

DEPARTMENT OF TRANSPORT

No. R. 5492

GG 51486

01 November 2024

MERCHANT SHIPPING ACT, 1951 (ACT NO. 57 OF 1951)

DRAFT MERCHANT SHIPPING (SEAFARER INSURANCE AND LABOUR RELATED MATTERS) REGULATIONS, 2024

The Minister of Transport intends, in terms of section 356(2)(a) of the Merchant Shipping Act, 1951 (Act No. 57 of 1951) and on the recommendation of the South African Maritime Safety Authority to repeal the Merchant Shipping (Seafarer Recruitment and Placement) Regulations, 2017 published by GN R 986 in Government Gazette 41108 of 11 November 2017, the Merchant Shipping (Seafarer Compensation) Regulations, 1998 published by GNR.1654 in Government Gazette No. 19604 of 18 December 1998, the Provisions Regulations, 1961 published by GNR. 896 of 27 October 1961, the Distressed Seamen's Regulations, 1961 published by GNR. 895 of 27 October 1961 and the Bedding, Towels, Mess Utensils and Other Articles for Personal Use Regulations, 1961 GNR. 897 of 27 October 1961 and the Seamen's Welfare Regulations, 1961 published by GNR. 898 of 27 October 1961, the Merchant Shipping (Seamen's Documents) Regulations, 2000 published by Government Notice No. R. 432 Government Gazette 21136 / RG 6796 of 5 May 2000 and promulgate the Draft Merchant Shipping (Seafarer, Insurance and Labour Related Matters) Regulations, 2024, as set out in the Schedule published in the South African Maritime Safety Authority website at [Draft Regulations \(samsa.org.za\)](http://Draft Regulations (samsa.org.za)).

To facilitate stakeholder engagement on the Draft Regulations, SAMSA will conduct various workshops around the country, including the following:

DATE	REGION	VENUE
13 November 2024	Western Region (Cape Town)	Southern Sun Cape Sun Strand Street, Cape Town
19 November 2024	Southern Region (Gqeberha)	Town Lodge Port Elizabeth Cnr Beach Road & Lodge Road Summerstrand, Gqeberha
27 November 2024	Eastern Region (Durban)	Garden Court Marine Parade 167 OR Tambo Parade, Durban

Electronic copies of the Draft Regulations are accessible on the SAMSA website at <https://www.samsa.org.za/Pages/SAMSADraftRegulation.aspx> and may also be requested from Bulelani Ncanywa at bncanywa@samsa.org.za

Interested persons are hereby invited to submit written comments on these draft regulations on or before the **20 December 2024** to the Chief Executive Officer: SAMSA, for the attention:

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DEPARTMENT OF TRANSPORT

No. R. 5492

GG 51486

01 November 2024

MERCHANT SHIPPING ACT, 1951 (ACT NO. 57 OF 1951)

**THE MERCHANT SHIPPING (SEAFARER ACCIDENT INSURANCE) REGULATIONS,
2024**

I, Barbara Creecy, Minister of Transport hereby, in anticipation of the promulgation of the Merchant Shipping Bill, 2023 (Bill No. 12 of 2023), in terms of section 426(d) read with 125, 126, 127 and section 162 Part 18 of the Merchant Shipping Bill, 2023 (Bill No. 12 of 2023), make the Regulations set out in the Schedule hereunder.

Ms. B. Creecy, MP

Minister of Transport

Date:

SCHEDULE

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CHAPTER 1 – GENERAL

Purpose of Regulations

1. These Regulations give effect to –
 - (a) Chapter 4 [Seafarers] of the Act;
 - (b) the Maritime Labour Convention; and
 - (c) the C188 Convention,

in so far as the Conventions relate to the recruitment and placement of seafarers.

Definitions

2. In these Regulations, the expression “the Act” means the Merchant Shipping Bill, 2023 (Bill No. 12 of 2023), and unless the context otherwise indicates, any word or expression used in these Regulations, to which a meaning has been assigned in the Act, bears the meaning so assigned, and –

‘Basic Conditions of Employment Act’ means the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);

‘C188 Convention’ means the Work in Fishing Convention, 2007, as defined in section 1 of the Act;

‘CCMA’ means the Commission for Conciliation, Mediation and Arbitration established in terms of section 112 of the Labour Relations Act, 1995;

‘disablement’ means permanent partial disablement, permanent total disablement, temporary partial disablement, temporary total disablement, or disfigurement, as the case may be;

‘Electronic Communications and Transactions Act’ means the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002);

‘ILO’ means the International Labour Organisation;

‘long term disablement’, in relation to a seafarer, means the inability of the seafarer to perform any work of the kind at which the seafarer was employed or engaged at the time of the accident, personal injury, sickness or disfigurement for a long term, resulting from an occupational injury, illness or hazard;

‘Maritime Fund’ has the meaning assigned to it in section 1 of the Act;

‘medical expenses’ means the charges levied by a medical practitioner or other registered health practitioner, and includes the cost of –

- (a) medical or surgical treatment, services or supplies and hospital, nursing, counselling and ambulance services;
- (b) providing for the medical and health care and treatment of seafarers;
- (c) medical and health assessments of any personal injury, disease, illness, disfigurement; and

(d) essential dental care;

'Minimum Wages Act' means the Minimum Wages Act, 2018 (Act No. 9 of 2018);

'MLC' means the Maritime Labour Convention as defined in section 1 of the Act;

'owner' has the meaning assigned to it in the Act and shipowner shall be construed accordingly;

'personal injury' means any disease or impairment, resulting from an accident, of a seafarer's physical or mental condition arising out of or in connection with employment of the seafarer;

'seafarer records' include seafarer qualifications, records of employment, personal data relevant to employment and medical data relevant to employment;

'seafarer recruitment and placement service' means any person, company, institution, agency or other organisation, in the public or the private sector, which is engaged in recruiting seafarers on behalf of shipowners or placing seafarers with shipowners and "SRPS" shall be construed accordingly;

'serious injury' an injury which is sustained by a person, resulting in incapacitation where the person is unable to function normally for more than 72 hours, commencing within seven days from the date when the injury was suffered; and

'the Act' means the Merchant Shipping Bill, 2023 (Bill No. 12 of 2023).

Application of Regulations

3. (1) These Regulations apply to –

- (a) every South African ship wherever it may be and the owner who for the purposes of these Regulations is deemed an employer of and seafarers employed on such ship; and
- (b) any seafarer recruitment or placement service, operating in the Republic, that recruits or places seafarers on ships.

(2) Notwithstanding subregulation (1), these Regulations does not apply to—

- (a) a ship used solely for sport or recreation;
- (b) vessels regulated by NSV Regulations, excluding commercial vessels;

- (c) vessels owned by any person who holds a valid subsistence fishing permit issued under the Marine Living Resources Act, 1998 (Act No. 18 of 1998), when used for fishing operations covered by the permit; or
- (d) any other ship, or class of ships, prescribed for the purposes of this subregulation.

CHAPTER 2 - SEAFARER RECRUITMENT AND PLACEMENT

Recruitment and placement

4. (1) It is prohibited for any person to operate a seafarer recruitment and placement service unless that person holds a valid certificate of accreditation issued by the Authority.

(2) The owner of a ship shall ensure that any seafarer recruited or placed for work on a ship by a seafarer recruitment and placement service, is recruited or placed by a seafarer recruitment and placement service which holds a valid certificate of accreditation issued by the Authority.

(3) It is an offence –

- (a) to operate a seafarer recruitment and placement service without accreditation; or
- (b) for an owner to use a seafarer recruitment and placement service that is not accredited by the Authority.

Accreditation of seafarer recruitment and placement services

5. (1) An application to be accredited as a Seafarer Recruitment and Placement Service, shall be in the form and manner prescribed by the Authority.

(2) (a) To be accredited, an applicant shall –

- (i) have a system of documented processes and procedures, as determined by the Authority.
- (ii) provide evidence of seafarer employment records in respect of seafarers recruited and placed on ships, where the applicant was previously accredited; or
- (iii) demonstrate capacity to retain seafarer employment records for a minimum period of three years, including record preservation and backup systems electronically, in accordance with the Electronic Communications and Transactions Act;
- (iv) establish a system of protection, by way of insurance or an equivalent system acceptable to the Authority, to compensate seafarers recruited and placed by the Seafarer Recruitment and

Placement Service for any monetary losses that the seafarer may incur as a result of the failure of the Seafarer Recruitment and Placement Service or shipowner under the seafarer's employment agreement to meet its obligations to the seafarer;

- (v) have in its practice, a person responsible for the supervision of recruitment in the Seafarer Recruitment and Placement Service's employment who—
 - (aa) is familiar with MLC or WIF and other international maritime instruments; and
 - (bb) has a minimum of an NQF level 6 qualification in recruitment recognised by the SAQA and one year experience as recruitment and placement agent; or
 - (cc) a certificate of competency or proficiency as an able seafarer or officer of the watch issued by the Authority and one year sea service whilst holding that certificate; and
- (vi) be registered in terms of and compliance with the Employment Services Act, 2014 (Act No. 4 of 2014).

- (3) The system of protection in subregulation (2)(a)(iv) shall –
 - (a) provide cover for seafarer's conditions of employment, as prescribed under regulation 17; and
 - (b) be in the form of insurance or an equivalent system that complies with minimum requirements of the Long-Term Insurance Act, 1998 (Act No. 52 of 1998) or the equivalent.

(4) The Authority shall, if satisfied that the seafarer recruitment and placement service complies with subregulations (2) and (3) and the processes determined by the Authority, issue the accreditation certificate which is valid for a period not exceeding three years, subject to subregulations (8), (9) and (10).

(5) The accredited Seafarer Recruitment and Placement Service, shall in in the form and manner determined by the Authority, request approval from the Authority, in writing, not later than 15 days before the proposed implementation date, with regard to any changes regarding the requirements in subregulations (2) and (3).

- (6) Every accredited seafarer recruitment and placement service shall, within two days of request by the Authority-
 - (a) make available to the Authority all contracts entered into between the seafarer recruitment and placement service and a shipowner or any other party;

- (b) any other documents or records; and
 - (c) make available to the Authority any contract entered into with seafarers.

- (7) Every accredited seafarer recruitment and placement service shall-
 - (a) for audit purposes, preserve the documents referred to in subregulation (6) for a minimum period of three years; and
 - (b) allow the Authority to –
 - (i) visit the seafarer recruitment and placement service at any reasonable time for the purposes of auditing the operations of the service; and
 - (ii) make a copy of any document found at the premises of the seafarer recruitment and placement service.

- (8) The Authority may by written notice vary, suspend or cancel an accreditation issued under subregulation (4) if –
 - (a) the seafarer recruitment and placement service fails to comply with these Regulations or any of the conditions of accreditation; or
 - (b) the accreditation was issued based on incorrect information.

- (9) The Authority may by written notice revoke an accreditation issued under subregulation (4) if the application for seafarer recruitment and placement service accreditation was issued based on fraudulent information or misrepresentation.

- (10) The Authority shall, before suspending, varying, revoking or cancelling the accreditation of a seafarer recruitment and placement service —
 - (a) notify the seafarer recruitment and placement service in writing of the intention to suspend, vary, revoke or cancel the accreditation and of the reasons for so doing;
 - (b) give the seafarer recruitment and placement service 30 days, calculated from the date the notice is given in terms of paragraph (a), an opportunity to make representations on why the seafarer recruitment and placement service's accreditation should not be suspended, varied, revoked or cancelled: provided in the case of a suspension, the Authority may give a period less than 30 days for submission of representations;
 - (c) consider any representations received; and
 - (d) notify the seafarer recruitment and placement service of the decision.

(11) Where accreditation of a seafarer recruitment and placement service has been suspended, varied or cancelled –

- (a) the seafarer recruitment and placement service shall transfer all its legal obligations and interests arising from or based on the accreditation during the validity period of the accreditation, to a holder of a valid seafarer recruitment and placement service, subject to approval by the Authority; or
- (b) the Authority may place the holder of the revoked, suspended, varied or cancelled seafarer recruitment and placement service under administration of any holder of a valid seafarer recruitment and placement service accreditation.

(12) The Authority shall publish details of –

- (a) accredited seafarer recruitment and placement services; and
- (b) suspended, revoked or cancelled seafarer recruitment and placement services.

(13) The accredited Seafarer Recruitment and Placement Service shall display its certificate of accreditation in a conspicuous place at the premises from where it operates and on its website.

Fees and other charges

- 6.(1) (a) It is prohibited to impose, directly or indirectly, any fees or other charges on a seafarer for, recruiting, placing, providing employment to the seafarer or for any training required for a particular post.
- (b) The cost of visa which shall be borne by the shipowner.

(2) The administrator appointed by the Authority in terms of regulation 5(11)(b) and regulation 7(4) is entitled to the fees or monies that would have accrued to the revoked, suspended, varied or cancelled seafarer recruitment and placement service.

(3) It is an offence to impose any fees, costs of a visa or other charges to a seafarer for the seafarer's recruitment and placement.

Duties of seafarer recruitment and placement services

7.(1) A seafarer recruitment and placement service shall-

- (a) retain seafarer employment records for a minimum period of three years, including record preservation and backup systems electronically, in accordance with the Electronic Communications and Transactions Act;

- (b) transfer seafarer employment records to the Authority on the anniversary of the accreditation and on the date of cessation of the service;
- (c) (i) maintain an up-to-date register of every seafarer recruited or placed by the service, which register shall be available for inspection by the Authority;
- (ii) submit the register in subparagraph (i) annually, on accreditation anniversary of the seafarer recruitment and placement service, to the Authority;
- (d) ensure that seafarers are informed of their rights and duties under their employment agreements prior to engagement;
- (e) ensure that proper arrangements are made for seafarers to examine their employment agreements before and after they are signed;
- (f) ensure that the seafarers receive copies of their agreements;
- (g) verify that seafarers recruited or placed by the service are properly qualified and hold the appropriate qualifications for the position;
- (h) ensure that the shipowner has the means to protect seafarers from being stranded in a foreign port;
- (i) (i) examine, respond to and resolve any complaint about the placement and recruitment of seafarers by the service within seven days of the complaint;
- (ii) report any unresolved complaint referred to in subparagraph (i) to the Authority within seven days of expiry of the period in subparagraph (i); and
- (iii) retain a record of all complaints complaint referred to in subparagraph (i), including resolved complaints, readily available for inspection by the Authority;
- (j) forward in writing, to the Authority any complaint received about on-board working or living conditions, within two days of receipt of the complaint;
- (k) establish a system of protection, by way of insurance or an equivalent system acceptable to the Authority, to compensate seafarers recruited and placed by the service for any monetary losses that the seafarer may incur as a result of the failure of the service or shipowner under the seafarer's employment agreement to meet its obligations to the seafarer;
- (l) advise the seafarer accordingly if the ship on which the seafarer is to be placed, is registered in a country that has not ratified the Convention, and of any possible problems;
- (m) advise the seafarer of any particular conditions applicable to the job, and the shipowner's policies relating to employment;
- (n) (i) ensure that there is a procedure for processing requests for information or advice directed by the families of seafarers who are at sea; and
- (ii) process and resolve requests for information or advice directed by the families of seafarers who are at sea promptly, sympathetically and at no cost;

- (o) ensure that the shipowner has in place financial protection to cover the minimum requirements in regulation 17;
- (p) ensure the confidentiality of documents submitted by a seafarer; and
- (q) ensure that the services are provided at the address provided to the Authority with the accreditation application.

(2) A seafarer recruitment and placement service may not use any means, mechanism or list intended to prevent or deter any person from gaining employment for which the person is qualified.

(3) Where accreditation of a seafarer recruitment and placement service has been varied, suspended, or cancelled, the seafarer recruitment and placement service shall continue to discharge all its legal obligations arising from or based on the accreditation during the period the accreditation was valid.

- (4) (a) An accredited holder of a valid seafarer recruitment and placement service shall accept an appointment by the Authority as administrator over another seafarer recruitment and placement service that has been revoked, suspended, varied or cancelled.
- (b) The appointment by the Authority in paragraph (a) shall terminate on conclusion of repatriation of all seafarers.

(5) Failure to discharge the duties of a seafarer recruitment and placement service in terms of subregulation (1) is an offence.

CHAPTER 3 – CONDITIONS OF EMPLOYMENT

Crew agreements

8.(1) If a seafarer is placed on a South African ship, section 94 of the Act applies.

- (2) (a) If a seafarer is placed on a South African ship to which section 94 applies or on a ship that is not registered in the Republic, a crew agreement shall be entered into.
- (b) The crew agreement in paragraph (a) –
 - (i) in the case of a South African ship, shall be in the form, contain the information, and comply with the requirements determined by the Authority; and

- (ii) in the case of a ship that is not registered in the Republic, shall be in the form, contain the information, and comply with the requirements determined by the MLC and the C188 Convention.
- (c) The owner or master of a ship shall, before a seafarer signs a crew agreement ensure that the seafarer has–
 - (i) been given an opportunity to examine and seek advice on the agreement; and
 - (ii) been informed of the seafarer’s rights and duties under the employment agreement, prior to engagement.

(3) A copy of the crew agreement signed by the seafarer and the owner shall be given to the seafarer as soon as practicable after the conclusion thereof but no later than when that seafarer joins a South African ship.

(4) Where a collective crew agreement forms part of the seafarer’s agreement, the agreement shall be made available and accessible to all seafarers that are party thereto, on the ship.

Visas

9. The shipowner is liable and shall provide for the cost of any Visa required by a seafarer when joining or leaving the ship, and when the ship calls at a port where a Visa is required.

Wages

- 10.(1)(a)** A seafarer employed on board a ship shall be paid the wages stipulated in the crew agreement concluded on joining the ship.
- (b) For sea going ships, the minimum wages shall be–
 - (i) in the currency agreed to in the crew agreement; and
 - (ii) in accordance with the scales determined by the ILO in regulation 2.2 of the MLC: provided this shall not be less than the minimum wages determined in terms of the Minimum Wages Act.
 - (c) A seafarer employed on a ship shall be provided with a payment advice which shall contain a full and true account of the seafarer’s wages in a form approved by the Authority.
 - (d) The contents of a payment advice shall be determined by the Authority.
 - (e) The amount of deductions from wages, excluding the deductions contemplated in section 34 of the Basic Conditions of Employment Act, may not exceed 25 percent of the wages or any other limit determined by the Authority during a payment period.

- (f) The master of the ship shall keep a record of deductions and reductions in the form determined by the Authority.
- (2) The wages in subregulation (1) shall -
 - (a) be paid at periodic intervals no longer than one calendar month and in accordance with the crew agreement;
 - (b) in the case where a seafarer is serving on a fishing vessel and paid on commission, be the equivalent or greater than the national minimum wage as defined in the Minimum Wages Act, 2018 (Act No. 9 of 2018) and shall be paid to the seafarer at intervals no longer than one calendar month, and shall be defined as such in the crew agreement; or
 - (c) in the case of a voyage agreement, at the end of the voyage agreement and at periodic intervals in accordance with the crew agreement, no longer than one calendar month.
- (3) It is prohibited to impose, directly or indirectly, any fees or other charges against the wages due to a seafarer for, recruiting, placing, providing employment to the seafarer or for any training required for a particular post, except statutory deductions required or permitted in terms of any law.
- (4) A seafarer of a South African ship shall not be entitled to wages—
 - (a) for any period during which the seafarer is absent without leave from the seafarer's ship or from the seafarer's duty;
 - (b) for any period during which the seafarer unlawfully refuses or neglects to work when required;
 - (c) unless the court hearing the case otherwise directs, for any period during which the seafarer is lawfully imprisoned;
 - (d) for any period during which the seafarer is by reason of the seafarer's being under the influence of liquor or a drug, incapable of performing the seafarer's duty; or
 - (e) if it is proved that a seafarer of a South African ship whose ship has been wrecked or actually or constructively lost has not made every reasonable effort to save the ship, cargo and stores, the seafarer shall not be entitled to claim any wages that would otherwise be due to the seafarer.
- (5) For the purposes of subregulation 4 paragraph (e), a ship shall be deemed to be constructively lost if—
 - (a) the ship is reasonably abandoned because its actual total loss appears to be unavoidable;
 - (b) the ship cannot be preserved from actual total loss without an expenditure that would exceed its value when the expenditure has been incurred; or
 - (c) the ship has been damaged to the extent that the cost of repairing the damage would exceed its value when repaired.

- (6) (a) A seafarer shall not be disentitled to claim wages for any period during which the seafarer has not performed the seafarer's duty if the seafarer proves that the seafarer was incapable of doing so by reason of illness, hurt or injury, unless the shipowner proves that—
- (i) the seafarer's illness, hurt or injury was caused by the seafarer's own wilful act or default or own misbehaviour; or
 - (ii) the seafarer has unreasonably refused to undergo medical or surgical treatment for the seafarer's illness, hurt or injury involving no appreciable risk to the seafarer's life.
- (b) Where the employment of the seafarer of a South African ship is terminated before the date contemplated in the crew agreement the seafarer is entitled to receive wages at the rate provided in the crew agreement for the period calculated from the date the seafarer's services are terminated until the seafarer's is returned to and arrives at a proper return port where the termination —
- (i) is due to injury or sickness, subject to paragraph (a); or
 - (ii) is due to mutual termination of the crew agreement.
- (c) A seafarer is entitled to receive wages for a period of not less than 16 weeks to defray the expenses for medical care and board-and-lodging from the date of the injury or the commencement of the sickness;

(7) This regulation shall be construed as though section 81 of the Act applies to this regulation; and in such construction any reference in the said subsections to the payment of wages in terms of section 81 of the Act shall be deemed to be a reference to the payment of wages in terms of this regulation.

- (8) (a) When a question as to wages is raised between the owner of a South African ship and a seafarer, and the parties concerned agree in writing to submit such matter for determination to a proper officer, the proper officer may hear and decide the question so submitted, and the proper officer's decision shall be final.
- (b) The proper officer may direct the parties to refer the dispute in paragraph (a) for resolution in terms of section 80 of the Basic Conditions of Employment Act.

Hours of Work and Hours of Rest

11. (1) For the purpose of this regulation —
- (a) the hours of work and hours of rest provided for in this regulation are complemented by the provisions of regulation 95 of the Merchant Shipping (Safe Manning, Training and Certification) Regulations; and

- (b) in the case of conflict between the provisions of regulation 95 of the Merchant Shipping (Safe Manning, Training and Certification) Regulations and this regulation, the following applies:
 - (i) for persons with watchkeeping responsibilities, the provisions of regulation 95 of the Merchant Shipping (Safe Manning, Training and Certification) Regulations prevails, and
 - (ii) for any other person, the provisions of this regulation shall prevail;
- (c) “hours of work” means time during which seafarers are required to do work on account of the ship; and
- (d) “hours of rest” means time outside hours of work; and does not include short breaks.

(2) For all sea going vessels other than fishing vessels, the maximum hours of work for all persons shall not exceed —

- (a) 14 hours in any 24-hour period; and
- (b) 72 hours in any seven-day period,

Provided: for fishing vessels the hours of rest shall not be less than 10 hours in any 24-hour period.

(3) The owner shall post, in an easily accessible place, a table with the shipboard working arrangements, which shall contain for every position at least—

- (a) the schedule of service at sea and service in port; and
- (b) the maximum hours of work or the minimum hours of rest required by law or regulations or applicable collective agreements.

(4) The table referred to in subregulation (3) shall be established in the working language or languages of the ship and in English.

- (5) (a) Working hours for young persons should not exceed eight hours per day and 40 hours per week and overtime should be worked only where unavoidable for safety reasons.
- (b) Sufficient time should be allowed for all meals, and a break of at least one hour for the main meal of the day should be assured.
- (c) A 15-minute rest period as soon as possible following each two hours of continuous work should be allowed.
- (d) The owner may depart from the application of the provisions of paragraphs (a) to (c) inclusive, if —

- (i) it is impracticable for young seafarers in the deck, engine room and catering departments assigned to watchkeeping duties or working on a rostered shiftwork system; or
 - (ii) the effective training of young seafarers in accordance with established programmes and schedules would be impaired.
 - (e) Any departure in terms of paragraph (d) shall be recorded, with reasons, and signed by the master.
- (6)
- (a) The owner shall maintain records of seafarers' daily hours of work or of the daily hours of rest.
 - (b) The records to be maintained by the owner or master in this regulation shall be in the format determined by the Authority.
 - (c) The owner shall provide each seafarer with a copy of the records in paragraph (a), pertaining to that seafarer, which shall be endorsed by the master, or a person authorised by the master, and by the seafarers.

(7) A collective agreement shall not contain provisions less favourable to the provisions of this regulation and may not regulate matters relating to work of young persons.

Work of young persons

12. (1) The owner or master of a South African ship shall not permit a young person as defined in the Act, to perform any work on a ship unless it is in compliance with Chapter Six - Prohibition of Employment of Children and Forced Labour of the Basic Conditions of Employment Act.

(2) The Authority shall in accordance with this regulation, determine for young persons, the following:

- (a) working conditions;
- (b) prohibited work;
- (c) eligibility to hold a rank on a ship; and
- (d) occupational guidelines.

Leave entitlement

13. (1) For the purposes of this section, "month" means a period of 30 days, and includes Saturdays, Sundays and public holiday, as defined in section 1 of the Public Holidays Act, 1994 (Act No. 86 of 1994).

(2) Every seafarer employed on a South African ship is entitled to leave accrued at the rate of at least 2.5 days per month of employment except as agreed in terms of a collective bargaining agreement or in a statutory council.

(3) The leave in subregulation (3) commences when the seafarer arrives at the seafarer's proper return port.

Repatriation

14. (1) The procedures, manner and forms for compliance with sections 115 to 120 inclusive, of the Act shall be as determined by the Authority.

(2) The Authority shall create a system of reporting, monitoring and assistance of seafarers in relation to repatriation, including —

- (a) seafarer reporting failure of owners to return them home;
- (b) evaluating records of repatriation in relation to those employed using a seafarer recruitment and placement service;
- (c) assisting distressed or abandoned South African seafarers, wherever they may be;
- (d) assisting distressed or abandoned seafarers in South Africa, whatever their nationality; and
- (e) any other matter in sections 115 to 120 of the Act.

(3) The Authority may invoke the Maritime Fund for expenditure incurred in respect of any matter in subregulation (2) paragraphs (c) and (d): Provided that the funds used shall constitute a debt and the Authority and the Authority may recover the funds used into the Maritime Fund, and keep the accounts of the activities in accordance with section 122 of the Act.

(4) For the purposes of subregulation (2), a seafarer shall be deemed to have been abandoned where the shipowner —

- (a) fails to cover the cost of the seafarer's repatriation; or
- (b) has left the seafarer without the necessary maintenance and support; or
- (c) has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months.

Career and Skills Development and Opportunities

15. (1) The procedures, manner and forms for systems for career and skill development and employment opportunities for seafarers, in order to provide the maritime sector with a stable and competent workforce shall be as determined by the Authority.

(2) The system of career and skills development shall be in accordance with the provisions of the Merchant Shipping (Safe Manning, Training and Certification) Regulations.

Provisions- Food and Catering

16. (1) The owner shall —

- (a) carry on board and serve food and drinking water of appropriate quality, nutritional value and quantity that adequately covers the requirements of the ship and takes into account the differing cultural and religious backgrounds;
- (b) provide seafarers on board a ship with food free of charge during the period of engagement; and
- (c) ensure that seafarers employed as ships' cooks with responsibility for food preparation shall, taking into consideration health and safety of crew, are —
 - (i) trained and qualified for the position on board ship; and
 - (ii) sufficient in number; and
- (d) compensate any seafarer employed on a South African ship for the reduction or bad quality of provisions, if any of the provisions which the master of a South African ship is required to provide is reduced, or any of those provisions are bad in quality.

(2) (a) The Authority shall make determinations regarding—

- (i) bad quality provisions; and
- (ii) compensation for bad quality provisions.

(3) (a) The compensation contemplated in subregulation (2)(a)(ii) may be recovered in money, as agreed by the parties or determined by the Authority

- (b) The proper officer may on complaint by a seafarer, determine if the compensation in paragraph (a) is reasonable, having regard to all the circumstances.

CHAPTER 4 - SYSTEM OF PROTECTION

Protection System

17. The shipowner shall have in place financial protection to cover-
- (a) medical costs in the event of a sickness and injury of the seafarer occurring between the date of commencing duty and the date upon which the seafarer is duly repatriated or arising from the seafarer's employment between those dates;
 - (b) medical care including medical treatment and the supply of the necessary medicines and therapeutic appliances, and board-and-lodging away from home until the sick or injured seafarer has recovered, or until the sickness or disability has been declared of a long term nature;
 - (c) financial compensation in the event of death or long-term disability of the seafarer due to occupational injury, sickness or hazard;
 - (d) cost of burial expenses in the case of death occurring on board or ashore during the period of engagement, including the repatriation of the body;
 - (e) the cost of repatriation to cover travel by appropriate and expeditious means, normally by air, including provision for food and accommodation of the seafarer from the time of leaving the ship until arrival at the seafarer's home, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment;
 - (f) loss of any or all of the seafarer's property on board the ship on which the seafarer's is employed by reason of the wreck, loss, abandonment, flooding, stranding, fire on board or collision of that ship;
 - (g) repatriation costs in the event that the seafarer is stranded in any port;
 - (h) outstanding wages, limited to four months;
 - (i) long term disablement; and
 - (j) any other minimum benefits prescribed under these Regulations.

Medical care on board and ashore

18. (1) The owner shall ensure that persons with responsibility for medical care on board are suitably trained and certificated in accordance with the provisions of the Merchant Shipping (Safe Manning, Training and Certification) Regulations.

(2) The number of persons with responsibility for medical care on board shall be in accordance with the provisions of the Merchant Shipping (Safe Manning, Training and Certification) Regulations.

- (3) The Authority shall make determinations in relation to ships of different classes and types of voyages regarding -
- (a) the need for a hospital on the ship;
 - (b) the carriage of medicines and medical equipment;
 - (c) publications to be carried on board; and
 - (d) the handling of controlled medicines on board a vessel.

Access to Shore-based welfare facilities

19. (1) The Authority shall establish a Seafarer Welfare Committee.

- (2) (a) The Ports Authority shall ensure that shore-based welfare facilities, exist in all ports.
- (b) The shore-based welfare facilities shall be easily accessible to seafarers.
- (3) The Authority shall, in consultation through the Seafarer Welfare Committee-
- (a) ensure compliance with subregulation (2);
 - (b) promote the development of welfare facilities; and
 - (c) monitor and ensure the provision in designated ports, seafarers on ships that are in the Ports Authority's ports with access to adequate welfare facilities and services.

Complaint Procedures - onboard and ashore

20. (1) The procedures, manner and forms for complaints shall be as determined by the Authority.

(2) The Authority shall create a system of reporting, monitoring and investigating seafarer complaints.

- (3) Where a seafarer deems appropriate to report a complaint ashore, the seafarer may report the complaint to –
- (a) the proper officer, in case of a South African ship or a ship in South African waters;
 - (b) the owner of the ship,
 - (c) the SRPS, where the SRPS represents the owner;
 - (d) the union; or
 - (e) where applicable, the bargaining council or the statutory council.

(4) Where a complaint is reported in terms of subregulation (3)(a), the proper officer shall cause the complaint to be investigated and provide the required support to the complainant.

CHAPTER 5 - SEAFARER COMPENSATION

Compensation for loss of seafarer's property

21. (1) If by reason of the wreck, loss, abandonment, flooding, stranding, fire on board or collision of a ship on which a seafarer is employed the seafarer sustains the loss of any of or all his or her property, the seafarer shall, subject to section 140(4) of the Act and subregulation (2), be entitled to compensation from the owner of the ship for such loss, as follows:

- (a) If—
 - (i) a detailed list of the property carried in the ship has been made; and
 - (ii) the replacement value of the property has been agreed to and certified by the master or chief engineer officer, or other responsible person on board the ship; and
 - (iii) a copy of the list had been lodged with a proper officer or the owner of the ship, or a local representative of such owner, before the departure of the ship,

the compensation payable by the owner to the seafarer shall be the lesser of—

- (aa) the amount of the replacement value of the property lost as agreed to and certified in terms of subparagraph (ii); and
 - (bb) the applicable amount referred to in the relevant scale determined by the Authority; or
- (b) in the absence of compliance with paragraph (a)(i), (ii) and (iii), the compensation payable by the owner to the seafarer shall, upon proof by the seafarer of the loss of his or her property and of its replacement value to the satisfaction of any person referred to in paragraph (a)(ii), be the lesser of—
 - (i) the amount of such replacement value of the property lost; and
 - (ii) 75 percent of the applicable amount referred to in the relevant scale determined by the Authority.

(2) A seafarer is not entitled to compensation under subregulation (1) in respect of any loss attributable to the seafarer's own gross negligence or wilful misconduct.

Loss of life

22. In the event of a seafarer losing his or her life by reason of the wreck, loss, abandonment, flooding, stranding, fire on board or collision of a ship on which the seafarer was employed, compensation on the basis provided for in regulation 3 for the loss of his or her property shall be payable by the owner of the ship to the estate of the deceased seafarer.

Compensation for and payment of minimum benefits

23. Where compensation is due to the seafarer in terms of these Regulations, compensation shall be paid within 14 days of the financial security provider being satisfied that the shipowner concerned is liable to pay compensation.

Relevant insurance certificates

24. For paragraph (b) of the definition of "relevant insurance certificate" and section 167 of the Act, each of the following is taken to be a relevant insurance certificate in relation to the ship concerned:

- (a) a document that evidences the registration, in terms of section 80 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993), of the employer of the seafarer belonging to the ship; or
- (b) a document that evidences an equivalent arrangement under section 162 of the Act,

Provided the certificate in paragraph (a) and (b) complies with the requirements of the minimum benefits prescribed under these Regulations.

Minimum benefits and form of insurance certificate

25. The insurance or other financial security to be maintained in terms of section 167 of the Act –

- (a) shall provide minimum benefits as determined by the Authority; and
- (b) be in the form determined by the Authority.

Restrictions on termination and modification of insurance or other financial security

26. (1) Insurance or other financial security is taken not to meet the requirements of these Regulations if the insurance or financial security can cease, for reasons other than the expiry of the period of validity of the insurance or financial security specified in the certificate in section 167(1) of the Act, before 60 days have elapsed from the date on which written notice of its termination is given to the proper officer, unless, within that

period, the certificate has been surrendered to that officer or a copy of a new certificate has been lodged with that officer in accordance with section 167(2) of the Act.

(2) Modification of insurance or other financial security maintained in terms of section 162 of the Act that results in a change in the information required to be recorded on the certificate mentioned in section 167(1) of the Act shall not be effective before 30 days have elapsed from the date on which written notice of the modification is given to the proper officer, unless, within that period, an authentic copy of the updated certificate has been lodged with that officer in accordance with section 167(2) of the Act.

Right of seafarer to compensation

27. (1) Notwithstanding that the seafarer was at the time of the accident acting contrary to any law applicable to the seafarer's employment or engagement or to any order by or on behalf of the employer or owner of the ship, or that the seafarer was acting without any order of the seafarer's employer or the owner of the ship, or an agent or servant of the owner of the ship, compensation shall be payable in terms of these Regulations.

Compensation for and Payment of benefits

28.(1) Where compensation is due to the seafarer and the amount payable is set out in the insurance or other financial security certificate, compensation shall be paid within 14 days of the financial security provider being satisfied that the shipowner concerned is liable to pay compensation.

(2) In cases of long-term disability, if it takes longer than seven days from the point at which the ship owner becomes liable to determine the amount of compensation due and the seafarer is suffering hardship, interim payments may be made to the seafarer.

Restriction on defences for insurer or provider of financial security

29. Insurance or other financial security is taken not to meet the requirements of these Regulations if a failure by employer or owner, at any time, to comply with any statutory requirement applicable in relation to the ship or anyone on the ship constitutes a ground for repudiating a claim in terms of the insurance or security.

Lodgement insurance certificate

30. For section 167(2) of the Act, an authentic copy of a certificate is taken to have been lodged with the proper officer if the authentic copy of the certificate is received at the office of the proper officer together with any fee payable upon its lodgement not later than seven days after the date of issue stated in the certificate.

CHAPTER 6 – SEAFARER RECORD OF EMPLOYMENT

Record of employment

- 31.(1)(a)** A seafarer shall be given a document containing a record of their employment on board the ship.
- (b)* The record of employment document referred to in paragraph (a) shall not contain any statement as to the quality of the seafarers' work or as to their wages.
 - (c)* The form of the document referred to in paragraph (a), the particulars to be recorded and the manner in which such particulars are to be entered shall be in as determined by the Authority.

Persons entitled to record book

32. (1) Subject to subregulation (2), a person is entitled to apply for a record book if the person is employed—

- (a)* on a ship registered in the Republic; or
- (b)* on a ship registered outside the Republic, if the person is a South African citizen or is permanently resident in the Republic.

(2) Notwithstanding subregulation (1), the following persons are not entitled to a record book:

- (a)* Persons employed in vessels used solely for sport or recreation who receive no wages for their service;
- (b)* persons employed on a ship engaged on a coastal voyage solely for the purpose of trials of the ship, its machinery or equipment, where such persons are not ordinarily employed as masters or seafarers;
- (c)* persons in the employment of the State who are not ordinarily employed as masters or seafarers; and
- (d)* persons employed on a ship solely in connection with the construction, alteration, repair or testing of the ship, and not engaged in the navigation of the ship, unless such person is a member of the crew.

Application for record book

33. (1) Application for a record book shall be made in the form determined by the Authority, by the applicant or through the applicant's employer or a duly authorised agent either of the applicant or of the employer.

(2) An application contemplated in subregulation (1) shall be lodged with a proper officer and shall, subject to subregulation (3), be accompanied by—

- (a) the prescribed fee; and
- (b) supporting documents determined by the Authority.

(3) Where application is made through an employer or agent, there shall be lodged in lieu of the original documents referred to in subregulation (2)(b), copies of such documents and certificates duly certified by a commissioner of oaths as being true copies of the originals.

Certificate of discharge

34. (1) When a seafarer who has signed the crew agreement is discharged from a South African ship, the master shall complete a certificate of discharge in the record book issued to the seafarer.

- (2) (a) Where a seafarer is, for whatever reason, not in possession of a record book, the master shall issue to the seafarer an interim certificate of discharge in the form determined by the Authority.
- (b) The particulars appearing in an interim certificate of discharge shall, as soon as conveniently possible, be entered in the seafarer's record book by a proper officer, whereupon the interim certificate shall be surrendered to that officer.

(3) In subregulations (1) and (2), reference to a record book shall, in relation to a seafarer holding a document containing substantially the same information as a record book, issued by or under the authority of the government of another country, be taken to include reference to such a document.

Lost, mutilated, damaged or full record book

- 35.**(1)(a) Application for a new record book where the seafarer record book has been lost, mutilated or damaged, or is full, shall be made in the form determined by the Authority.
- (b) In the case of loss, mutilation or destruction, a declaration concerning the circumstances thereof shall be made before a proper officer or, if there is no proper officer, before a commissioner of oaths.

(2) An application contemplated in subregulation (1), together with the prescribed fee and accompanied by the supporting documents determined by the Authority, shall—

- (a) where there is a proper officer, be lodged with that officer; or
- (b) in a location where there is no proper officer, be forwarded by the applicant to the proper officer nearest to the applicant, and the proper officer shall, if satisfied that the applicant is entitled to a record book and, as the case may be, that—
 - (i) the applicant has lost the record book; or
 - (ii) the applicant is the rightful owner of the record book and that the record book is mutilated or damaged to such an extent that the record book can no longer be used; or
 - (iii) the applicant's record book is full, issue to the applicant a new record book.

(3) A record book issued pursuant to subregulation (2)(b)(i) or (ii) shall have the same force and effect as the original.

Duty of owner and master of South African ship

36. (1) The owner and the master of every South African ship shall ensure that every person entitled to a seafarer record book who has signed a crew agreement makes application for the seafarer record book before being allowed to assume duties on the ship.

Withdrawal of seafarer record book

37. (1) The Authority may by written notice withdraw seafarer record book if –

- (a) the seafarer record book was issued based on fraudulent information or misrepresentation;
- (b) a fraudulent entry has been made into the seafarer record book;
- (c) the seafarer record book was issued based on incorrect information: provided the Authority may vary the seafarer record book; or
- (d) the seafarer has misused the seafarer record book for any purpose.

(2) The Authority shall, before withdrawing the seafarer record book —

- (a) notify the seafarer in writing of the intention to withdraw the seafarer record book and of the reasons for so doing;
- (b) give the seafarer 30 days, calculated from the date the notice is given in terms of paragraph (a), an opportunity to make representations on why the seafarer record book should not be withdrawn;
- (c) consider any representations received; and
- (d) notify the seafarer of the decision.

CHAPTER 8 – ADMINISTRATIVE PROVISIONS

Exemptions

38. The Authority may grant exemption, on terms if any, as the Authority may specify, from all or any of the provisions of these Regulations, as may be specified in the exemption, in so far as the provisions relate to work of young persons where such persons are undergoing onboard training accredited by the Authority under the Act.

Offences and penalties

39. Any person who, without reasonable excuse, fails to comply with or contravenes regulation 4(1) read with (3), 6(1) read with (3); 7(1) read with (5), Part 3, Part 4, Part 5, Part 6 is guilty of an offence and on conviction is liable to a fine or to imprisonment for a period not exceeding 12 months.

Offences due to fault of another person

40. Where the commission by any person of an offence in terms of these Regulations is due to the act or omission of some other person, that other person also commits the offence and may be charged with and convicted of the offence by virtue of this regulation, whether or not proceedings are taken against the first-mentioned person.

Repeal of regulations

41. (1) The Merchant Shipping (Seafarer Recruitment and Placement) Regulations, 2017 published by GN R 986 in Government Gazette 41108 of 11 November 2017 are hereby repealed.

(2) The Merchant Shipping (Seafarer Compensation) Regulations, 1998 published by GNR.1654 in Government Gazette No. 19604 of 18 December 1998 are hereby repealed.

(3) The Provisions Regulations, 1961 published by GNR. 896 of 27 October 1961 are hereby repealed.

(4) The Distressed Seamen's Regulations, 1961 published by GNR. 895 of 27 October 1961 are hereby repealed.

(5) The Bedding, Towels, Mess Utensils and Other Articles for Personal Use Regulations, 1961 GNR. 897 of 27 October 1961 are hereby repealed.

(6) The Seamen's Welfare Regulations, 1961 published by GNR. 898 of 27 October 1961 are hereby repealed.

(7) The Merchant Shipping (Seamen's Documents) Regulations, 2000 published by Government Notice No. R. 432 Government Gazette 21136 / RG 6796 of 5 May 2000 are hereby repealed.

Short title and commencement

42. These Regulations are called the Draft Merchant Shipping (Seafarer, Insurance and Labour Related Matters) Regulations, 2024 and are published for public comments.