is, that the seaman's employer has failed to make or to continue to make any or sufficient provision with respect to any matter for which he is required to make provision for that seaman under regulation 3. the shipping master or proper officer shall make that provision.

Conveyance orders and directions

8. (1) Where a shipping master or proper office is requested by an employer who is under an obligation under regulation 3 to make provision for a seaman's return, he shall or, where he is himself under an obligation under regulation 7 to make provision for the return of a seaman, he may, subject to paragraph (2) of this regulation-

- (a) by means of a conveyance order in writing require the master of a ship (which, where the order is made at the request of the employer, shall be specified by the employer) to convey the seaman from any place specified in the order to such other place so specified as lies on a reasonable route between the place specified in the order and the place ascertained under regulation 6 to which he is to be returned: and
- (b) give to the master of that ship such directions as may be necessary for the purpose of that requirement: and more than one such order may be made in the course of the seaman's return.

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

- (a) if his ship is a fishing vessel:
- (b) if any provision of an enactment Or instrument would be infringed by reason of that person being conveyed in the ship in addition to the other persons carried in the ship:
- (c) if his ship would be required to go to any place to which it would not otherwise go in the course of the voyage then being undertaken or about to be undertaken:
- (d) if, by reason of compliance with such requirement or direction, his ship would be unreasonably delayed: or
- (e) if the master has other reasonable cause for objecting to the requirement or direction. as the case may be.

(3) A person who fails to comply with a requirement made of him by a conveyance order under paragraph (1)(a) of this regulation or with a direction given to him under paragraph (1)(b) for the purpose of that requirement shall he guilty of an offence and shall be punishable on summary conviction with a fine not exceeding level 3 on the standard scale.

Official log book entry required regarding section 8 orders and directions

9. (1) A master shall make entries in the official log book recording the particulars of any requirement made of him under regulation 8 and of any directions given to him by a shipping master or proper officer for the purpose of that requirement.

(2) A master who fails to comply with an obligation imposed on him by or under paragraph (1) of this regulation shall be guilty of an offence and shall be punishable on summary conviction with a fine not exceeding level 1 on the standard scale.

Master entitlement
To payment for
conveyance of
seamen

10. (1) A master of a ship in which a person is conveyed in accordance with regulation 8 shall be entitled to payment for the conveyance at a rate not exceeding ten dollars per day for every day (including part of a day) on which that person is on board the ship; and payment shall be made to him or to his order by the person specified in paragraph (2) of this regulation upon presentation both of the conveyance order and of an account showing the total amount claimed and how that amount is calculated.

(2) The person by whom payment is to be made to the master in accordance with paragraph (1) of this regulation is the seaman's employer or, where the conveyance is required by a shipping master or proper officer in pursuance of his obligation under regulation 7, the Governor.

Wages of seamen,
employed in ships,
who are left behind

11. (1) The wages due under a crew agreement to a Seaman to whom these Regulations apply in respect of his employment in a ship (other than a fishing vessel) in the case of a seaman left behind in any country shall (except when he leaves the ship on being discharged therefrom and is accordingly entitled to receive his wages and an account thereof under sections 7 and 8 of the Act) be paid to him in full and an account thereof shall be delivered by the person employing him (or the master acting in that behalf) within 28 days from the time when he was returned to a place ascertained under regulation 6; and, if the amount shown in the account delivered to a seaman as being the amount payable is replaced by an increased amount shown in a further account delivered to him, the balance shall be paid to him within that time. When the employer's obligation to return a seaman ceases pursuant to regulation 3(3), the wages shall be paid and an account thereof delivered within 28 days from the date the obligation ceased; if the employer does not know of the seaman's current address, an account thereof and notice that they may be had on application to the employer shall be sent to the seaman's last known address.

(2) If a person fails without reasonable cause to comply with the provisions of paragraph (1) of this regulation, he shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.

Wages of seamen,
employed in fishing
vessels, who are left
behind

12. (1) The wages (other than wages related to the catch or sums due under a partnership agreement) due under a crew agreement to a seaman to whom these Regulations apply in respect of his employment in a fishing vessel in the case of a seaman left behind in any country:

(a) on being discharged from his fishing vessel, shall be paid to him in full and an account thereof shall be delivered or made out at the time when he leaves the fishing vessel on being discharged therefrom or, if this is impracticable, within seven days of the seaman's return to a place ascertained under regulation 6, by the person employing him (or the master acting in that behalf):

(b) otherwise than on being discharged from his fishing vessel, shall be paid to him in full and an account thereof shall be delivered by the person employing him (or by the master acting in that behalf) within 28 days from the time when he was returned to a place ascertained under regulation 6. When the employer's obligation to return a seaman ceases pursuant to regulation 3(3), the wages shall be paid and an account thereof delivered within 28 days from the date the obligation ceased; if the employer does not know of the seaman's current address, an account thereof and notice that they may be had on application to the employer shall be sent to the seaman's last known address.

(2) Where the wages related to the catch are due under a crew agreement to a seaman to whom these Regulations apply in respect of his employment in a fishing vessel, an account showing how those wages are arrived at shall be delivered and be made available and those wages paid. By the person employing him, or the master acting in that behalf, at the time when final payment is made under the provisions of the crew agreement or within 28 days from the time when he was returned to a place ascertained under regulation 6, whichever is the later.

(3) Where there is a partnership between the master and any member of the crew of a fishing vessel to whom these Regulations apply, the owner of the vessel shall make out an account showing the sums due to each partner in respect of his share and that account shall be made available and the sum paid at the time when final payment is to be made under the provisions of the partnership agreement or within 28 days from the time when he was returned to a place ascertained under regulation 6, whichever is the later.

(4) If a person fails without reasonable cause to comply with the provisions of paragraphs (1), (2) or (3) of this regulation, he shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.

Wages to be dealt with under employment agreements

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

Wages to be paid to next of kin under certain circumstances

14. Where the wages cannot be paid to the seaman in accordance with regulations 11 and 12 of these Regulations and the seaman is not known to be dead, then, notwithstanding anything contained in sections 7 and 8 of the Act Or those regulations, the wages shall be paid and accounts thereof delivered to the person named in the list of crew as the seaman's next of kin. as soon as is practicable after the expiration of four months from the time for payment specified in the said regulations 11 and 12.

Other records and accounts

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

(2) Where, in respect of any expense incurred or sum paid by him in discharge of his obligations under these Regulations, the employer of a seaman makes a deduction authorised by regulations made under section 9(a) of the Act to be made from the wages due to a seaman under a crew agreement, the employer shall render an account of all such expenses and sums to the seaman or, if the seaman's wages are payable by virtue of regulation 14 to his next of kin as named in the list of crew, to that next of kin.

(3) An employer who fails to comply with an obligation imposed on him by or under this regulation shall be guilty of an offence and shall be punishable on summary conviction with a fine not exceeding level 3 on the standard scale.

Property of seamen left behind and of shipwrecked seamen

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

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

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

(3) The master shall .

- (a) take charge of that property; and
- (b) enter in the official log book-
 - (i) a list of all the property so taken into his charge;
 - (ii) in the case of the sale under paragraph (4)(a) of this regulation of any part of the property. A description of each article sold 'and the sum received for it:
 - (iii) in the case of the destruction or disposal of any part of the property under paragraph (4)(b) of this regulation. a description of each article destroyed or disposed of and the name of any person to whom disposal was made,

(4) The master may at any time-

- (a) sell, by public auction or otherwise, any part of the property which is of a perishable or deteriorating nature and the proceeds of sale shall form part of the property; and
- (b) destroy or otherwise dispose of any part of the property which, in his opinion, endangers or is likely to endanger the health or safety of any person on board the ship,

(5) Subject to paragraph (6) of this regulation-

(a) the master shall, when directed by the employer, cause the property to be delivered to the employer at an address in the country to which the seaman is to be returned in accordance with regulation 6; and

(b) the employer shall deliver the property -

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

(ii) if the seaman's wages are payable by virtue of regulation 14 to his next of kin as named in the list of crew, to that next of kin at the address stated in the list of crew; and the expense of such delivery by the employer shall be borne by the person to whom the property is delivered.

(6) If the seaman so requests, the master shall cause the seaman's property to be delivered to him at an address stated by the seaman; and any expense incurred in so delivering the property shall be borne by the seaman.

(7) The employer, when delivering the property to the seaman or his next of kin in accordance with paragraph (5)(b) of this regulation, or the master when causing the seaman's property to be delivered to the seaman in accordance with paragraph (6) of this regulation, shall deliver to the seaman or his next of kin, as the case may be, a record of all the property delivered and

(a) where any property has been sold under paragraph (4)(3) of this regulation, a description of each article sold and the sum received for it; and

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

(8) A master who fails to comply with an obligation imposed on him by or under:

(a) paragraph (3)(a), (5)(a), (6) or (7) of this regulation shall be guilty of an offence and shall be punishable on summary conviction with a fine not exceeding level 3 on the standard scale;

(b) paragraph (3)(b) of this regulation shall be guilty of an offence and shall be punishable on summary conviction with a fine not exceeding level 1 on the standard scale.

(9) An employer who fails to comply with an obligation imposed on him by or under paragraph (5)(b) or (7) of this regulation shall be guilty of an offence and shall be punishable on summary conviction with a fine not exceeding level 3 on the standard scale.

17. All entries in the official log book required to be made by the master under regulations 4(3), 9 and 16(3)(b) shall be signed by the master and by a member of the crew.

Official log book entries

Made in Council this 14th day of November, 1989.

MONA N. JACKSON

Clerk of the Executive Council