

DEPARTMENT OF TRANSPORT

NO. R. 917

02 OCTOBER 2015

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

Draft Maritime Labour Certificate and Declaration of Compliance Regulations, 2015

The Minister of Transport intends, in terms of section 356 (1) of the Merchant Shipping Act, 1951 (Act No. 57 of 1951) intends to make the regulations in the Schedule.

Interested persons are invited to submit their written comments on the drafts listed below to the Director-General, Department of Transport for the attention of MR. P Mbeki or Mr. T Matlala within 30 days from publication thereof at :

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Part 1 Introduction

1. Objects of regulations

These regulations give effect to Maritime Labour Convention, 2006.

2. Definition

In these regulations any word or expression given a meaning in the Act has the meaning so given and, unless the context indicates otherwise—

“**Authority**” means Authority as defined in the Act ;

“**authorized person**” means a person authorized by the Authority to perform some or all functions and duties of the Authority;

“**Declaration of Maritime Labour Compliance**” means the Declaration of Maritime Labour Compliance referred to in regulation 5.1.3 of the Convention;

“**Maritime Labour Certificate**” means the Maritime Labour Certificate referred to in regulation 5.1.3 of the Convention;

“**Maritime Labour Convention**” means the Convention as defined in the Act ; below MLC.

“**seafarer**” means seafarer as defined in the Act ;

“**ship**” means a ship as defined in the Act ;

“**shipowner**” means the owner of the ship or any organization or person, such as a manager or bareboat charterer who has assumed the responsibility for the operation of the ship;

“**the Act**” means the Merchant Shipping Act 1951 (Act No. 57 of 1951);

“**tons**” has the same corresponding meaning of registered tonnage as defined under the Act.

3. Application

(1) Subject to subregulation (2) these regulations apply to all South African ships of 500 tons or more, engaged in international voyages, wherever they may be;

(2) These regulations do not apply to—

(a) fishing vessels; and

(b) vessels operating solely within port limits.

PART 2 DUTY TO HOLD AND HAVE ONBOARD DOCUMENTATION

4. Duty to hold certificates

(1) No person may operate a ship unless—

- (a) the ship has been issued with a valid Maritime Labour Certificate by the Authority; and
- (b) the ship has been issued with a valid Declaration of Maritime Labour Compliance by the Authority.

(2) For the purpose of this regulation a Maritime Labour Certificate is not valid if between the second and third anniversary of the issue of the certificate, it has not been endorsed.

5. Duty to carry documentation

Every shipowner must ensure that—

- (a) the original Maritime Labour Certificate is onboard;
- (b) the original Declaration of Labour Compliance is onboard and attached to the Maritime Labour Certificate;
- (c) the Maritime Labour Convention is on board; and
- (d) a procedure for the masters to deal with onboard complaints relating to matters dealt with by the Convention is on board.

PART 3 ISSUE OF DOCUMENTATION

6. Declaration of Maritime Labour Compliance and issuance of Maritime Labour Certificate

(1) The shipowner shall make application to the Authority, for the issuance of a Maritime Labour Certificate, by completing Part II of the Declaration of Maritime Labour Compliance;

(2) Upon receipt of the completed Part II, the Authority will conduct inspection of the ship and audit of the shipowner;

(3) If the Authority is satisfied with the inspection of the ship and audit of the shipowner as stated in (2), it will complete Part I of the Declaration of Maritime Labour Compliance and issue the ship with a Maritime Labour Certificate valid for a period not exceeding five years; and

(4) The Authority must attach Part I and II of the Declaration of Maritime Labour Compliance to the issued Maritime Labour Certificate.

7. Interim Maritime Labour Certificate

- (1) The Authority may, on request and subject to (3), issue an interim Certificate of Labour Compliance when—
- (a) a ship is on a delivery voyage;
 - (b) a ship is transferred to the South African register; and
 - (c) a shipowner assumes responsibility for the operation of a ship from another shipowner.
- (2) A certificate issued in terms of this regulation is valid for a period not exceeding six months.
- (3) An interim Maritime Labour Certificate may only be issued following verification that:
- (a) the ship has been inspected, as far as reasonable and practicable, for the matters listed in Appendix A5- I of the Convention, taking into account verification of items under subparagraphs (b), (c) and (d);
 - (b) the shipowner has demonstrated to the Authority that the ship has adequate procedures to comply with Convention;
 - (c) the master is familiar with the requirements of Convention and the responsibilities for implementation; and
 - (d) relevant information has been submitted to the Authority to produce a interim Declaration of Maritime Labour Compliance Certificate.
- (4) A full inspection in accordance with regulation 7 shall be carried out prior to expiry of the interim Declaration of Maritime Labour Certificate to enable issue of the Declaration of Maritime Labour Certificate.
- (5) The Maritime Labour Certificate, the interim Declaration of Maritime Labour Certificate and Declaration of Maritime Labour Compliance Part 1 or 2 shall be drawn up in the form corresponding to the models given in Appendix A5- II of the Convention.

8. Intermediate audit

- (1) The Authority must carry out an intermediate audit of each ship to ensure compliance with the conditions for the continued validity of the Maritime Labour Certificate.
- (2) The audit must be undertaken between the second and third anniversary of the date of issue of the certificate.
- (3) The Authority may undertake inspections at any time that it deems fit.

9. Renewal of certificate

(1) Before the renewal of the Maritime Labour Certificate the Authority must carry out a renewal audit of the shipowner and inspection of the ship during the six month period exceeding the expiry date of the certificate.

(2) When the renewal inspection of the ship has been completed within three months before the expiry of the existing maritime labour certificate, the new maritime labour certificate shall be valid from the date of completion of the renewal inspection of the ship for a period not exceeding five years from the date of expiry of the existing certificate.

(3) When the renewal inspection of the ship is completed more than three months before the expiry date of the existing maritime labour certificate, the new maritime labour certificate shall be valid for period not exceeding five years starting from the date of completion of the renewal inspection of the ship.

10. Powers of audit, inspection, suspension of service and detention

(1) For the purpose of ensuring compliance with these regulations—

(a) The Authority may instruct an authorized person to conduct an audit to a shipowner or inspection of any ship regarding compliance with the Regulations

(b) The Authority may, after considering the report of an authorized person and is satisfied that a shipowner or ship, despite holding a Declaration of Maritime Compliance or a Maritime Labour Certificate, operates a vessel in contravention of the Regulations, the Authority may suspend both the certificate and declaration until such time as the Convention is complied with.

(c) Where a service is to be suspended under paragraph (b), the Authority must serve on the shipowner or ship a notice stating that the operation of the service specified in the notice must be suspended and giving reasons for the suspension.

(2) For the purpose of ensuring compliance with these regulations—

(a) The Authority may instruct an authorized person to audit any shipowner or inspect any ship regarding compliance with the Regulation.

(b) The Authority may, after considering the report of an authorized person, and is satisfied that there is a failure to comply with the Regulations, the Authority may cause the ship to be detained.

(3) An authorized person performing functions in terms of this regulation, who is not a surveyor, has all the powers conferred upon a surveyor by section 9 of the Act.

11. Suspension or cancellation of Declaration of Maritime Labour Compliance and Maritime Labour Certificates.

(1) (a) The Authority may, by notice in writing, suspend or cancel any Declaration of Maritime Compliance and Maritime Labour Certificates issued by it or at its request under these regulations where any audit of a shipowner or inspection of a ship has revealed or where it believes on reasonable grounds that—

- (i) the Maritime Labour Certificates or Declaration of Maritime Compliance was issued on false or erroneous information; or
- (ii) since any audit or inspection required by these regulations, the ownership of the ship has changed without notification to the Authority.

(b) A notice must set out the grounds for suspending or cancelling the Maritime Labour Certificates.

(c) A notice must not be given unless the holder of the Declaration of Maritime Labour Compliance and Maritime Labour Certificates have been given the opportunity to make representations.

(2) The Authority may require that any Declaration of Maritime Labour Compliance and Maritime Labour Certificates issued by it or at its request under these regulations that has expired or has been suspended or cancelled, be surrendered as directed.

(3) No person may—

- (a) alter a Declaration of Maritime Labour Compliance or a Maritime Labour Certificate;
- (b) in connection with any audit or inspection conducted pursuant to these regulations, knowingly or recklessly furnish false information;
- (c) with intent to deceive, use, lend or allow to be used by another the Declaration of Maritime Labour Compliance and Maritime Labour Certificate;
- (d) fail to surrender a Declaration of Maritime Labour Compliance and Maritime Labour Certificate required to be surrendered under subregulation (2); or
- (e) forge any Declaration of Maritime Compliance and Maritime Labour Certificate.

12. Issue of certificates on behalf of other governments

(1) The Authority may, at the request of the government of a State, other than the Republic, to which the Convention applies—

- (a) Audit and inspect the systems of shipowners and ships registered in that State; and
- (b) If satisfied that the requirements of the Convention are complied with

and that the audit and inspection has been satisfactorily completed in accordance with these regulations, issue to the ship a Maritime Labour Certificate or endorse such certificates after an intermediate audit.

- (2) A Maritime Labour Certificate issued under subregulation (1) must—
- (a) contain a statement that it has been so issued; and
 - (b) correspond to the appropriate form of certificate set out in the Appendix A5-II 1 of the Conventions
- (3) A Maritime Labour Certificate issued under this regulation has the same effect as if it were issued by the relevant government and not by the Authority.

PART 4 OFFENCES

13 Offences and penalties

- (1) A shipowner and/or a ship that contravenes regulations 5 and 6 shall be guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 12 months.
- (2) A master who contravenes regulations 5 and 6 commits an offence and liable on conviction to a fine or imprisonment for a period not exceeding 12 months.
- (3) Any person who contravenes regulation 12 (3) (a), (b), (c), (d) or (e) commits an offence and liable on conviction to a fine or imprisonment for a period not exceeding 12 months.

14. Title and commencement

These regulations are called the Maritime Labour Certificate and Declaration of Compliance Regulations *Merchant Shipping (Maritime Labour Convention) Regulations, 2015* and are published for comments.

APPENDIX A5-I

The working and living conditions of seafarers that must be inspected and approved by the flag State before certifying a ship in accordance with Standard A5.1.3, paragraph 1

Minimum age

Medical certification

Qualifications of seafarers

APPENDIX A5-II

Maritime Labour Certificate

(Note: This Certificate shall have a Declaration of Maritime Labour Compliance attached)

Issued under the provisions of Article V and Title 5 of the *Maritime Labour Convention, 2006* (referred to below as "the Convention") under the authority of the Government of:

.....
(full designation of the State whose flag the ship is entitled to fly)

by

(full designation and address of the competent person or organization duly authorized under the provisions of the Convention)

Particulars of the ship

Name of ship

.....

Distinctive number or letters

.....

Port of registry

.....

Date of registry

.....

Gross tonnage *

.....

IMO number

.....

Type of ship

.....

Name and address of the shipowner (as defined in Article II, paragraph 1(j), of the Convention)

.....

.....

This is to certify:

1. That this ship has been inspected and verified to be in compliance with the requirements of the Convention, and the provisions of the attached Declaration of Maritime Labour Compliance.

2. That the seafarers' working and living conditions specified in Appendix A5-I of the Regulations were found to correspond to the abovementioned country's national requirements implementing the Convention. These national requirements are summarized in the Declaration of Maritime Labour Compliance, Part I.
This Certificate is valid until subject to inspections in accordance with Standards A5.1.3 and A5.1.4 of the Regulations.

This Certificate is valid only when the Declaration of Maritime Labour Compliance issued at on is attached.

Completion date of the inspection on which this Certificate is based was

.....
Issued at on

.....
Signature of the duly authorized official issuing the Certificate
(Seal or stamp of issuing authority, as appropriate)
Endorsements for mandatory intermediate inspection and any additional inspection (if required)

This is to certify that the ship was inspected in accordance with Standards A5.1.3 and A5.1.4 of the Convention and that the seafarers' working and living conditions specified in Appendix A5-I of the Convention were found to correspond to the abovementioned country's national requirements implementing the Convention.

Intermediate inspection: Signed
(to be completed between the second and third anniversary dates)
(signature of authorized official)

.....
Place
Date
(Seal or stamp of the authority, as appropriate)
Additional endorsements (if required)

This is to certify that the ship was the subject of an additional inspection for the purpose of verifying that the ship continued to be in compliance with the national requirements implementing the Convention, as required by Standard A3.1, paragraph 3, of the Convention (re-registration or substantial alteration of accommodation) or for other reasons.

Additional inspection: Signed
(if required) (signature of authorized official)

.....
Place
Date
(Seal or stamp of the authority, as appropriate)
Additional inspection: Signed
(if required) (signature of authorized official)

.....

Place
 Date
 (Seal or stamp of the authority, as appropriate)
 Additional inspection: Signed
 (if required) (signature of authorized official)

 Place
 Date
 (Seal or stamp of the authority, as appropriate)

Maritime Labour Convention, 2006

Declaration of Maritime Labour Compliance – Part I

(Note: This must be attached to the ship’s Maritime Labour Certificate)

Issued under the authority of: (insert name of competent authority as defined in Article II, paragraph 1(a), of the Convention)

In respect to the provisions of the Maritime Labour Convention, 2006, the following referenced ship:

Name of ship	IMO number	Gross tonnage

is maintained in accordance with Standard A5.1.3 of the Convention.
 The undersigned declares, on behalf of the abovementioned competent authority, that:

1. The provisions of the Maritime Labour Convention are fully embodied in the national requirements referred to below;
2. These national requirements are contained in the national provisions referenced below; explanations concerning the content of those provisions are provided where necessary;
3. The details of any substantial equivalencies under Article VI, paragraphs 3 and 4, are provided <under the corresponding national requirement listed below> <in the section provided for this purpose below> <strike out the statement which is not applicable>; and

4. Any ship-type specific requirements under national legislation are also referenced under the requirements concerned.

- (a) Minimum age (Regulation 1.1)
- (b) Medical certification (Regulation 1.2)
- (c) Qualifications of seafarers (Regulation 1.3)

- (d) Seafarer employment agreements (Regulation 2.1)
- (e) Use of a licensed or certified or regulated private recruitment and placement service (Regulation 1.4)
- (f) Hours of work or rest (Regulation 2.3)
- (g) Manning levels for the ship (Regulation 2.7)
- (h) Accommodation (Regulation 3.1)
- (i) On-board recreational facilities (Regulation 3.1)
- (j) Food and catering (Regulation 3.2)
- (k) Health and safety and accident prevention (Regulation 4.3)
- (l) On-board medical care (Regulation 4.1)
- (m) On-board complaint procedures (Regulation 5.1.5)
- (n) Payment of wages (Regulation 2.2)

Name:

Title:

Signature:

Place:

Date:

Substantial equivalencies

(Note: Strike out the statement which is not applicable)

The following substantial equivalencies, as provided under the Convention, Article VI, paragraphs 3 and 4, except where stated above, are noted: [insert description if applicable]

.....

...

.....

...

No equivalencies have been granted

Name:

Title:

Signature:

Place:

Date:

Declaration of Maritime Labour Compliance – Part II

Measures adopted to ensure ongoing compliance between inspections

The following measures have been drawn up by the shipowner, named in the Maritime Labour Certificate to which this Declaration is attached, to ensure ongoing compliance between inspections:

<State below the measures drawn up by the shipowner to ensure compliance with each of the items in Part I>

1. Minimum age (Regulation 1.1)

.....

2. Medical certification (Regulation 1.2)

.....

3. Qualifications of seafarers (Regulation 1.3)

.....

4. Seafarer employment agreements (Regulation 2.1)

.....

5. Use of a licensed or certified or regulated private recruitment and placement service (Regulation 1.4)

.....

6. Hours of work or rest (Regulation 2.3)

.....

7. Manning levels for the ship (Regulation 2.7)

.....

8. Accommodation (Regulation 3.1)

.....

9. On-board recreational facilities (Regulation 3.1)

.....

10. Food and catering (Regulation 3.2)

.....

11. Health and safety and accident prevention (Regulation 4.3)

.....

12. On-board medical care (Regulation 4.1)

.....

13. On-board complaint procedures (Regulation 5.1.5)

.....

14. Payment of wages (Regulation 2.2)

.....

The above measures have been reviewed by <insert name of competent authority or duly recognized organization> and, following inspection of the ship, have been determined as meeting the purposes set out under (b) of paragraph 10 of Standard A5.1.3, regarding measures to ensure initial and ongoing compliance with the requirements set out in Part I of this Declaration.

Name:

Title:

Company address:

.....

.....

Signature:

Place:

(Seal or stamp of the competent authority)

EXPLANATORY NOTE

(This note is not part of the regulations)

The purpose of these regulations is to introduce the Maritime Labour Convention into domestic legislation.

These regulations seek to implement particularly the provisions of Regulation 5.1.3 of the Convention as follows:

Clauses under the proposed regulations—

Clause 1: Objects of regulation

Clause 2: Definition

Clause 3: Application of the Regulations

Clause 4: Duty of the shipowner to hold certificates

Clause 5: Duty of the shipowner to carry documents

Clause 6: Declaration of Maritime Labour Compliance by the shipowner and issuance of Maritime Labour Certificate by the Authority

Clause 7: Interim Maritime Labour Certificate issued to the shipowner by the Authority

Clause 8: Intermediate Audit and inspection conducted by the Authority

Clause 9: Renewal of Declaration of Maritime Labour Compliance Maritime Labour Certificate

Clause 10: Powers of audit, inspection, suspension of service and detention by the Authority or duly appointed person

Clause 11: Suspension or cancellation of Documents of Compliance and Safety Management Certificates by the Authority

Clause 12: Issue of Certificate by the Authority on behalf of other governments

Clause 13: Offences for the contravention of the provisions of the regulations

Clause 14: Title and commencement