

Translation: Only the Danish version is authentic

The Danish Maritime Authority's Technical Regulation no. 5 of 19 May 2003

Technical regulation on stowaways on board ships

In pursuance of section 1(3), section 3, section 17(5) and section 32 of the Act on Safety at Sea, cf. consolidated act no. 627 of 26 July 2002, and Royal Decree no. 607 of 25 June 2001 on the entry into force of the Act on Safety at Sea in Greenland, in consultation with Greenland's Home Rule and on the authority of the Minister of Economic and Business Affairs, the following provisions are laid down:

Section 1. This regulation shall apply to ships with stowaways on board and ships in or on voyage from ports where there is a risk of getting stowaways on board.

Section 2. In this technical regulation, a stowaway shall be construed as a person who is secreted on a ship, or in cargo which is subsequently loaded on the ship, without the consent of the shipowner, the master of the ship or any other responsible person, and who is detected on board the ship after it has departed from a port, or in the cargo while unloading it in the port of arrival, and is reported as a stowaway by the master to the appropriate authorities.

General principles

Section 3. Shipowners and their representatives and ship masters shall co-operate to the fullest extent possible with public authorities and port authorities to prevent stowaway incidents and to resolve stowaway cases expeditiously and secure that an early return or repatriation of the stowaway will take place. All appropriate measures shall be taken in order to avoid situations where stowaways must stay on board ships indefinitely.

Preventive measures on board the ship

Section 4. Shipowners and their representatives in the port, the masters as well as other responsible persons shall have security arrangements in place which, as far as practicable,

- 1) will prevent intending stowaways from getting aboard the ship and, if this fails,
- 2) will detect them before the ship leaves port.

Section 5. When calling at ports and during stay in ports where there is a risk of stowaway embarkation, security arrangements should at least contain the following preventive measures:

- 1) All doors, hatches and means of access to holds or stores which are not used during the ship's stay in port should be locked;
- 2) Access points to the ship should be kept to a minimum and be adequately secured;
- 3) Areas seaward of the ship should be adequately secured;
- 4) Adequate deck watch should be kept;

- 5) Boardings and disembarkations should, where possible, be tallied by the ship's crew or, after agreement with the ship master, by others;
- 6) Adequate means of communication should be maintained; and
- 7) At night, adequate lighting should be maintained both inside and along the hull.

Section 6. The master of a Danish ship – except passenger ships – shall, when the ship departs from a port where there is a risk of stowaway embarkation, ensure that the ship undergoes a thorough search in accordance with a specific plan or schedule, and with priorities given to places where stowaways might hide. Search methods which are likely to harm secreted stowaways may not be used.

Section 7. The master may not have areas on board fumigated or sealed until a search which is as thorough as possible of the areas to be fumigated or sealed has taken place in order to ensure that no stowaways are present in these areas.

Treatment of the stowaway while on board
General principles – humane treatment

Section 8. Stowaway incidents shall be dealt with consistent with humanitarian principles. Due consideration shall always be given to the operational safety of the ship and the safety and well-being of the stowaway.

Section 9. The master shall take appropriate measures to ensure the security, general health and welfare of the stowaway while he/she is on board, including providing him/her with adequate provisioning, accommodation, proper medical attention and sanitary facilities.

Section 10. Stowaways may not be detained unnecessarily. If the stowaway is detained, he or she shall as soon as possible be informed about the reason for this and the applicable law.

Work on board

Section 11. Stowaways may not be required to work on board the ship, except in emergency situations or in relation to the stowaway's accommodation on board.

Questioning and notification by the ship master

Section 12. The master shall make every effort to establish the identity, including nationality/citizenship of the stowaway and the port of embarkation of the stowaway. In addition, the master shall be ordered to notify the existence of the stowaway along with relevant details to the public authorities of the first planned port of call. This information shall also be provided to the shipowner, public authorities at the port of embarkation, the flag State and any subsequent ports of call, if relevant.

Section 13. When gathering relevant details for notification of the relevant parties, the ship master should use the form as specified in annex 1 or annex 2.

Section 14. When a stowaway declares himself/herself to be a refugee, this information shall be treated as confidential to the extent necessary for the security of the stowaway.

Notification of the International Maritime Organization (IMO)

Section 15. The master shall report information about stowaway incidents by submitting information about the incident to the Danish Maritime Authority. This may be done by completing the form in annex 3.

Deviations from the planned route

Section 16. The shipowner shall instruct his masters not to deviate from the planned voyage to seek the disembarkation of stowaways discovered on board the ship after it has left the territorial waters of the country where the stowaways embarked, unless:

- 1) permission to disembark the stowaway has been granted by the public authorities of the State to whose port the ship deviates; or
- 2) repatriation has been arranged elsewhere with sufficient documentation and permission for disembarkation; or
- 3) there are extenuating security, health or compassionate reasons.

Disembarkation and return of a stowaway

Section 17. In chapter 4 of the FAL Convention, governments who have acceded to the convention have agreed to act as stipulated in annex 4 if they get involved in stowaway incidents.

Penalty and entry into force, etc.

Section 18. Contraventions of sections 3-16 shall be punishable by fine or imprisonment for a term not exceeding one year.

Subsection 2. The penalty may be increased to imprisonment for a term not exceeding two years if

- 1) the violation has resulted in damage to life or health, or risk of such damage,
- 2) an injunction or order has previously been issued in connection with the same or equivalent situations, or
- 3) the violation has given or has been intended to give financial benefits to the transgressor or others.

Subsection 3. It shall be considered especially aggravating circumstances if the violation has resulted in damage to the life or health or risk of such damage to young persons below the age of 18, cf. subsection 2(1).

Subsection 4. If the financial benefit achieved is not confiscated, special consideration shall be given to the size of the achieved or intended financial benefit when determining the size of the fine, including supplementary fine.

Subsection 5. Companies etc. (legal personalities) may be liable to punishment according to the provisions of Chapter 5 of the penal code.

Section 19. If the contravention is covered by the Royal Decree on the entry into force of the Act on Safety at Sea in Greenland, measures may be ordered in accordance with the Penal Code for Greenland.

Subsection 2. The conditions mentioned in section 18(2) and (3) shall be considered especially aggravating circumstances.

Subsection 3. If the financial benefit achieved is not confiscated, cf. Section 116(1) of the Penal Code, special consideration shall be given to the size of the achieved or intended financial benefit when determining the size of the fine, including supplementary fine.

Subsection 4. If the contravener is a company, etc. (legal personalities), the legal personality may be liable to punishment by fine. If the contravener is the State, Greenland's Home Rule, a municipality, an inter-municipal enterprise covered by Section 64 of the Act of the Landsting (Greenland Parliament) on municipal councils and village councils, etc. or a village council, the relevant public authority shall be liable to punishment by fine.

Subsection 5. If the person in question does not live in Greenland, or if his tie to Greenland society is of such a rather loose nature that the preconditions for the application of the measures are not present, legal proceedings may be instituted in Denmark or the case may be sent for trial in Denmark.

Section 20. This regulation shall enter into force on 1 June 2003.

Subsection 2. At the same time the following shall be repealed:

- 1) Technical regulation no. 3 of 13 June 2001 on stowaways on board ships.
- 2) Guidance no. 4 of 30 November 1998 on the notification of the Danish Maritime Authority of information on stowaways.

The Danish Maritime Authority, 19 May 2003

Ib Matthiesen / Peter Lauridsen

Annex 1 to the technical regulation on stowaways on board ships
Oplysninger vedrørende blindpassageren

Oplysninger om skibet

Skibets navn:
IMO-nr.:
Flag:
Rederi:
Rederiets adresse:
Agent i næstfølgende havn:
Agentens adresse:
Internationalt kaldesignal (IRCS):
INMARSAT-nr.:
Registreringshavn:
Skibsførerens navn:

Udløbsdato:
Udstedt af:

Foto af blindpassageren

Oplysninger om blindpassageren

Hvornår (dato/tid) blev han/hun opdaget om bord:
I hvilken havn sneg han/hun sig om bord:
Indskibningsland:
Hvor lang tid har han/hun tilbragt i det land, hvor indskibningshavnen befinder sig:
Hvornår (dato/tid) sneg han/hun sig om bord:
Tilsigtet bestemmelsehavn:
Tilsigtet endelig bestemmelsehavn (hvis ikke den same)
Hvad grunden var til, at han/hun sneg sig om bord (vedkommendes eget udsagn):

Nødpas nr.:
Udstedt (tid):
Udstedt (sted):
Udløbsdato:
Udstedt af:

Adresse i hjemlandet:

By:
Land:
Stilling:
Arbejdsgiver(e): [navne og adresser]

Adresse i det land, hvor indskibningshavnen befinder sig:

Efternavn:
Fornavn:
Kendt under dette navn:
Religion:
Køn:
Fødselsdag:
Fødested:
Påberåbt nationalitet:
Type ID-dokumenter:

Højde (cm):
Vægt (kg):
Hudfarve:
Øjenfarve:
Hårfarve:
Hoved-/ansigtsfacon:
Særlige træk: [f.eks. ar, tatoveringer m.m.]

Pas nr.:
Udstedt (tid):
Udstedt (sted):
Udløbsdato:
Udstedt af:

Modersmål:
Tale læsning skrift

Andre sprog:
Tale læsning skrift

Søfartsbog nr.:
Udstedt (tid):
Udstedt (sted):

Ægteskabelig stilling:
Ægtefællens navn:
Ægtefællens nationalitet:
Ægtefællens adresse:

Forældrenes navne:
Forældrenes nationalitet:
Forældrenes adresse:

Andre oplysninger

Hvordan bar blindpassageren sig ad med at komme om bord? Var der andre personer involveret (f.eks. besætningsmedlemmer, havnearbejdere m.m.), eller havde blindpassageren skjult sig i last/container eller skjult sig i skibet?

Liste over blindpassagerens ejendele:

Fik blindpassageren hjælp til at snige sig om bord, f.eks. fra et af besætningsmedlemmerne? Hvis ja, blev der givet nogen betaling for denne hjælp?

Andre oplysninger (f.eks. kollegers navne og adresser, leder af samfund, f.eks. en borgmester eller en stammehøvding, kontakter i andre dele af verden):

Blindpassagerens forklaring:

Skibsførerens udtalelse (samt eventuelle bemærkninger vedrørende troværdigheden i blindpassagerens oplysninger):

Interview-dato(er):

Blindpassagerens underskrift

Skibsførerens underskrift

Dato:

Dato:

Annex 2 to the technical regulation on stowaways on board ships
Stowaway details

Ship details

Name of ship:
 IMO number:
 Flag:
 Company:
 Company address:
 Agent in next port:
 Agent address:
 International callsign (IRCS):
 Inmarsat number:
 Port of registry:
 Name of the master:

Where issued:
 Date of expiry:
 Issued by:

 Photograph of stowaway

Stowaway details

Date/time found on board:
 Place of boarding:
 Country of boarding:
 Time spent in country of boarding:
 Date/time of boarding:
 Intended port of destination:
 Intended final destination (if different):
 Stated reasons for boarding the ship:

Emergency passport no:
 When issued:
 Where issued:
 Date of expiry:
 Issued by:

 Home address:

 Home town:
 Country of domicile:
 Profession(s):
 Employer(s): [names and addresses]

Surname:
 Given name:
 Name by which known:
 Religion:
 Gender:
 Date of birth:
 Place of birth:
 Claimed nationality:
 ID document type:

Address in country of boarding:

 Height (cm):
 Weight (kg):
 Complexion:
 Colour of eyes:
 Colour of hair:
 Form of head/face:
 Marks/characteristics: [e.g. scars, tattoos, etc.]

Passport no:
 When issued:
 Where issued:
 Date of expiry:
 Issued by:

First language:
 Spoken Read Written

 Other languages:
 Spoken Read Written

ID card no.:
 When issued:
 Where issued:
 Date of expiry:
 Issued by:
 Seaman's book no.:
 When issued:

Marital status:
 Name of spouse:
 Nationality of spouse:
 Address of spouse:

 Names of parents:
 Nationality of parents:
 Address of parents:

Other details

Method of boarding, including other persons involved (e.g. crew, port workers, etc.) and whether they were secreted in cargo/container or hidden in the vessel:

Inventory of stowaway's possessions:

Was the stowaway assisted in boarding the vessel, or assisted by any member of the crew? If so, was any payment made for this assistance?

Other information (e.g. names and addresses of colleagues, community leader, e.g. mayor, tribal chief, contacts in other parts of the world):

Statement made by stowaway:

Statement made by master (including any observations on the credibility of the information provided by the stowaway):

Date(s) of interview(s):

Stowaway's signature

Master's signature

Date:

Date:

Annex 3 on the notification of the Danish Maritime Authority of information on stowaways

The Facilitation Committee (FAL) of the International Maritime Organization (IMO) has decided that the member states and the organisations that advise the IMO shall notify the IMO of stowaway incidents. The notification system shall make it possible for the Committee to monitor whether the IMO guidelines on the treatment of stowaways function effectively and provide the Committee with a basis for launching further measures, including the development of new binding rules that may prove necessary. Some of the information that the IMO has requested the member states to submit cannot be provided until the stowaway has disembarked.

This guidance has been drawn up to establish appropriate procedures so that the declaration and the notification that may form the basis of the notification to the IMO under Section 15 of the technical regulation together with the notification by means of a form mentioned below are submitted to the IMO.

Overall, the said provisions in the technical regulation as well as the procedure established below along with notification by means of a form involve the following:

1. The master shall, as soon as possible, notify the shipowner and the Danish Maritime Authority of the stowaway. This notification shall, as a minimum, contain information about the ship's name and IMO number, the location of the ship, the presumed port of embarkation and the next port of call as well as the number of stowaways. If it is possible to complete the form mentioned in subparagraph 2, it may be used for notification, but it is not required that notification takes place by means of this declaration.
2. When stowaways have been detected on board, the master shall draw up a declaration with information about the stowaway, cf. the annex to the technical regulation. This declaration shall be given to the authorities in the next port of call and in the presumed port of embarkation as well as to the Danish Maritime Authority. The notification may be carried out via the shipowner who shall be obliged to ensure that notification takes place. If it has been necessary to use physical force to the stowaway, to keep him or her locked up for more than short periods of time or if the stowaway has involved a risk to the safety of the ship or any other special conditions apply, the declaration shall contain such information.
3. For the Danish Maritime Authority's notification to the IMO, the shipowners shall periodically provide the Danish Maritime Authority with the information given in the form below about each individual stowaway incident. The notifications shall be made in Danish or English. The information shall be forwarded to the Danish Maritime Authority on a quarterly basis. The notifications shall contain both the incidents that have occurred during the previous notification period (whether completed or not) and the incidents that have been completed during the period.
 - Number
 - Name of ship

- Type
- Flag
- Gross tonnage
- IMO number
- Time* and place* of embarkation
- Time and place of disembarkation
- Time and place of attempted disembarkations
- Number and nationality* of stowaways
- Other conditions for use by the Danish Maritime Authority when assessing whether the IMO guidelines have been effective.

* Please indicate by means of a star if the information has not been confirmed.

**Annex 4: The standards and recommendations of the FAL Convention
for states and authorities in states affected by stowaway incidents**
(The numbering is the same as that used in the FAL Convention)

Article VI of the FAL Convention

For the purposes of the present Convention and its annexes:

- (a) *Standards* are those measures the uniform application of which by Contracting Governments in accordance with the Convention is necessary and practicable in order to facilitate international maritime traffic;
- (b) *Recommended Practices* are those measures the application of which by Contracting Governments is desirable in order to facilitate international maritime traffic.

Section 4 – Stowaways

A. General Principles

4.1 Standard. The provisions in this section shall be applied in accordance with international protection principles as set out in international instruments, such as the UN Convention relating to the Status of Refugees of 28 July 1951 and the UN Protocol relating to the Status of Refugees of 31 January 1967, and relevant national legislation.¹

4.2 Standard. Public authorities, port authorities, shipowners and their representatives and shipmasters shall co-operate to the fullest extent possible in order to prevent stowaway incidents and to resolve stowaway cases expeditiously and secure that an early return or repatriation of the stowaway will take place. All appropriate measures shall be taken in order to avoid situations where stowaways must stay on board ships indefinitely.

B. Preventive measures

4.3 Ship/port preventive measures

4.3.1 Port/terminal authorities

4.3.1.1 Standard. Contracting Governments shall ensure that the necessary infrastructure, and operational and security arrangements for the purpose of preventing persons attempting to stow away on board ships from gaining access to port installations and to ships, are established in all their ports, taking into consideration when developing these arrangements the size of the port, and what type of cargo is shipped from the port. This should be done in close co-operation with relevant public authorities, shipowners and shore-side entities, with the aim of preventing stowaway occurrences in the individual port.

¹ In addition, public authorities may wish to consider the non-binding conclusion of the UNHCR Executive Committee on Stowaway Asylum-Seekers (1988, No. 53 (XXXIX)).

4.3.1.2 Recommended Practice. Operational arrangements and/or security plans should, *inter alia*, address the following issues where appropriate:

- (a) regular patrolling of port areas;
- (b) establishment of special storage facilities for cargo subject to high risk of access of stowaways, and continuous monitoring of both persons and cargo entering these areas;
- (c) inspections of warehouses and cargo storage areas;
- (d) search of cargo itself, when presence of stowaways is clearly indicated;
- (e) co-operation between public authorities, shipowners, masters and relevant shore-side entities in developing operational arrangements;
- (f) co-operation between port authorities and other relevant authorities (e.g. police, customs, immigration) in order to prevent smuggling of humans;
- (g) developing and implementing agreements with stevedores and other shore-side entities operating in national ports to ensure that only personnel authorised by these entities participate in the stowing/unstowing or loading/unloading of ships or other functions related to the ships' stay in port;
- (h) developing and implementing agreements with stevedores and other shore-side entities to ensure that their personnel having access to the ship is easily identifiable, and a list of names of persons likely to need to board the ship in the course of their duties is provided; and
- (i) encouragement of stevedores and other persons working in the port area to report to the port authorities the presence of any persons apparently not authorised to be in the port area.

4.3.2 Shipowner/shipmaster (the text has been transferred to the technical regulation)

4.3.3 National Sanctions

4.3.3.1 Standard. Where appropriate, contracting Governments shall, according to their national legislation, prosecute stowaways, attempted stowaways and persons aiding stowaways in gaining access to ships. *Such Danish penalty provisions have been included in the Aliens Act and the Penal Code.*

*C. Treatment of the stowaway while on board
(the text has been transferred to the technical regulation)*

D. Deviation from the planned route

(the text has been transferred to the technical regulation)

E. Disembarkation and return of a stowaway

4.9. The State of the first port of call according to the voyage plan

4.9.1 Standard. Public authorities in the country of the ship's first scheduled port of call after discovery of a stowaway shall decide in accordance with national legislation whether the stowaway is admissible to that State.

4.9.2 Standard. Public authorities in the country of the ship's first scheduled port of call after discovery of a stowaway shall allow disembarkation of the stowaway, when the stowaway is in possession of valid travel documents for return, and the public authorities are satisfied that timely arrangements have been or will be made for repatriation and all the requisites for transit fulfilled.

4.9.3 Standard. Where appropriate and in accordance with national legislation, public authorities in the country of the ship's first scheduled port of call after discovery of a stowaway shall allow disembarkation of the stowaway when the public authorities are satisfied that they or the shipowner will obtain valid travel documents, make timely arrangements for repatriation of the stowaway, and fulfil all the requisites for transit. Public authorities shall, further, favourably consider allowing disembarkation of the stowaway, when it is impracticable to remove the stowaway on the ship of arrival or other factors exist which would preclude removal of the ship. Such factors may include, but are not limited to when:

- a case is unresolved at the time of sailing of the ship; or
- the presence on board of the stowaway would endanger the safe operation of the ship, the health of the crew or the stowaway.

4.10 Subsequent ports of call

4.10.1 Standard. When disembarkation of a stowaway has failed in the first scheduled port of call after discovery of the stowaway, public authorities of the subsequent ports of call shall examine the stowaway as for disembarkation with Standards 4.9.1, 4.9.2 and 4.9.3.

4.11 State of Nationality or Right of Residence

4.11.1 Standard. Public authorities shall in accordance with international law accept the return of stowaways with full nationality/citizenship status or accept the return of stowaways who in accordance with their national legislation have a right of residence in their State.

4.11.2 Standard. Public authorities shall, when possible, assist in determining the identity and nationality/citizenship of stowaways claiming to be a national or having a right of residence in their State.

4.12 State of Embarkation

4.12.1 Standard. When it has been established to their satisfaction that stowaways have embarked a ship in a port in their State, public authorities shall accept for examination such

stowaways being returned from their point of disembarkation after having been found inadmissible there. The public authorities of the State of embarkation shall not return such stowaways to the country where they were earlier found to be inadmissible.

4.12.2 Standard. When it has been established to their satisfaction that attempted stowaways have embarked a ship in a port in their State, public authorities shall accept disembarkation of attempted stowaways, and of stowaways found on board the ship while it is still in the territorial waters or if applicable according to the national legislation of that State in the area of immigration jurisdiction of that State. No penalty or charge in respect of detention or removal costs shall be imposed on the shipowner.

4.12.3 Standard. When an attempted stowaway has not been disembarked at the port of embarkation, he/she is to be treated as a stowaway in accordance with the regulation of this section.

4.13 The flag State

4.13.1 Standard. The public authorities of the flag State of the ship shall assist and co-operate with the master/shipowner or the appropriate public authority at ports of call in:

- identifying the stowaway and determining his/her nationality;
- making representations to the relevant public authority to assist in the removal of the stowaway from the ship at the first available opportunity; and
- making arrangements for the removal or repatriation of the stowaway.

4.14 Return of stowaways

4.14.1 Recommended Practice. When a stowaway has inadequate documents, public authorities should, whenever practicable and to an extent compatible with national legislation and security requirements, issue a covering letter with a photograph of the stowaway and any other important information. The letter, authorising the return of the stowaway either to his/her country of origin or to the point where the stowaway commenced his/her journey, as appropriate, by any means of transportation and specifying any other conditions imposed by the authorities, should be handed over to the operator affecting the removal of the stowaway. This letter will include information required by the authorities at transit points and/or the point of disembarkation.

4.14.2 Recommended Practice. Public authorities in the State where the stowaway has disembarked should contact the relevant public authorities at transit points during the return of a stowaway, in order to inform them of the status of the stowaway. In addition, public authorities in countries of transit during the return of any stowaway should allow, subject to normal visa requirements and national security concerns, the transit through their ports and airports of stowaways travelling under the removal instructions or directions of public authorities of the country of the port of disembarkation.

4.14.3 Recommended Practice. When a port State has refused disembarkation of a stowaway that State should, without undue delay, notify the flag State of the ship carrying the stowaway of the reasons for refusing disembarkation.

4.15 Cost of return and maintenance of stowaways

4.15.1 Recommended Practice. The public authorities of the State where a stowaway has been disembarked should generally inform the shipowner on whose ship the stowaway was found, or his representative, as far as practicable, of the level of cost of detention and return of the stowaway if the shipowner is to cover these costs. In addition, public authorities should keep such costs to a minimum, as far as practicable and according to national legislation, if they are to be covered by the shipowner.

4.15.2 Recommended Practice. The period during which shipowners are held liable to defray costs of maintenance of a stowaway by public authorities in the State where the stowaway has been disembarked should be kept to a minimum.

4.15.3 Recommended Practice. Public authorities shall, according to national legislation, consider mitigation of penalties against whips where the master of the ship has properly declared the existence of a stowaway to the appropriate authorities in the port of arrival, and has shown that all reasonable preventive measures had been taken to prevent stowaways gaining access to the ship.

4.15.4 Recommended Practice. Public authorities should, according to national legislation, consider mitigation of other charges that might otherwise be applicable, when shipowners have co-operated with the control authorities to the satisfaction of those authorities in measures designed to prevent the transportation of stowaways.