

CHAPTER No. 4

**MERCHANT SHIPPING
(AMENDMENT) ACT 2007**

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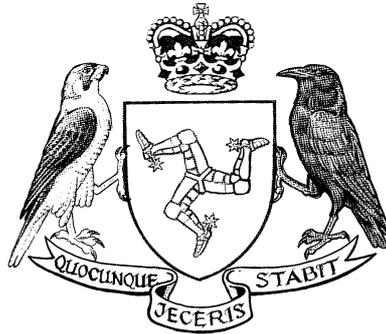
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MERCHANT SHIPPING (AMENDMENT) ACT 2007

Arrangement of Sections

Section

1. Implementation of ILO Maritime Labour Conventions
2. Registration of ships under construction
3. Representative persons
4. Short title and commencement



Isle of Man } Signed in Tynwald: 17th October 2006
 to Wit } Received Royal Assent: 11th July 2007
 Announced to Tynwald: 11th July 2007

AN ACT

to provide for the implementation of International Labour Organization Conventions; for the registration of vessels under construction; for the authorisation of representative persons; and for connected purposes.

WE, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows (that is to say):—

1. After section 2A of the Merchant Shipping Act 1985 insert —

“Implementation of ILO Maritime Labour Conventions

2B. (1) This section applies for the purpose of implementing conventions of the International Labour Organization that deal wholly or partly with maritime labour and extend to the Island (“ILO Maritime Labour Conventions”).

Implementation of ILO Maritime Labour Conventions

[c. 3]

(2) The Department may make such regulations (“ILO regulations”) as it considers appropriate to give effect to —

- (a) any provisions of ILO Maritime Labour Conventions and any amendment to those conventions; and
- (b) any code of practice and guideline which is referred to or forms part of ILO Maritime Labour Conventions.

(3) The powers conferred by subsection (2) to make provision for the purpose of giving effect to an ILO Maritime Labour Convention include power to provide for the provision to come into force although the ILO Maritime Labour Convention has not come into force or has not been extended to the Island.

(4) Section 1(3)(p) to (r) and (4) to (6) and section 2 apply in respect of ILO regulations as they apply in respect of safety regulations.

(5) Subsection (4) does not prejudice the generality of subsection (2).

(6) Regulations under this section shall not come into operation unless they are approved by Tynwald.

(7) For the purposes of this section, “maritime labour” includes anything relating directly or indirectly to —

- (a) fundamental rights of seafarers;
- (b) employment, social rights and recruitment of seafarers;
- (c) seafarers’ identity documents;
- (d) training and qualifications of seafarers;
- (e) repatriation of seafarers and compensation in cases of loss of ship or foundering;
- (f) manning levels on ships;
- (g) health protection, medical care, welfare and social protection for seafarers;
- (h) accommodation, recreational facilities, food and catering for seafarers;
- (i) persons (including seafarers, masters and skippers) employed or engaged in any capacity on board a ship;
- (j) persons employed or engaged in any capacity in respect of any ship (whether in port or at sea);
- (k) any matter relating to the management and operation of vessels; and

- (l) any matter related to those specified in paragraphs (a) to (k).”.

2. (1) After section 60 of the Merchant Shipping Registration Act 1991 insert — Registration of ships under construction

“PART IVA [c.15]

REGISTER OF SHIPS UNDER CONSTRUCTION

Register of ships under construction **60A.** (1) The Department may by regulations make provision for the establishment and maintenance of a register (which may be in documentary or non-documentary form) of —

- (a) ships which are under construction; and
- (b) instruments making a ship under construction or a share in such a ship a security for the repayment of a loan or the discharge of any other obligation.

(2) Schedule 4A shall have effect for supplementing the provisions of this section.”.

(2) After Schedule 4 of the Merchant Shipping Registration Act 1991 insert —

“Section 60A SCHEDULE 4A

REGULATIONS RELATING TO THE REGISTER OF SHIPS UNDER CONSTRUCTION

1. In this Schedule —

“mortgage” means an instrument referred to in section 60A(1)(b);

“the Register” means the register established under section 60A;

“regulations” means regulations made under that section;

“specified” means specified in regulations.

2. Regulations may make provision —

(a) for the persons by whom and the manner in which applications in connection with the Register are to be made (including provisions limiting the persons who may make such applications);

(b) for the information and evidence to be provided in connection with such applications and for such

supplementary information or evidence as may be required by any authority specified for the purpose to be so provided;

- (c) for the issue of certificates of entries in the Register, their production and surrender;
- (d) for the identification of ships under construction entered in the Register;
- (e) for the period for which any entry in the Register is to remain effective;
- (f) for the refusal of applications where the application, applicant, ship under construction or the circumstances or place of construction do not or are unlikely to comply with specified requirements imposed under regulations;
- (g) for the termination of registration in specified circumstances (including failure to comply with requirements imposed under regulations);
- (h) for matters arising out of the expiration or termination of registration (including the removal of identification required by regulations and the cancellation of certificates);
- (i) for the inspection of ships under construction entered or to be entered in the Register;
- (j) for the discharge of functions under the regulations by persons appointed by the Department;
- (k) excluding from entry in the Register specified classes or descriptions of ships under construction;
- (l) for any statutory provision (including Parts I, V and VI of, and Schedule 1 to, this Act) to have effect in relation to ships under construction for the time being entered in the Register subject to such modifications (if any) as may be specified;
- (m) for the transfer of the registration (including the transfer of registered mortgages) of ships under construction from the Register to another register maintained under this Act when the ship ceases to be a ship under construction and for the continuation of registration on such cessation;
- (n) for determining the circumstances in which a ship is to be treated for the purposes of the Register as a ship under construction; and
- (o) for any other matters relating to the maintenance of the Register (including its inspection).

3. (1) Regulations may provide for the creation of offences and their punishment on summary conviction in any of the following cases —

- (a) where a person with intent to deceive uses, or lends to or allows to be used by another, a certificate of an entry in the Register which has ceased to have effect;
- (b) where a person for any purpose in connection with the Register makes a statement which that person knows to be false in a material particular or recklessly makes a statement which is false in a material particular;
- (c) where a person required by regulations to ensure that any requirement of the regulations as to the identification of a ship under construction is met fails to ensure that the requirement is met;
- (d) where a person required by regulations to surrender a certificate of any entry in the Register fails without reasonable excuse to surrender the certificate.

(2) Regulations providing for the creation of an offence under sub-paragraph (1)(c) shall provide that it shall be a defence for a person charged with the offence to prove that he or she took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(3) Regulations providing for the creation of an offence by virtue of sub-paragraph (1)(a) or (b) shall provide for it to be punishable with a fine not exceeding £2,500.

(4) Regulations providing for the creation of an offence by virtue of sub-paragraph 1(c) or (d) shall provide for it to be punishable with a fine not exceeding £1,000.

4. Regulations may contain such supplemental and incidental provisions as appear to the Department to be necessary or expedient.

5. Regulations may provide for their operation in respect of ships under construction in the Island or elsewhere.

6. No provision of this Schedule is to be taken to prejudice the generality of section 60A.”.

3. (1) After section 60A (inserted by this Act) of the Merchant Shipping Registration Act 1991 insert — Representative persons

[c.15]

“PART IVB

REPRESENTATIVE PERSONS

Application and authorisation to become a representative person **60B.** (1) In this Act, “representative person” means a person who is authorised under this section to act as a representative person for the purpose of exercising functions under section 4, regulations made under this

Act and any other enactment relating directly or indirectly to merchant shipping.

(2) Every application to become a representative person shall be made to the Department.

(3) An application under subsection (2) shall be in a form specified by the Department, together with such documents and information as may be required by the Department.

(4) The Department will not authorise a person to act as a representative person unless it is satisfied that the applicant —

- (a) is able to undertake the functions of a representative person set out in any regulations; and
- (b) is otherwise a fit and proper person to act as a representative person.

(5) The Department shall, in relation to every application for authorisation to become a representative person —

- (a) grant the authorisation;
- (b) grant the authorisation, subject to conditions; or
- (c) refuse the application.

(6) Where authorisation has been granted under subsection 5(a), the Department may at any time make that authorisation subject to conditions.

(7) Where authorisation is granted, or has been granted subject to conditions the Department may at any time —

- (a) make the authorisation subject to further conditions; or
- (b) vary or revoke any condition,

by giving 21 days notice in writing.

Revocation
and
suspension of
authorisation

60C. (1) The Department may at any time revoke or suspend authorisation for a person to be a representative person if there are reasonable grounds for so doing.

(2) Without prejudice to the generality of subsection (1), the Department —

- (a) may revoke or suspend authorisation if, on reasonable grounds, it appears to it that the representative person does not continue to comply with the requirements of paragraphs (a) and (b) of section 4(2);
- (b) may revoke or suspend authorisation if, on reasonable grounds, it appears to it that the representative person —
 - (i) has contravened any provision of this Act or any public document under it; or
 - (ii) in purported compliance with any such provision, has furnished the Department with false, inaccurate or misleading information.

(3) Where the Department proposes to revoke or suspend authorisation it shall give the representative person written notice of its intention to do so, stating the reasons for the decision.

(4) A person who furnishes the Department with false, inaccurate or misleading information under subsection (2)(b)(ii) shall be guilty of an offence and liable to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both.

(5) Subject to subsection (6), where a notice has been given under subsection (3), the revocation or suspension shall take effect —

- (a) if no application for a review under section 60E is made within the period prescribed under section 8 of the Tribunals Act 2006, on the expiry of that period; or [c. 1]
- (b) if there is an application for a review under section 60E —
 - (i) where the applicant abandons the review, on the date of abandonment; or
 - (ii) where the decision of the Department is confirmed, on the date of confirmation; or

- (iii) where the decision of the Department is varied, on such date as the Representative Persons Review Tribunal appointed under section 60E directs.

(6) If the Department is of the opinion that a revocation or suspension should have immediate effect, the notice under subsection (3) shall contain a statement to that effect together with the reasons for that opinion, and the revocation or, as the case may be, suspension shall have effect on the giving of the notice.

(7) The suspension of authorisation to be a representative person shall be for a specified period or until the occurrence of a specified event or until specified conditions are complied with; and the Department may vary any period, event or condition specified under this subsection.

Regulations **60D.** (1) The Department may make such regulations as it considers are necessary to carry sections 60B and 60C into effect.

(2) Without prejudice to the generality of subsection (1), the Department may by regulations specify —

- (a) the qualifications, functions and standards required of a representative person;
- (b) the circumstances in which the representative person shall be liable for the payment of fees due under any enactment relating to merchant shipping or in respect of any service provided by the Department;
- (c) the duties that a representative person shall perform in respect of a ship;
- (d) the circumstances in which a person shall be treated as a representative person.

(3) Before making regulations under this section, the Department shall consult with such persons and bodies as the Department considers appropriate, having regard to the purposes of the regulations.

(4) Regulations under this section shall not come into operation unless they are approved by Tynwald.

Review of
Department
decisions

60E. (1) Any person who is aggrieved by a decision of the Department to —

- (a) refuse to issue authorisation to a person to act as a representative person;
- (b) revoke authorisation for a person to act as a representative person;
- (c) suspend authorisation for a person to act as a representative person;
- (d) issue authorisation for a person to act as a representative person subject to conditions;
- (e) make an authorisation subject to conditions or further conditions; or
- (f) vary any condition attached to an authorisation to act as a representative person,

may apply to the Representative Persons Review Tribunal for review of the decision.

(2) The Representative Persons Review Tribunal is a Part 2 Tribunal for the purposes of the Tribunals Act 2006 and shall consist of a chairman appointed under that Act and 2 members drawn from a panel appointed in accordance with that Act.

(3) The panel shall be drawn from persons —

- (a) who have appropriate experience; and
- (b) who are independent of both the Department and the applicant.

(4) On the determination of a review under this section the Tribunal shall confirm, vary or revoke the decision in question.

(5) Any variation or revocation of a decision shall not affect the previous operation of that decision or anything duly done or suffered under it.

(6) Subject to subsection (7), any decision of the Tribunal on a review under this section shall be binding on the Department and the applicant.

(7) An appeal from a decision of the Tribunal on a point of law shall lie to the High Court.”.

Short title and commencement **4.** (1) This Act may be cited as the Merchant Shipping (Amendment) Act 2007.

(2) This Act shall come into operation on such day as the Department of Trade and Industry may by order appoint and different days may be so appointed in respect of different provisions and for different purposes.