

## **Order on seafarers' right to receive care<sup>1</sup>**

The following shall be laid down pursuant to sections 70(1) and section 73 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, and by authority:

### Part 1

#### *Application and definitions*

**Section 1.** This order shall apply to employees on board ships, cf. section 1(1) as well as section 49 of the act on seafarers' conditions of employment (*lov om søfarendes ansættelsesforhold*) irrespective of the ships' use and trade areas, with the exception of fishing vessels and recreational craft.

*Subsection 2.* In case of doubt whether the person concerned is to be considered as employed on board, the issue shall be decided by the Danish Maritime Authority following consultation with the ship-owner and seafarer organisations that the issue concerns.

**Section 2.** For the purposes of this order, the following definitions shall apply:

- 1) "Danish representation": Any Danish diplomatic or consular representation (Embassy, General Consulate, Consulate, or Vice-Consulate);
- 2) "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.
- 3) "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 employee is accommodated outside his home for treatment-related reasons. Board and lodging allowance shall not be paid during hospitalisation.
- 4) "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.
- 5) "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.
- 6) "Fraudulently concealed diseases or sufferings": Such diseases or bodily injury that a seafarer has concealed when being employed though he or she knew or should have known that their non-existence was a condition for being employed.

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<sup>1</sup> This order contains provisions implementing parts of Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC, Official Journal 2009, no. L 124, pp. 30-50.

- 7) “Self-inflicted disease or bodily injury”: Such disease or injury that the seafarer has inflicted on himself through own reckless – intentional or grossly negligent – action. In this connection, venereal diseases shall not be considered as self-inflicted.

## Part 2

### *Care*

**Section 3.** An ill or injured employee shall have a right to care on the conditions following from sections 27, 30 and 49(xvi) of the act. The care shall include subsistence, medical care and medicaments, cf. section 2(iii)-(v).

**Section 4.** The master shall ensure that an employee aboard or ashore is provided with appropriate care in case of illness or injury. This obligation shall be independent of who is obliged to pay the expenses incurred in connection with the care, cf. part 4.

*Subsection 2.* The treatment on board, while the ship 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 employee’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, and the ship’s doctor shall take the decisions mentioned in subsection 3.

**Section 5.** If an ill employee 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 the employee appropriate care and inform the nearest Danish representation about this. If the employee so wishes, the master shall inform his nearest dependants.

## Part 3

### *Funeral and cremation*

**Section 6.** If an employee dies, the master shall inform his nearest dependants and arrange for the funeral. If the death occurs abroad, the nearest Danish representation shall also be informed. As regards the master’s notification obligation in connection with deaths during the ship’s call at a Danish port, section 2(4) of act no. 225 of 31 May 1968 shall apply.

**Section 7.** If the death occurs while the ship is at sea, and if the ship’s arrival in a port or at a location where interment or cremation can take place cannot be awaited, the master shall see to it that the body is lowered into the sea in accordance with the forms and ceremonies normally observed within the merchant fleet. If the deceased was a member of the Danish National Evangelical Lutheran Church, the master should,

insofar as possible, observe the guidelines contained in the “Guidelines on church service on board” (*vejledning for kirkelig betjening om bord*) drawn up by the bishops.

*Subsection 2.* In other cases of an employee’s death where the funeral or cremation takes place outside the deceased person’s native country, the master shall take care of the funeral or cremation, including that it is carried out in a proper way and, insofar as possible, in accordance with the deceased person’s wishes and faith or observing the religious ceremonial or other solemn forms usually observed in the deceased person’s native country.

*Subsection 3.* Unless the master assesses that the actual circumstances do not permit the dependants to take over the arrangement of the funeral or cremation, the master should accompany the notification mentioned in section 32 of the act by a request to the dependants to immediately state their wishes in this respect. If a declaration is received in due time that the dependants will take any further necessary arrangements in connection with the funeral or cremation, the master shall take any necessary measures concerning the keeping, etc. of the body.

**Section 8.** In Danish ports, the master may meet his obligations by leaving the funeral or cremation to funeral directors.

**Section 9.** If cremation is arranged for by the master, he shall also arrange for the sending home of the ashes. Assistance for sending home the ashes may be requested by approaching a Danish representation.

**Section 10.** The master shall inform the Danish representation about the death and about the measures taken according to the provisions of this chapter.

**Section 11.** The master shall, as soon as possible after the death, preferably on the same day, arrange for a record of what the deceased person has left on board. The correctness of the record shall be confirmed by two persons. The master shall ensure that the record as well as the deceased person’s belongings and outstanding wages are forwarded to the relevant Danish probate court or nearest Danish representation.

**Section 12.** If an employee dies while having been entrusted to the care of the representation, cf. section 5(2), the representation shall assume the obligations mentioned above in connection with the funeral or cremation.

#### Part 4

##### *Payment and refunding provisions*

**Section 13.** Expenses for an employee’s care shall be paid by the shipowner or by the employer or by the one assuming the obligations of the shipowner or employer:

- 1) during the service, cf. however below under item 2;
- 2) from the termination of the service for up to 16 weeks, however not for more than two weeks after the employee has arrived in the country where he is resident, cf. also below under subsections 2-4. Cases where the employee is left (signed off) in a port without the service formally having been terminated shall be considered equal to termination of service.

*Subsection 2.* In cases where the shipowner is another person than the employer, the obligation to pay the expenses for care shall also rest with the shipowner.

*Subsection 3.* Subsections 1 and 2 shall not apply in case of the employee's fraudulently concealed disease or in case of self-inflicted disease. In this connection, venereal diseases shall not be considered as self-inflicted. The employee shall pay the expenses for care beyond the time-limits mentioned in subsection 1(ii) of 16 or 2 weeks, respectively.

*Subsection 4.* The State shall pay the expenses for the care of an employee 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 16 or 2 weeks, respectively.

*Subsection 5.* The shipowner or the State shall not be obliged to pay for the employee'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.** The expenses for a funeral or cremation and – in case of cremation – the expenses for sending home the ashes and entombment shall be held by:

- 1) the shipowner or the employer or the person who has assumed the obligations of the shipowner or the employer if the employee has died in service or at a time when the obligation to provide care still applied, cf. section 13(1)(ii). When the shipowner is another person than the employer, the obligation shall also rest with the shipowner;
- 2) the State if the death occurred while the employee was entitled to receive care at the expense of the State, cf. section 13(1)(ii).

**Section 15.** 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 an employee 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 employee.

**Section 16.** In cases where a measure mentioned in parts 2 and 3 shall be taken by somebody else than the one who is, according to the provisions above, 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 5

### *Penalty*

**Section 17.** 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.*) og any other

legislation, contraventions of section 4(1) and (2), section 6, section 7(1) and (2) and section 11 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. If a document of compliance has been issued pursuant to the International Safety Management Code or a certificate pursuant to the Maritime Labour Convention to another organisation or person, the master and the seafarers shall also be considered affiliated with the one to whom the certificate has been issued.

## Part 6

### *Entry into force*

**Section 18.** This order shall enter into force on 20 August 2013 and shall apply to cases of illness and deaths occurring after the entry into force.

*Subsection 2.* At the same time, order no. 614 of 29 November 1973 on the right to care and a free journey home, etc. pursuant to the seamen's act shall be repealed.

*Danish Maritime Authority, 14 March 2013*

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