

Order on fishermen's right to receive care and free transportation, etc.

Pursuant to section 70, section 73a(2) and section 75 of the act on seafarers' conditions of employment, etc. (*lov om søfarendes ansættelsesforhold m.v.*), cf. consolidated act no. 742 of 18 July 2005, as amended by act no. 493 of 12 May 2010, the following provisions are laid down:

Part 1

Definitions and application

Section 1. For the purposes of this order, the following definitions shall apply:

- 1) "Fisherman": Employee serving on board a fishing vessel, cf. section 1(1) and section 49 of the act on seafarers' conditions of employment, etc. (*lov om søfarendes ansættelsesforhold m.v.*).
- 2) "Danish representation": Any Danish diplomatic or consular representation (Embassy, General Consulate, Consulate, or Vice-Consulate).
- 3) "Venereal disease": Syphilis, gonorrhoea, venereal ulcer (soft chancre) and lymphogranuloma inguinale when these diseases occur in infectious or other fresh form requiring treatment. Complications that do not occur until a number of years after these diseases, such as post syphilitic heart and nerve diseases, are not covered by the term.
- 4) "Subsistence": Hospital accommodation, board and lodging as well as care for as long as the person concerned is unfit to work due to illness. Lodging allowance shall be paid only when the fisherman is accommodated outside his home for treatment-related reasons. Board and lodging allowance shall not be paid during hospitalisation.
- 5) "Medical care": Medical examination with associated prescriptions and treatments, including medical attention, operations, X-rays and the like. Furthermore, this shall include the writing of certificates and prescriptions, etc. as well as transport to and from doctor, hospital or other treatment facility.
- 6) "Medicaments": Medicine, dressings, physiotherapeutic treatment insofar as the treatment takes place in connection with medical or hospital treatment, but not spectacles, hernial bandages, crutches, artificial limbs and the like.
- 7) "Fraudulently concealed diseases or sufferings": Such diseases or bodily injury that a fisherman has concealed when being employed though he knew or should have known that their non-existence was a condition for being employed.
- 8) "Self-inflicted disease or bodily injury": Such disease or injury that the fisherman has inflicted on himself through own reckless – intentional or grossly negligent – action. In this connection, venereal diseases shall not be considered as self-inflicted.

Section 2. This order shall apply to fishermen.

Part 2

Care

Section 3. An ill or injured fisherman shall have a right to care on the conditions following from sections 27, 30 and 49(xvi) of the act on seafarers' conditions of employment, etc. (*lov om søfarendes ansættelsesforhold m.v.*). The care shall include subsistence, medical care and medicaments, cf. section 2(iii)-(v) of the act mentioned above.

Section 4. The master shall ensure that an ill or injured fisherman aboard or ashore is provided with appropriate care. This obligation shall be independent of who is obliged to pay the expenses incurred in connection with the care, cf. part 5.

Subsection 2. The treatment on board, while the fishing vessel is at sea, shall be in accordance with the provisions of a medical guide for seafarers approved by the Danish Maritime Authority and, in cases where it is possible and is considered necessary for treatment purposes, with guidance provided by Radio Medical.

Subsection 3. If the ship is in port or if it is so close to shore that the possibilities of care ashore may and should be considered, the master shall decide, in consideration of the nature of the case and of the seafarer's wishes, whether care shall be continued on board, whether a doctor should be called or consulted from ashore or whether hospital treatment should be initiated either as an out-patient or in the form of hospitalisation.

Subsection 4. If there is a ship's doctor on board, the care shall be left to him.

Section 5. If an ill fisherman is left abroad, the master shall entrust him to the care of a Danish representation or, if there is no Danish representation on the location, in some other way secure him appropriate care and inform the nearest Danish representation about this. If the fisherman so wishes, the master shall inform his nearest dependants.

Part 3

Paid transportation with subsistence

Section 6. Fishermen shall be entitled to paid transportation according to the provisions of section 8, sections 11-13, section 14(1), cf. subsection 3, section 18(2), section 18b(2), section 19(2), section 19a(2), section 30(3) and section 35 of the act on seafarers' conditions of employment, etc. (*lov om søfarendes ansættelsesforhold m.v.*).

Section 7. Paid transportation shall include:

- 1) Transportation from the place where the fisherman was when the right to free transportation started to the place of destination.
- 2) Subsistence during the voyage as such as well as during the stay at the place of departure while waiting for the voyage to be arranged.
- 3) Carriage of personal effects, but not of other articles acquired during the voyage.

Section 8. If no special agreement has been made about the means of transport, any public means of transport may be used for the transport. However, any other special means of transport may be agreed on.

The voyage shall be arranged so that it is carried out as soon as possible. When arranging the voyage, consideration shall be taken of the fisherman's requests, health and the costs.

Section 9. Subsistence shall be provided in consideration of the living expenses prevailing at the place concerned.

Section 10. In connection with termination for a voyage home to Denmark pursuant to section 8 of the act on seafarers' conditions of employment, etc. (*lov om søfarendes ansættelsesforhold m.v.*), the demand for a voyage home shall have been made at the same time as the fisherman's own notice or resignation.

Section 6. The fisherman may renounce his right to paid transportation, cf. however subsection 2. The fisherman shall not be entitled to compensation for the unused right.

Subsection 2. The fisherman cannot renounce his right to paid transportation in cases

- 1) where it is decided as part of the care of an ill or injured fisherman and
- 2) where the purpose is to send him home for further care at his domicile or at the place of engagement.

Part 4

Special provisions on funeral and cremation

Section 12. If a fisherman dies while having been entrusted to the care of a Danish representation, cf. section 5 of this order, the Danish representation shall assume the obligations mentioned in order no. 829 of 10 December 1990 on inquests and burials, etc. in case of death at sea in connection with the funeral or cremation.

Part 5

Payment and refunding provisions

Section 13. Expenses for a fisherman's care shall be paid by the shipowner:

- 1) during the service, cf. subsection 2; or
- 2) from the termination of the service for up to 12 weeks, however not for more than two weeks after the fisherman has arrived in the country where he is resident, cf. however subsections 2 and 3. Cases where the fisherman is left (signed off) in a port without the service formally having been terminated shall be considered equal to termination of service.

Subsection 2. Subsection 1 shall not apply in case of the fisherman's fraudulently concealed diseases or sufferings or in case of the fisherman's self-inflicted disease or bodily injury. In this connection, venereal diseases shall not be considered as self-inflicted. The fisherman shall pay the expenses for care beyond the time-limits mentioned in subsection 1(ii) of 12 or 2 weeks, respectively.

Subsection 3. The State shall pay the expenses for the care of a fisherman suffering from a venereal disease or tuberculosis during the period from the termination of the service until the expiry of the time-limits mentioned in subsection 1(ii) of 12 or 2 weeks, respectively.

Subsection 4. The State shall not be obliged to pay for the fisherman's care after the termination of service to the extent that it is possible to cover the treatment expenses through a social security scheme or

through a foreign health insurance society, sickness benefit association or private insurance company, but shall pay the expenses in advance until it is possible to refund the expenses.

Section 14. Expenses for paid transportation with subsistence shall be defrayed by the shipowner when the fisherman terminates employment:

- 1) outside the native country following the shipowner's notice of termination or the expiry of a time-limited employment contract;
- 2) as a consequence of the shipowner's bankruptcy, etc.;
- 3) as a consequence of the shipowner's unlawful notice of termination;
- 4) in case of notice of termination pursuant to section 11, 12, 13 or 14 of the act on seafarers' conditions of employment, etc. (*lov om søfarendes ansættelsesforhold m.v.*);
- 5) as a consequence of a danger of war, cf. sections 18a and 18b of the act mentioned in (iv);
- 6) as a consequence of illness or injury that have or could have caused the termination of employment; or
- 7) in case of termination of employment due to the ship's loss.

Subsection 2. As regards fishermen domiciled in Denmark, the State shall refund half of the expenses for the fisherman's voyage home with subsistence in case of termination of employment of long duration, cf. section 8(2) of the act on seafarers' conditions of employment, etc. (*lov om søfarendes ansættelsesforhold m.v.*).

Subsection 3. In cases where the shipowner is another person than the employer, the obligation to pay the expenses pursuant to parts 2 and 3 of the order shall also rest with the shipowner.

Section 15. The fisherman shall pay the expenses for his own voyage home as a consequence of fraudulently concealed diseases or sufferings or self-inflicted illness or bodily injuries. In this connection, venereal diseases shall not be considered self-inflicted.

Subsection 2. Furthermore, the employee shall pay the expenses for his own voyage home after the expiry of the time-limits mentioned in section 30(1)-(3) of the act, cf. section 35, of 12 or 2 weeks, respectively.

Section 16. As regards fishermen domiciled in Denmark, the State shall pay the travelling expenses for the voyage to the domicile in Denmark if the employee suffers from a venereal disease or from tuberculosis that has or could have caused the termination of employment.

Section 17. The master may contact any Danish representation with a request for assistance to carry out the obligations resting with him pursuant to this order.

Subsection 2. If the representation takes any of the measures required pursuant to this order on behalf of the shipowner, the master shall upon request provide security for the expenses paid by the representation. The provision of security may consist of a declaration of guarantee.

Subsection 3. The amounts for wages paid to a representation for a fisherman who is ill or injured and who is left abroad may, depending on the circumstances, serve as security for the expenses to be covered by the seafarer himself.

Section 18. If the shipowner does not, within reasonable time, take measures to arrange for the fisherman's voyage home pursuant to section 6 of this order, the Danish Maritime Authority shall ensure the fish-

erman's voyage home pursuant to the provisions of section 10a of the act on seafarers' conditions of employment, etc. (*lov om søfarendes ansættelsesforhold m.v.*).

Part 6

Consideration of generally sound economic principles

Section 19. In cases where a measure in accordance with the provisions of parts 2, 3 and 4 of this order is taken by somebody else than the one who is to pay the expense, the measure should be taken in consideration of generally sound economic principles.

Subsection 2. In the cases mentioned here, the person who has had to pay the expense so far shall secure the necessary documentation for use when requesting refunding.

Part 7

Penalty provisions

Section 20. If a stricter penalty is not prescribed by section 65(1) and (2) or section 66(i)(b) of the act on seafarers' conditions of employment, etc. (*lov om søfarendes ansættelsesforhold m.v.*) or any other legislation, contraventions of section 4(1) and (2) shall be punishable by fine.

Subsection 2. Companies, etc. (legal persons) may incur criminal liability according to the provisions of part 5 of the Danish Criminal Code (*straffeloven*).

Subsection 3. When determining liability to punishment under subsection 2, persons who are hired to carry out work on board the ship by others than the shipowner shall also be considered to be affiliated with the shipowner.

Part 8

Entry into force

Section 21. This order shall enter into force on 20 August 2013.

Subsection 2. This order shall apply to cases of illness or deaths occurring after the entry into force.

Subsection 3. This order shall also apply to voyages home initiated after the entry into force.

Danish Maritime Authority, 16 August 2013

Jan Gabrielsen / Alexander Milan