

- “(a) ensure that the employees comply with the provisions of the regulations and the related provisions of the applicable Codes;”;
- (f) by the substitution in subregulation (3) for paragraph (b) of the following paragraph:
- “(b) ensure that any occupational health and safety policy determined by the employer concerned is complied with by the employees;”;
- (g) by the substitution in subregulation (3) for paragraph (c) of the following paragraph:
- “(c) ensure that the employees maintain a high standard of occupational health and safety;”;
- (h) by the substitution in subregulation (3) for paragraph (d) of the following paragraph:
- “(d) investigate the cause of an accident **[mentioned]**referred to in section 259(1)(c) of the Act, all hazards or potential hazards to health and safety, including fatigue, affecting or which may affect the employees in the execution of their work and all complaints about occupational health and safety by the employees onboard the vessel;”;
- (i) by the substitution in subregulation (3) for paragraph (e) of the following paragraph:
- “(e) make recommendations to the employer **[regarding]**or the health and safety committee concerned about any investigation or inspection or the prevention of **[an]**any accident, or the removal of **[a]**any hazard, or potential hazard, and about any deficiency in occupational health and safety regarding **[the requirements of the Act and these regulations]**—
- (i) the requirements of the Act and these regulations that affect the employees; and
- (ii) the related provisions of the Code;”;
- (j) by the substitution in subregulation (3) for paragraph (f) of the following paragraph:

- “(f) monitor the effectiveness of the applicable health and safety measures, conduct inspections contemplated regulation 30(1)(b) and the investigation referred to in paragraph (j) and immediately stop or cause to be stopped, the performance of any work which **[in his opinion]** may cause an accident or **[serious]**an accident that may result in an injury and inform the employer, owner or master forthwith thereof;”;
- (k) by the substitution in subregulation (3) for paragraph (h) of the following paragraph:
- “(h) carry out any other investigation relating to occupational health and safety which an employer or a health and safety committee may deem necessary if requested thereto in writing by the employer or the health and safety committee, as the case may be, and thereafter submit a report in respect of such investigation;”;
- (l) by the substitution in subregulation (3) for paragraph (i) of the following paragraph:
- “(i) for the purposes of regulation 32, submit to the employer a brief report of **[the]**each investigation, complaint or inspection contemplated in this regulation **[to the employer for the purposes of record keeping]; and**”;
- (m) by the addition in subregulation (3) after paragraph (i) of the following paragraph:
- “(j) ensure that the workplace is inspected periodically in respect of unsafe acts and unsafe conditions during the time the employees are employed on board a vessel and evidence retained as prescribed in regulation 32.”.

Insertion of regulations 31A to 31E of the Regulations

35. The following regulations are hereby inserted in Chapter III of the Regulations after regulation 31:

31A Appointment, termination of appointment, and functions of a health and safety appointee

- (1) An employer shall in writing appoint in respect of any work on board a vessel at least one employee as a health and safety appointee for every shift worked on the vessel.
- (2) The appointment of the health and safety appointee shall terminate on the date—
- (a) the person ceases to be employed by the employer; or
 - (b) the employer terminates the appointment.
- (3) A health and safety appointee shall ensure that—
- (a) before each shift—
 - (i) every part of the vessel including access facilities, transit areas where cargo is to be worked is inspected in respect of occupational health and safety affecting employees;
 - (ii) employees are made aware of any hazards associated with the work being undertaken;
 - (iii) employees use the appropriate personal protective equipment; and
 - (iv) documentary evidence of compliance with subparagraphs (i) and (ii) are kept on the vessel;
 - (b) any unsafe equipment or workplace is reported to the health and safety officer and that appropriate corrective action is taken;
 - (c) workplaces are well-lit and well-ventilated;
 - (d) any person not involved in work is kept clear of areas where cargo handling and ship repair and maintenance is taking place;
 - (e) safety equipment is used only for its intended purpose and is not misused or interfered with;
 - (f) ensure that the inspection contemplated in regulation 30(1)(b) is conducted; and
 - (f) report any other unsafe acts or unsafe conditions to the Health and Safety Officer.

31B Appointment, termination of appointment, and functions of a health and safety committee

- (1) An employer shall in writing establish a health and safety committee consisting of a chairperson appointed by the employer, a health and safety officer and every health and safety appointee.
- (2) The chairperson may co-opt as a member of the health and safety committee any other person whose knowledge or experience can contribute to the business of the committee.
- (3) An employer may in writing dissolve, or reconstitute, the health and safety committee at any time.
- (4) The health and safety committee shall meet at least once every three months: provided that the Authority may by notice in writing direct that a meeting be held at any place and time determined by the Authority and specified in the notice.
- (5) Subject to any directions by an employer, the health and safety committee shall determine its own procedures.
- (6) The health and safety committee shall—
- (a) consider every recommendation of the health and safety officer made in terms of regulation 31(3)(e) and any recommendation of a health and safety appointee;
- (b) submit such recommendations referred to in paragraph (a) to the employer together with its own recommendations;
- (c) inquire into any occupational health and safety matter that affects the employer or its employees and take the steps it may deem necessary to remove any hazard or potential hazard; and
- (d) monitor the employer's procedures and arrangements for ensuring that—
- (i) an accident involving an employee is reported in terms of the Act and investigated by the health and safety officer and that appropriate corrective action is taken;
- (ii) every workplace is safe so far as reasonably practicable; and
- (iii) any equipment used by employees to work meets the applicable statutory requirements.

- (7) An employer shall keep proper minutes of every meeting of the health and safety committee for a period of at least three years and shall make the minutes available to the Authority upon demand.

31C Incidental persons

- (1) An employer of an incidental person shall upon employment of a new employee ensure that—
- (a) the employee attends internal health and safety induction training covering hazards associated with access to the vessel as well as hazards and risks associated with working on board the vessel;
 - (b) the employee uses the appropriate personal protective equipment;
and
 - (c) any incidental person reports to the health and safety appointee referred to in regulation 31(1) before proceeding to work on any working area where cargo operations or ship repair and maintenance work is taking place.

31D Certification of a stevedore, ship repair and maintenance contractor or incidental person as fit for duty by an Occupational Medicine Practitioner

- (1) A stevedore, ship repair and maintenance contractor or incidental person shall be examined and certified fit for duty only by a certified Occupational Medicine Practitioner, in accordance with the Medical Surveillance Protocols prescribed in Table 1 of Annex 5 of the Code, with due regard to the portability of the position.
- (2) An Occupational Medicine Practitioner shall consider the multitasking and exposure to additional hazards related to the position and conduct an assessment of whether stevedore, ship repair and maintenance contractor or incidental person is fit for duty in accordance with the criteria prescribed in Table 2 of Annex 5 of the Code.
- (3) An Occupational Medicine Practitioner shall, when conducting an assessment of whether a bulk cargo stevedore, ship repair and maintenance contractor or incidental person is fit for duty, comply with the guidelines prescribed in Table 3 of Annex 5 of the Code: provided where the bulk cargo is not listed in Table 3, the Material Safety Data Sheet

(MSDS) or the International Maritime Solid Bulk Cargoes Code (IMSBC Code) shall be consulted for guidance.

31E Certification of an employee as fit for duty by an Occupational Medicine Practitioner

- (1) An employee shall be examined and certified fit for duty only by a certified Occupational Medicine Practitioner, in accordance with the Medical Surveillance Protocols prescribed in Table 1 of Annex 4 of the Code, with due regard to the portability of the position.
- (2) An Occupational Medicine Practitioner shall consider the multitasking and exposure to additional hazards related to the position and conduct an assessment of whether an employee is fit for duty in accordance with the criteria prescribed in Table 2 of Annex 4 of the Code.

31F Portable Ladders

- (1) An employer shall ensure that every ladder used on a vessel—
- (a) is constructed of sound material of adequate strength and is suitable for the purpose for which it is used;
 - (b) is properly maintained and free from defects;
 - (c) complies with the requirements prescribed in the relevant sections of the Code;
 - (d) is fitted with non-skid devices at the bottom ends and hooks or similar devices at the upper ends of the stiles which shall ensure the stability of the ladder during normal use; and
 - (e) is so lashed, held or secured whilst being used as to ensure the stability of the ladder under all conditions and at all times.
- (2) An employer shall not use a ladder, or permit it to be used, if it —
- (a) (i) has rungs fastened to the stiles only by means of nails, screws, spikes or in like manner;
 - (ii) has rungs which have not been properly let into the stiles: provided that in the case of welded ladder or ladders of which the rungs are bolted or riveted to the stiles, the rungs need not be let into the sides; or
 - (iii) has damaged stiles, or damaged or missing rungs.

- (3) An employer may not permit the use of a ladder longer than 9 metres which is required to be leaned against an object for support.
- (4) In the case of a wooden ladder, an employer shall ensure that—
- (a) each ladder is constructed of straight grained wood, free from defects, and with the grain running in the length of the stiles and rungs; and
 - (b) each ladder is not painted or covered in any manner, unless it has been established that there are no cracks or other inherent weaknesses: provided that the ladder may be treated with oil or covered with clear varnish or wood preservative.
- (5) When work is done from a ladder, an employer shall—
- (a) take special precautionary measures to prevent articles from falling off; and
 - (b) provide suitable sheaths or receptacles in which hand tools shall be kept when not being used.
- (6) An employer shall ensure that a fixed ladder which exceeds 5 metres in length and is attached to a vertical structure with an inclination to the horizontal level of 75 degrees or more—
- (a) has its rungs at least 150 millimetres away from the structure to which the ladder is attached; and
 - (b) is provided with a cage which—
 - (i) extends from a point not exceeding 2,5 metres from the lower level to a height of at least 900 millimetres above the top level served by the ladder; and
 - (iii) shall afford firm support along its whole length for the back of the person climbing the ladder, and for which purpose no part of the cage shall be more than 700 millimetres away from the level of the rungs: provided that the provisions of paragraph (b) shall not apply if platforms, which are spaced not more than 8 metres apart and suitable for persons to rest on, are provided.
- (7) An employer shall ensure that employees—
- (a) have both hands free for climbing up and down;
 - (b) face the ladder when climbing up and down;
 - (c) do not wear footwear that is slippery; and

- (d) use a belt or other suitable means to carry any object they may need whilst using a ladder.

31G Safety measures when working with steel pipes and on container tops

- (1) An employer shall take all reasonable precautionary measures in order to ensure that employees who have to work [with,] near or with the discharge of steel pipes [are] follow precautions prescribed in the Code.
- (2) An employer shall take all reasonable precautionary measures in order to ensure that employees who have to work on top of containers are not injured and comply with the safety measures prescribed in the Code.”.

Amendment of regulation 32 of the Regulations

36. Regulation 32 of the Regulations is hereby amended —

(a) by the substitution for subregulation (1) of the following subregulation:

- “(1) **[Every]**An employer [of a stevedore or shore contractor] shall maintain a record book[, in which he shall enter]containing the full details of—
- (a) any accident or dangerous occurrence **[mentioned]**referred to in section 259(1)(c) of the Act **[(including the date of, names of persons concerned and the nature, if any, of any injuries suffered)]** including the date of, names of persons concerned and the nature, if any, of any injuries suffered; and
- (b) any investigation, complaint or inspection in terms of regulation 31 and evidence of compliance with regulation 31A.”; and

(b) by the substitution for subregulation (2) of the following subregulation:

- “(2) **[The]**An employer shall keep the records specified in subregulation (1) for a period of [not less than]at least three years, and shall make these records available to the Authority upon demand.”.

Amendment of Chapter IV of the Regulations

37. Chapter IV of the Regulations is amended by the substitution for the table of contents (Arrangement of regulations) of the following table:

“Chapter IV Fishing Vessels

- 33 Definitions
- 34 Application
- 35 Duties of employer
- 36 Appointment, termination of appointment, and functions of a health and safety [officers]officer
- 37 Appointment, termination of appointment, and functions of a health and safety [appointees]appointee
- 38 Appointment, termination of appointment, and functions of a health and safety [committees]committee
- 39 Record books
- 39A Compliance audit
- 39B Access equipment”.

Amendment of regulation 35 of the Regulations

38. Regulation 35 of the Regulations is hereby amended by the substitution for subregulation (2) of the following subregulation:

- “(2) **[Every employer of a crew shall in]**in addition to the general duties prescribed in Chapter I **[comply with the following:]**an employer of a crew shall—
- (a) **[Ensure]**ensure that **[no]**health and safety equipment or other facility on a vessel **[be]**is not removed therefrom, except for cleaning, repairing, maintenance, modification or replacement thereof;
 - (b) train all **[his]** employees or **[]**[them]the employees to be trained in the proper use and maintenance of health and safety equipment or other facilities on board a vessel;
 - (c) ensure that all hazards or potential hazards to health and safety that may cause **[]** a health and safety officer or health and safety appointee to stop work on a vessel, are removed before resumption of such work;

- (d) ensure compliance with regulations 17, 21 and ~~[27(1)]~~27(1), (2), (3)(b) and (c), and (4), read with the applicable Code.”.

Amendment of regulation 36 of the Regulations

39. Regulation 36 of the Regulations is hereby amended—

- (a) by the substitution for the heading of regulation 36 of the following heading:

“36 Appointment, termination of appointment, and functions of a health and safety [officers] officer”;

- (b) by the substitution for subregulation (1) of the following subregulation:

“(1) (a) For the ~~[purpose]~~purposes of a fishing vessel in service, ~~[the]~~an employer of the crew of ~~[the]~~a vessel shall in writing appoint a suitably qualified crew member as ~~[the]~~a health and safety officer for the vessel.

- (b) A person is not suitably qualified for the purposes of paragraph (a) unless ~~[he or she]~~that such person holds documentary evidence of having successfully completed health and safety officer training approved by the Authority: provided that this provision does not require a person to hold such documentary evidence during the period expiring 12 months after the commencement of Part 1 of the Merchant Shipping (Miscellaneous Amendments) Regulations, 2004.”;

- (c) by the substitution for subregulation (2) of the following subregulation:

“(2) The appointment of a health and safety officer shall terminate—

- (a) on ~~[a]~~the date that ~~[he]~~the health and safety officer ceases to be employed on board the fishing vessel; or
- (b) on the date that ~~[his]~~the employer, in writing, terminates ~~[his]~~the health and safety officer's appointment.”; and

- (d) by the substitution for subregulation (3) of the following subregulation:

“(3) A health and safety officer shall, whilst a fishing vessel is in service—

- (a) ensure that the crew ~~[comply]~~complies with the provisions of the Code;

- (b) ensure that the crew [**comply**]complies with any occupational health and safety policy determined by the employer concerned;
- (c) ensure that the crew [**maintain**]maintains a high standard of occupational health and safety;
- (d) investigate [**the cause of an accident contemplated in section 259(1)(c) of the Act; all hazards or potential hazards to safety including fatigue, that affect or may affect the crew of a vessel in the execution of their work, and all complaints concerning occupational safety**]—
 - (i) the cause of an accident contemplated in section 259(1)(c) of the Act;
 - (ii) all hazards or potential hazards to health and safety including fatigue, that affect or may affect the crew of a vessel in the execution of their work; and
 - (iii) all complaints concerning occupational health and safety;
- (dA) ensure that the members of the vessel's health and safety committee are made aware of—
 - (i) the relevant requirements of these regulations and [**of**]the Act;
 - (ii) any relevant Marine Notice; and
 - (iii) the provisions of the Code[.];
- (e) make recommendations to the health and safety committee concerned about any investigation or inspection or the prevention of any accident or the removal of any hazard or potential hazard, and about any deficiency in occupational health and safety regarding—
 - (i) the requirements of the Act and these regulations that affect the crew;
 - (ii) any relevant Marine Notice; and
 - (iii) any provisions of the Code;
- (f) carry out inspections of each accessible part of the vessel in respect of the occupational health and safety affecting the crew, at least once during a voyage;
- (g) immediately stop or cause to be stopped, the performance of any work which [**in his opinion**] may cause an accident or [**serious**]an accident that may result in an injury, and inform the master thereof forthwith;

- (h) carry out any other investigation or inspection relating to occupational health and safety which an employer or health and safety committee may deem necessary, if so requested in writing by the employer or health and safety committee, as the case may be, and thereafter submit a report in respect of such investigation or inspection; and
- (i) submit to the employer for the purposes of the record book a brief report of the investigation or inspection referred to in this regulation.”.

Amendment of regulation 37 of the Regulations

40. Regulation 37 of the Regulations is hereby amended —

(e) by the substitution for the heading of regulation 37 of the following heading:

“37 Appointment, termination of appointment, and functions of a health and safety [appointees]appointee”;

(f) by the substitution for subregulation (1) of the following subregulation:

“(1) ~~[The]~~An owner of a fishing vessel shall in writing appoint an employee as a health and safety appointee for that fishing vessel whilst it is not in service.”;

(g) by the substitution for subregulation (2) of the following subregulation:

“(2) The appointment of the health and safety appointee shall terminate—
(a) on the date that the employee ceases to be employed by the owner;
or
(b) on the date that the employer terminates ~~[his]~~the employee's appointment.”; and

(h) by the substitution for subregulation (3) of the following subregulation:

“(3) The health and safety appointee shall whilst a vessel is not in service—
(a) ensure that ~~[the]~~employees comply with the provisions of the Code;
(b) ensure that ~~[the]~~employees comply with any occupational health and safety policy determined by the employer concerned;
(c) ensure that ~~[the]~~employees maintain a high standard of occupational health and safety;

- (d) investigate **[the cause of an accident contemplated in section 259(1)(c) of the Act; all hazards or potential hazards to safety including fatigue, that affect or may affect the employees in the execution of their work, and all complaints by the employees of the vessel concerning occupational safety]**—
- (i) the cause of an accident contemplated in section 259(1)(c) of the Act;
- (ii) all hazards or potential hazards to health and safety including fatigue, that affect or may affect the employees in the execution of their work; and
- (iii) all complaints concerning occupational health and safety;
- (e) make recommendations to the health and safety committee concerned, about any investigation or inspection or the prevention of any accident or the removal of any hazard or potential hazard, and about any deficiency in occupational health and safety regarding—
- (i) the requirements of the Act and these regulations that affect **[the]**employees;
- (ii) any relevant Marine Notice; and
- (iii) any provision of the Code;
- (f) carry out inspections of each accessible part of the vessel in respect of the occupational health and safety of **[the]**employees, at least once during the vessel's not-in-service period and should such period extend beyond one month, at least once a month;
- (g) immediately stop or cause to be stopped, the performance of any work which **[in his opinion]**may cause an accident or **[serious]**injury and inform the owner thereof forthwith;
- (h) carry out any other investigation relating to occupational health and safety which an employer or health and safety committee may deem necessary, if so requested in writing by the employer or the health and safety committee, as the case may be, and thereafter submit a report in respect of such investigation; and
- (i) submit to the employer for the purposes of the record book a brief report of the investigation or inspection referred to in this regulation.”.

Amendment of regulation 38 of the Regulations

41. Regulation 38 of the Regulations is hereby amended —

(a) by the substitution for the heading of regulation 38 of the following heading:

“38 Appointment, termination of appointment, and functions of a health and safety [committees]committee”; and

(b) by the substitution for regulation 38 of the following regulation:

“(1) ~~[The]~~An owner of every fishing vessel shall in writing establish a health and safety committee for the vessel, which committee is to consist of such number of members as the owner may determine from time to time taking into account the other provisions of this regulation.

(2) The ~~[]~~chairperson, in the person of the owner or the owner’s representative, shall co-opt the vessel’s health and safety officer and not less than one crew member from each of the deck, engine, factory ~~[(if applicable) and]~~or catering departments on board, and may co-opt such other crew members or employees as are necessary to conduct the business of the committee.

(3) The ~~[chairman]~~chairperson may also co-opt any other person who by the virtue of ~~[his]~~such person’s special knowledge can contribute to the business of the health and safety committee.

(4) An owner may, ~~[in his discretion,]~~in writing, dissolve a health and safety committee.

(5) A health and safety committee ~~[is to]~~ shall meet as often as may be necessary for the effective and efficient performance of its functions: provided that the Authority may by notice in writing direct that a meeting be held at any place and time determined by it and specified in the notice.

(6) The procedure at meetings of a health and safety committee shall be determined by the committee.

(7) The committee shall consider all recommendations of the health and safety officer or health and safety appointee.

(8) After consideration of such recommendations a health and safety committee may recommend any appropriate action in respect of any

incident on board a vessel and the recommendation shall be made available to the Authority upon demand.

- (9) **[The]An** owner shall keep the minutes of every meeting of a health and safety committee for a period of at least three years and shall make the minutes available to the Authority upon demand.”.

Amendment of regulation 39 of the Regulations

42. Regulation 39 of the Regulations is hereby amended —

- (i) by the substitution for subregulation (1) of the following subregulation:

“(1) **[Every]An** employer shall maintain a record book, **[in which he shall enter]** containing the full details of—

- (a) any accident or dangerous occurrence referred to in section 259(1)(c) of the Act **[(including the date, names of persons concerned and the nature, if any, of any injuries suffered)]** including the date, names of persons concerned and the nature, if any, of any injuries suffered; and
- (b) any investigation, complaint or inspection referred to in **[terms of]** regulations 36 and 37.”; and

- (j) by the substitution for subregulation (2) of the following subregulation:

“(2) **[The]An** employer shall keep the records specified in subregulation (1) for a period of at least three years, and shall make these records available to the health and safety committee, and to the Authority upon demand.”.

Amendment of regulation 39A of the Regulations

43. Regulation 39A of the Regulations is hereby amended —

- (a) by the substitution for subregulation (1) of the following subregulation:

“(1) **[The]An** owner shall, at intervals not exceeding three months, audit the arrangements for ensuring compliance with these regulations in respect of its vessels to ensure that they are implemented effectively—.”;

(b) by the substitution in subregulation (1) for paragraphs (a) and (b) of the following paragraphs:

- “(a) a health and safety officer or health and safety appointee, as the case may be, has been duly appointed in respect of each of the owner's vessels and is functioning effectively;
- (b) a health and safety committee has been duly appointed in respect of each of the owner's vessels and is functioning effectively;”;

(c) by the substitution for subregulation (3) of the following subregulation:

“(3) ~~[The]~~An owner shall maintain a written record of each audit for a period of at least three years and shall make the record available to the Authority upon demand.”.

Substitution of regulation 39B of the Regulations

44. The following Regulation is hereby substituted for Regulation 39B of the Regulations:

~~“[The]~~An employer shall provide—”.

Amendment of regulation 40 of the Regulations

45. Regulation 40 of the Regulations is hereby amended by the substitution for subregulations (1) to (5) of the following subregulations:

“(1) ~~[Every]~~An employer commits an offence when an employer contravenes regulation 3(1) or (2), 4, 5, 9, 10(1), 11(1), 13, 14, 15, 16(1), 17, 18, 19, 20, 21, 22, 23, 24, 25(1), 26, 27, 30(1), (2) or (4), 31(1), 31A(1), 31B(1) or (7), 32, 35(2), 36(1), 39 or 39B.

(2) ~~[Every]~~An employee who contravenes regulation 3(3)(f) commits an offence.

- (3) **[Every]**A person who contravenes regulation 16(2) commits an offence.
- (4) **[Every]**An owner commits an offence when an owner contravenes regulation 35(1), 37(1), 38(1), 38(9) or 39A(1) or (3).
- (5) **[Every]**A master who contravenes regulation 35(1)(b) commits an offence.”.

Short title and commencement

- 46. “These regulations are called the Maritime Occupational Health and Safety Amendment Regulations, 2021 and are published for public comments.