1972 No. 1294

MERCHANT SHIPPING

MASTERS AND SEAMEN

The Merchant Shipping (Disciplinary Offences) Regulations 1972

Made - - -	17*th August* 1972
Laid before Parliament	25*th August* 1972
Coming into Operation	1st January 1973

The Secretary of State, after consulting with the organisations referred to in section 99(2) of the Merchant Shipping Act 1970(**a**), in exercise of powers conferred by sections 34, 35, 38(3) and 68(2) and (5) of that Act and now vested in him (**b**), and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Merchant Shipping (Disciplinary Offences) Regulations 1972 and shall come into operation on 1st January 1973.

(2) In these Regulations—

"the Act" means the Merchant Shipping Act 1970;

"the 1894 Act" means the Merchant Shipping Act 1894(**c**);

"intermediate port", in relation to an appeal by a seaman to a superintendent or proper officer, means a port at which a ship calls before arriving at the port at which, or nearest to the place at which, the seaman is to be discharged;

"master" includes (except in regulation 5) any officer authorised under regulation 5(2) to exercise the powers of the master and to perform his duties in relation to a disciplinary offence;

"officer" means an officer qualified for the purposes of section 43 of the Act or duly certificated under the 1894 Act;

"seaman" does not include an officer;

"ship" means a ship registered in the United Kingdom.

(3) The Interpretation Act 1889(**d**) shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

(**a**) 1970 c. 36.
(**b**) See the Secretary of State for Trade and Industry Order 1970 (S.I. 1970/1537 (1970 III, p. 5293)).
(**c**) 57 & 58 Vict. c. 60.
(**d**) 52 & 53 Vict. c. 63.

Application

2.—(1) These Regulations apply to any seaman employed in a ship otherwise than—

(*a*) in a pleasure yacht;

(*b*) in a ship belonging to a general lighthouse authority;

(*c*) in a ship of less than 200 tons engaged solely on coastal voyages;

(*d*) solely in connection with the construction, alteration, repair or testing of the ship, its machinery or equipment, and not engaged in the navigation of the ship;

(*e*) in a ship engaged solely on a coastal voyage for the purpose of trials of the ship, its machinery or equipment.

(2) For the purposes of paragraph (1)(*c*) and (*e*) of this regulation—

"coastal voyage" means a voyage between places in the British Islands (including the Republic of Ireland) or from and returning to such a place during which, in either case, no call is made at any place outside those islands;

"tons" means tons gross tonnage and the gross tonnage of a ship having alternative tonnages shall be the larger of those tonnages.

PART I

Disciplinary Offences

3. It is a disciplinary offence on board a ship for a seaman to whom these Regulations apply—

(*a*) wilfully to strike any person;

(*b*) wilfully to disobey a lawful command;

(*c*) without reasonable cause—

(i) to fail to be available for duty at a time when he is required by the master or by a person authorised by the master to be so available; or

(ii) to fail to report or to remain at his place of duty at a time when he is so required to be at that place; or

(iii) while on duty, to be asleep at his place of duty;

(*d*) to be under the influence of drink or a drug (whether alone or in combination) to such an extent that he behaves in a disorderly manner or is unfit to be entrusted with his duty or with any duty which he might be called upon to perform, unless the drug was taken by him for medical purposes and either—

(i) he took it on medical advice and complied with any directions given as part of that advice; or

(ii) he had no reason to believe that the drug might have the influence it had;

(*e*) without the consent of the master or of any other person authorised to give it, to bring on board the ship or to have in his possession on board any offensive weapon;

(*f*) wilfully and without reasonable cause—

(i) to damage the ship; or

(ii) to damage any property on board the ship; or

(iii) to throw any such property overboard;

(*g*) without reasonable cause, to take or to be in possession of any property belonging to or in the custody of any person on board the ship;

(*h*) to cause or knowingly to permit to be on board the ship any person who, being neither in Her Majesty's service nor authorised by law to be on board the ship, is on board without the consent of the master or of any other person authorised to give it.

Disciplinary offences on board certain ships

4.—(1) It is a disciplinary offence on board a ship described in paragraph (3) of this regulation for a seaman to whom these Regulations apply—

(*a*) to smoke; or

(*b*) to use a naked light or mechanical lighter; or

(*c*) to use an electric torch which is not of a type approved by the master;

in any part of the ship in which smoking or the use of such a light, mechanical lighter or torch is prohibited by the master or the employer.

(2) It is a disciplinary offence on board a ship described in paragraph (3) of this regulation for a seaman to whom these Regulations apply, without the consent of the master or of any other person authorised to give it, to bring on board the ship or to have in his possession on board any matches or a mechanical lighter.

(3) The description of ship referred to in paragraphs (1) and (2) of this regulation is any ship in which—

(i) by reason of the cargo or stores which are or have been carried in the ship, there is a special risk of fire or explosion; and

(ii) the master or the employer has given notice to seamen in the ship (whether by means of notices displayed in the ship or otherwise) that the acts mentioned in sub-paragraphs (*a*), (*b*) and (*c*) of paragraph (1) of this regulation are prohibited, either in all or specified parts of the ship.

(4) In this regulation—

"mechanical lighter" includes any mechanical, chemical or electrical contrivance designed or adapted for or capable of causing fire or explosion.

Procedure relating to disciplinary offences

5.—(1) Subject to paragraph (2) of this regulation, a disciplinary offence may be dealt with only by the master of the ship on board which the offence is alleged to have occurred and the master may impose a fine (not exceeding such an amount as is specified in regulation 8) on the seaman whom he finds has committed the offence.

(2) The powers of the master in relation to a disciplinary offence may be exercised and his duties may be performed by any officer authorised for the purpose by the master; and the name of any officer so authorised shall be entered by the master in the official log book.

6. A disciplinary offence shall be dealt with within 24 hours of the time it comes to the notice of the master, unless it is not practicable to deal with it within that time, in which case it shall be dealt with as soon as practicable thereafter.

7. In dealing with a disciplinary offence, the following procedure shall be followed—

(*a*) A seaman charged with a disciplinary offence shall, if he so requests, be permitted at the hearing before the master to be accompanied by a friend for the purpose of advising him and the friend may speak on behalf of the seaman.

(*b*) The charge shall be entered by the master in the official log book and shall be read to the seaman by the master, who shall record therein that it has been so read.

(*c*) The seaman shall then be asked whether or not he admits the charge. If he does admit it, the admission shall be recorded by the master in the official log book. In all other cases an entry to the effect that the seaman does not admit the charge shall be recorded therein.

(*d*) The evidence of any witness called by the master shall be heard in the presence of the seaman, who shall be afforded reasonable opportunity to question the witness on his evidence.

(*e*) The seaman shall be given an opportunity to make a statement in answer to the charge, including any comments on the evidence produced against him. Particulars of the statement (or a record that the seaman declined to make one, if such should be the case) shall be entered by the master in the official log book or contained in a separate document annexed to, and referred to in an entry made by the master in, the official log book.

(*f*) The seaman shall be permitted to call witnesses to give evidence on his behalf, and any such witness may be questioned by the master on his evidence.

(*g*) The master shall, after consideration of all the evidence given before him, give his decision in the presence of the seaman as to whether he finds the seaman has committed the offence charged and—

(i) if he does not find that the seaman has committed the offence, he shall dismiss the charge;

(ii) if he finds that the seaman has committed the offence, he shall, after having regard to any mitigating circumstances brought to his notice, give his decision either as to the amount of the fine he is imposing or that he is imposing no fine;

and the master shall record his decisions in the official log book.

(*h*) The master shall—

(i) inform a seaman on whom a fine has been imposed, of his right of appeal under section 35 of the Act and of the time within which notice of intended appeal must be given in accordance with these Regulations;

(ii) if the seaman so requests, supply to him copies of all entries in the official log book (including any annexes thereto) referring to the disciplinary offence to which the fine relates.

Fines

8.—(1) The fine that may be imposed on a seaman for a disciplinary offence under regulation 3 shall be an amount not exceeding £2 or, in the case of a second or subsequent commission of that offence before the seaman is discharged from the ship, an amount not exceeding £5.

(2) The fine that may be imposed on a seaman for a disciplinary offence under regulation 4 shall be an amount not exceeding £10.

9. A fine imposed on a seaman for a disciplinary offence may be remitted in whole or in part by the master—

(*a*) if the master is of the opinion that the seaman's conduct since the fine was imposed has been such as to justify the remission; or

(*b*) if new evidence has been discovered which was not known to the master at the time he dealt with the offence and which, in his opinion, justifies the remission;

and a record of every such remission shall be entered in the official log book by the master.

10. A fine imposed on a seaman for a disciplinary offence and against which an appeal is pending at the time mentioned in section 38(2) of the Act may be provisionally deducted from the seaman's wages pending the appeal.

PART II

Appeals against a fine for a disciplinary offence

11. Subject to regulations 14 and 15, an appeal by a seaman against a fine for a disciplinary offence shall be heard by a superintendent or proper officer at the place at which the seaman is discharged.

12. Subject to regulation 14, if a seaman on whom a fine has been imposed for a disciplinary offence wishes to appeal against the decision to a superintendent or proper officer, he shall give notice of intended appeal to the master within 2 days of the decision; provided that if the decision is given within 2 days of the ship's expected time of arrival at the port at which, or nearest to the place at which, the seaman is to be discharged, the notice shall be given before the seaman is discharged.

13. Upon receipt of a notice of intended appeal from the seaman, the master shall—

(*a*) make an entry in the official log book recording the date of receipt of the notice; and

(*b*) subject to regulation 14, give notice of the appeal, not later than 36 hours before the ship's expected time of arrival at the port at which, or nearest to the place at which, the seaman is to be discharged, to the superintendent or proper officer for that port; provided that if it is not practicable for the notice to be given within that period, it shall be given as soon as practicable thereafter.

14.—(1) Notwithstanding anything contained in regulations 11, 12 or 13(b), an appeal by a seaman against a fine for a disciplinary offence may be heard at an intermediate port by the superintendent or proper officer for that port if

(*a*) either the master or the seaman requests that superintendent or proper officer to hear the appeal; and

(*b*) notice of intended appeal is given by the seaman to the master and by the master to the superintendent or proper officer within a reasonable time of the ship's expected time of arrival at the intermediate port; and

(*c*) the superintendent or proper officer is of the opinion that it is desirable that the appeal should be heard by him.

(2) If an appeal is to be heard at an intermediate port, the master shall make an entry to that effect in the official log book.

15. Notwithstanding anything contained in regulation 11, if an appeal has not been determined at an intermediate port and either—

(*a*) there is no superintendent or proper officer available to hear the appeal at the place, date and time at which the seaman is discharged; or

(*b*) the Secretary of State is of the opinion, that, having regard to all the circumstances of the case, it is expedient that the appeal should be heard at a place other than that at which the seaman is discharged;

the appeal shall be heard at such other place as the Secretary of State may direct.

16.—(1) The superintendent or proper officer to whom a notice of intended appeal has been given shall make arrangements as to the place, date and time at which the appeal is to be heard and shall inform the master of those arrangements.

(2) The master shall, upon being informed by the superintendent or proper officer of the arrangements which have been made for hearing the appeal, inform the seaman of those arrangements.

(3) The master shall supply to the seaman copies of all entries in the official log book (including any annexes thereto) referring to the disciplinary offence to which the appeal relates, unless he has already supplied those copies in accordance with regulation 7(*h*)(ii).

17. The master shall, upon request, supply the superintendent or proper officer with copies of all entries in the official log book (including any annexes thereto) referring to the disciplinary offence to which the appeal relates and, if so required, produce to him the official log book.

18.—(1) In hearing an appeal, the following procedure shall be followed—

(*a*) The seaman shall, if he so requests, be permitted at the hearing to be accompanied by a friend for the purpose of advising him and the friend may speak on behalf of the seaman.

(*b*) The seaman shall be given an opportunity to state the grounds of his appeal, to produce supporting evidence and to call witnesses to give evidence on his behalf.

(*c*) Subject to paragraph (2) of this regulation, the master shall be given an opportunity to call witnesses and to give evidence himself.

(*d*) The evidence of any witness (whether called by the superintendent or proper officer or otherwise) shall be heard in the presence of the seaman.

(*e*) Subject to paragraph (2) of this regulation, both the seaman and the master shall be afforded reasonable opportunity to question any witness on his evidence and to comment upon it.

(*f*) The superintendent or proper officer shall notify the seaman and the employer of his decision regarding the appeal and shall record that decision in the official log book.

(2) If the master is absent from the hearing of the appeal and the superintendent or proper officer is satisfied that no injustice will result, the appeal may (notwithstanding sub-paragraphs (*c*) and (*e*) of paragraph (1) of this regulation) be heard and determined by the superintendent or proper officer in the absence of the master.

19.—(1) Where a seaman is not present at the place, date and time arranged for the hearing of his appeal—

(*a*) if the seaman so requests within 6 months from the date on which he was discharged from the ship; and

(*b*) if the seaman had not been informed of those arrangements or had other reasonable excuse for not being present;

the superintendent or proper officer shall make further arrangements for the appeal to be heard.

(2) If the superintendent or proper officer makes further arrangements for the appeal to be heard, he shall notify them to the seaman and to the employer.

(3) If the superintendent or proper officer does not make further arrangements for the appeal to be heard, he shall notify his reasons to the seaman and to the employer.

(4) It shall be sufficient compliance with the requirements of paragraphs (2) or (3) of this regulation for the notification to be sent by registered post to the last known address of the seaman and to the last known address of the employer.

20.—(1) All entries in the official log book (including annexes thereto) required to be made by the master under these Regulations shall be signed by the master and by a member of the crew.

(2) A master or the officer authorised by him under regulation 5(2) to exercise the powers of the master and to perform his duties in relation to a disciplinary offence, who fails to make an entry in an official log book required to be made by the master under these Regulations (except regulation 14(2)), shall be guilty of an offence and shall be punishable on summary conviction with a fine not exceeding £20.

Michael Heseltine,
Minister for Aerospace,
Department of Trade and Industry.

17th August 1972.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations, made under the Merchant Shipping Act 1970, make provision for the maintenance of discipline on board ships (other than fishing vessels) registered in the United Kingdom. They apply to all seamen, except certificated officers, employed in such ships otherwise than as specified in regulation 2. The Regulations—

(*a*) specify the types of misconduct which constitute disciplinary offences on board all such ships (regulation 3);

(*b*) specify the types of misconduct which constitute disciplinary offences on board the ships described in regulation 4(3) in which there is a special risk of fire or explosion (regulation 4);

(*c*) prescribe the procedure to be followed in dealing with disciplinary offences (regulations 5-7), the fines which may be imposed (regulation 8) and make provision for matters relating to such fines (regulations 9 and 10);

(*d*) provide for appeals against fines for disciplinary offences, including the procedure to be followed on any such appeal (regulations 11-20).