

(Legislative Supplement No. 19)

LEGAL NOTICE NO. 40

THE MERCHANT SHIPPING ACT, 2009

(No. 4 of 2009)

MERCHANT SHIPPING (MINIMUM SAFE MANNING)
REGULATIONS, 2016

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THE MERCHANT SHIPPING ACT, 2009

(No. 4 of 2009)

IN EXERCISE of the powers conferred by section 450 of the Merchant Shipping Act, the Cabinet Secretary for Transport and Infrastructure makes the following Regulations –

THE MERCHANT SHIPPING (MINIMUM SAFE MANNING)
REGULATIONS, 2016

1. These Regulations may be cited as the Merchant Shipping (Safe Manning) Regulations, 2016. Citation and Commencement.
2. In these Regulations unless the context otherwise requires- Interpretation.
 - “administration” means the Government of the Party whose flag the ship is entitled to fly;
 - “Authority” means the Kenya Maritime Authority;
 - “Company” means the owner of a ship and includes the manager, or the bareboat charterer or any other person or organization, who has assumed the responsibility for operation of the ship from the shipowner and who, and agreed to take over all the duties and responsibilities imposed on the company by these regulations;
 - “Organisation” means the International Maritime Organization;
 - “STCW Code” means the Seafarers’ Training, Certification and Watchkeeping (STCW) Code adopted by the 1995 Conference Resolution 2, as it may be amended from time to time by the International Maritime Organization;
 - “Training and Certification regulations” means the relevant regulations relating to seafarer training and certification currently in force.
3. Unless expressly provided otherwise, these Regulations shall apply to- Application.
 - (a) Kenyan ships wherever they may be;
 - (b) **foreign ships within the territory of Kenya**; except-
 - (i) warships, naval auxiliaries or other ships owned or operated by a State and engaged only on governmental non-commercial service;
 - (ii) fishing vessels;
 - (iii) pleasure yachts not engaged in trade
4. The Director-General may grant, on such terms, if any, as he may specify, exemptions from all or any provisions of these Regulations for classes of cases or individual cases. Exemptions.
5. (1) A ship shall be sufficiently and efficiently manned. Ship Manning.
 - (2) The Authority shall issue the minimum safe manning document set out in the First Schedule to every ship of **500GT or more** as evidence of compliance with sub-regulation (1).

(3) It shall be the duty of the company after the issue of a minimum safe manning document to inform the Authority as soon as any of the circumstances which are pertinent to that minimum safe manning document change, for the purpose of enabling the Authority to review the document's continuing validity or approve fresh proposals from the Company.

(4) The Company shall ensure that every ship of 500 GT or more-

- (a) has a safe manning document is in force in respect of the ship;
- (b) has the safe manning document is kept on board the ship at all times; and
- (c) the manning of the ship is maintained at all times to at least the levels specified in the minimum safe manning document.

(5) A master of a ship shall ensure that the ship does not go to sea unless-

- (a) there is on board and in force in respect of the ship a valid minimum safe manning document; and
- (b) the manning of the ship complies with minimum safe manning document.

6. (1) The Company shall prepare and submit to the Authority a proposal for the minimum safe manning based upon the assessment of the numbers and grades or capacities in the ship's complement required for its safe operation, for its security and for protection of the marine environment, justifying the proposal by explaining how the proposed ship's complement will deal with emergency situations, including the evacuation of passengers, where necessary.

Application for safe manning document.

(2) In preparing proposals under sub regulation (1) the company shall take into account the Principle of Minimum Safe Manning as may be adopted by the Organisation.

(3) A proposal for the minimum safe manning of a ship submitted by a company to the Authority shall be evaluated by the Authority in accordance with Principle of Minimum Safe Manning as may be adopted by the Organisation.

7. (1) Companies shall be held responsible for the assignment of seafarers for service on their ships.

Responsibilities of companies, masters and crew members.

(2) Companies, masters and crew members each have responsibility for ensuring that:

- (a) the obligations set out in these regulations are fully implemented; and
- (b) such other measures as may be necessary are taken to ensure that each crew member can make a knowledgeable and informed contribution to the safe operation of the ship.

- (3) A Company shall ensure that-
- (a) each seafarer assigned to any of its ships holds an appropriate certificate in respect of any function he is to perform on that ship;
 - (b) all masters, officers and radio operators holding certificates issued by foreign countries in accordance with Chapters II, III, IV or regulations V/1-1 or V/1-2 of the STCW Convention shall also have valid "recognition endorsement" issued by the Authority or proof that application for the recognition endorsement have been received by the Authority;
 - (c) its ships are manned in compliance with these regulations;
 - (d) seafarers assigned to any of its ships have received refresher and updating training as required by the relevant training and certification regulations;
 - (e) documentation and data relevant to all seafarers employed on its ships are maintained and readily accessible, and include, without being limited to, documentation and data on their experience, training, medical fitness and competency in assigned duties;
 - (f) seafarers, on being assigned to any of its ships, are familiarized with their specific duties and with all ship arrangements, installations, equipment, procedures and ship characteristics that are relevant to their routine or emergency duties;
 - (g) the ship's complement can effectively coordinate their activities in an emergency situation and in performing functions vital to safety, security and to the prevention or mitigation of pollution; and
 - (h) at all times on board its ships there shall be effective oral communication in accordance with these Regulations.
- (4) Nothing in sub-regulation (3) shall prohibit the allocation of tasks for training under supervision or in case of *force majeure*.

8. (1) The Company shall provide written instructions to the master of each of its ships setting out the policies and the procedures to be followed to ensure that all seamen who are newly employed on board the ship are given a reasonable opportunity to become familiar with the shipboard equipment, operating procedures and other arrangements needed for the proper performance of their duties, before being assigned to those duties.

Company policies
and procedures

(2) The policies and procedures referred to in sub-regulation 1 shall include-

- (a) allocation of a reasonable period of time during which each newly employed seaman will have an opportunity to become acquainted with;

- (b) the specific equipment the seaman will be using or operating;
- (c) ship-specific watchkeeping, safety, environmental protection and emergency procedures and arrangements the seafarer needs to know to perform the assigned duties properly; and
- (d) designation of a knowledgeable crew member who will be responsible for ensuring that an opportunity is provided to each newly employed seaman to receive essential information in a language the seaman understands.

9. (1) Companies shall ensure that masters, officers and other personnel assigned specific duties and responsibilities onboard their ro-ro passenger ships shall have completed familiarization training to attain the abilities that are appropriate to the capacity to be filled and duties and responsibilities to be taken up.

Familiarization
training

(2) Before being assigned to shipboard duties, all persons employed or engaged on a seagoing ship, other than passengers, shall receive approved familiarization training in personal survival techniques or receive sufficient information and instruction to be able to-

- (a) communicate with other persons on board on elementary safety matters and understand safety information symbols, signs and alarm signals;
- (b) know what to do if-
 - (i) a person falls overboard;
 - (ii) fire or smoke is detected; or
 - (iii) the fire or abandon ship alarm is sounded;
- (c) identify muster and embarkation stations and emergency escape routes;
- (d) locate and wear lifejackets;
- (e) raise the alarm and have basic knowledge of the use of portable fire extinguishers;
- (f) take immediate action upon encountering an accident or other medical emergency before seeking further medical assistance on board; and
- (g) close and open the fire, weathertight and watertight doors fitted in the particular ship other than those for hull openings.

(3) Before being assigned to shipboard duties, all persons employed or engaged on a seagoing ship which is required to comply with the provisions of the ISPS Code, other than passengers, shall receive approved security-related familiarization training to be able to-

- (a) report a security incident, including a piracy or armed robbery threat or attack;
- (b) know the procedures to follow when they recognize a security threat; and
- (c) take part in security-related emergency and contingency procedures

(4) Seafarers with designated security duties engaged or employed on a seagoing ship shall, before being assigned such duties, receive security-related familiarization training in their assigned duties and responsibilities.

(5) The security-related familiarization training shall be conducted by the ship security officer or an equally qualified person.

10. (1) A working language shall be established on all ships and recorded in the official log- book.

Working
language.

(2) The company or the master, as appropriate, shall determine the appropriate working language.

(3) Each seafarer shall be required to understand and, where appropriate, give orders and instructions and to report back in that language.

(4) For a Kenyan ship, if the working language is not English, all plans and lists required to be posted shall include a translation into the working language.

(5) On all ships, English shall be used on the bridge as the working language for bridge-to-bridge and bridge-to-shore safety communications as well as for communications on-board between the pilot and bridge watchkeeping personnel, unless those directly involved in the communication speak a common language other than English.

11. (1) Every Company, and every employer shall- Fitness for duty.

- (a) establish and enforce rest periods for watchkeeping personnel and those whose duties involve designated safety, security and prevention of pollution duties in accordance with sub-regulations (2) and (3); and
- (b) adopt watch systems so arranged that the efficiency of all watchkeeping personnel is not impaired by fatigue and that duties are so organized that the first watch at the commencement of a voyage and subsequent relieving watches are sufficiently rested and otherwise fit for duty.

(2) All persons who are assigned duty as officer in charge of a watch or as a rating forming part of a watch and those whose duties involve designated safety, prevention of pollution and security duties shall be provided with a rest period of not less than-

- (a) a minimum of ten hours of rest in any twenty-four-hour period; and
- (b) seventy-seven hours in any seven day period.

(3) The hours of rest may be divided into no more than two periods, one of which shall be at least six hours in length, and the intervals between consecutive periods of rest shall not exceed fourteen hours.

(4) The requirements for rest periods laid down in sub-regulations (2) and (3) need not be maintained in the case of an emergency or in other overriding operational conditions. Musters, fire-fighting and lifeboat drills, and drills prescribed by national laws and regulations and by international instruments, shall be conducted in a manner that minimizes the disturbance of rest periods and does not induce fatigue.

(5) The Company shall post watch schedules where they are easily accessible and the schedules shall be set out in a standardized format prescribed in the Second Schedule, in the working language or languages of the ship and in English.

(6) When a seafarer is on call, such as when a machinery space is unattended, the seafarer shall have an adequate compensatory rest period if the normal period of rest is disturbed by call-outs to work.

(7) Companies shall maintain records of daily hours of rest of seafarers in a standardized format prescribed in Second Schedule, in the working language or languages of the ship and in English, to allow monitoring and verification of compliance with the provisions of this section and the seafarers shall receive a copy of the records pertaining to them, which shall be endorsed by the master or by a person authorized by the master and by the seafarers.

(8) Nothing in this regulation shall be deemed to impair the right of the master of a ship to require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to other ships or

persons in distress at sea, and accordingly, the Master may suspend the schedule of hours of rest and require a seafarer to perform any hours of work necessary until the normal situation has been restored, and as soon as practicable after the normal situation has been restored, the master shall ensure that any seafarers who have performed work in a scheduled rest period are provided with an adequate period of rest.

(9) The Authority may allow exceptions from the required hours of rest in sub-regulations (2) and (3), provided that the rest period is not less than seventy hours in any seven-day period.

(10) Exceptions from the weekly rest period provided for in sub-regulation (9) shall not be allowed for more than two consecutive weeks. The intervals between two periods of exceptions on board shall not be less than twice the duration of the exception.

(11) The hours of rest provided for in sub-regulation (2) may be divided into not more than three periods, one of which shall be at least six hours in length and neither of the other two periods shall be less than one hour in length, with intervals between consecutive periods of rest not exceeding fourteen hours, and exceptions shall not extend beyond two twenty-four hour periods in any seven-day period.

12. (1) Companies shall implement on-board a clearly written policy of drug and alcohol abuse prevention.

Preventing drug and alcohol abuse.

(2) Consumption of alcohol within four hours prior to serving as a member of a watch shall be prohibited.

(3) Masters, officers and other seafarers shall not exceed a limit of 0.05% blood alcohol level (BAC) or 0.25 mg/l alcohol in the breath or a quantity of alcohol leading to such alcohol concentration while performing designated safety, security and marine environmental duties.

13. (1) Companies, masters, chief engineer officers and all watch keeping personnel shall ensure requirements, principles and guidance set out in the STCW Code are observed during maintenance of watch or watches appropriate to the prevailing circumstances and conditions on all seagoing ships at all times.

Watch keeping arrangements and principles to be observed.

(2) The master of every ship shall ensure that watch keeping arrangements are adequate for maintaining a safe watch or watches, taking into account the prevailing circumstances and conditions and that, under the master's general direction-

- (a) officers in charge of the navigational watch are responsible for navigating the ship safely during their periods of duty, when they shall be physically present on the navigating bridge or in a directly associated location such as the chartroom or bridge control room at all times;
- (b) radio operators are responsible for maintaining a continuous radio watch on appropriate frequencies during their periods of duty;
- (c) officers in charge of an engineering watch, as defined in the

STCW Code, under the direction of the chief engineer officer, shall be immediately available and on call to attend the machinery spaces and, when required, shall be physically present in the machinery space during their periods of responsibility;

- (d) an appropriate and effective watch or watches are maintained for the purpose of safety at all times, while the ship is at anchor or moored and, if the ship is carrying hazardous cargo, the organization of such watch or watches takes full account of the nature, quantity, packing and stowage of the hazardous cargo and of any special conditions prevailing on board, afloat or ashore; and
- (e) as applicable, an appropriate and effective watch or watches are maintained for the purposes of security.

14. Without prejudice to regulation 5, the Company and the Master shall ensure that there are carried at all times on board ship all original certificates and other documents issued pursuant to the STCW Convention indicating the qualification of any member of the crew to perform the functions which they are required to perform aboard ship in the course of their designated duties.

Carriage of documents.

15. Foreign ships while in the ports or territory of Kenya shall be subject to control by the inspector in accordance with regulation 16.

Control of foreign ships.

16. (1) Control exercised by the inspector shall be limited to-

Control procedure.

- (a) verification that all seafarers serving on board a ship who are required to be certificated in accordance with the Convention hold an appropriate certificate or a valid dispensation, or provide documentary proof that an application for an endorsement has been submitted to the Administration and such a certificate shall be accepted unless there are clear grounds for believing that it has been fraudulently obtained or that the holder is not the person to whom it was originally issued;
- (b) verification that the numbers and certificates of the seafarers serving on board are in conformity with the applicable safe manning requirements of the Administration; and
- (c) assessment, in accordance with STCW Code, of the ability of the seafarers of the ship to maintain watch keeping and security standards, as appropriate, as required by the STCW Convention if there are clear grounds for believing that such standards are not being maintained because any of the following have occurred-
 - (i) the ship has been involved in a collision, grounding or stranding; or
 - (ii) there has been a discharge of substances from the ship when under way, at anchor or at berth which is illegal under any international convention, or

- (iii) the ship has been maneuvered in an erratic or unsafe manner whereby routing measures adopted by the Organization or safe navigation practices and procedures have not been followed; or
- (iv) the ship is otherwise being operated in such a manner as to pose a danger to persons, property, the environment, or a compromise to security.

(2) Deficiencies which are deemed to pose a danger to persons, property or the environment include the following-

- (a) failure of seafarers to hold a certificate, to have an appropriate certificate, to have a valid dispensation or to provide documentary proof that an application for an endorsement has been submitted to the Administration;
- (b) failure to comply with the applicable safe manning requirements of the Administration;
- (c) failure of navigational or engineering watch arrangements to conform to the requirements specified for the ship by the Administration;
- (d) absence in a watch of a person qualified to operate equipment essential to safe navigation, safety radio communications or the prevention of marine pollution; and
- (e) inability to provide, for the first watch at the commencement of a voyage and for subsequent relieving watches, persons who are sufficiently rested and otherwise fit for duty.

17. Failure to correct any of the deficiencies referred to in sub-regulation 16(2), insofar as it has been determined by the Authority that they pose a danger to persons, property or the environment, shall be the only grounds on which the Authority shall detain a ship.

Power to detain.

18. (1) Any Company in contravention of these regulations commits an offence and shall be liable upon conviction to a fine not exceeding one hundred, or in the case of an individual, to imprisonment not exceeding six months, or both;

Offences, penalties and defences.

(2) A person who commits an offence in terms of sub-regulation (4) is liable on conviction to a fine of fifty thousand shillings or to imprisonment for a period not exceeding six months, or both.

(3) In proceedings for an offence in terms of this regulation it is a defence to prove that the accused took reasonable precautions and exercised due diligence to avoid committing the offence.

(4) In proceedings for an offence in terms of this regulation consisting of a failure to comply with a duty or requirement to do something so far as is reasonably practicable, it shall be for the accused to prove that it was not reasonably practicable to do more than what was in fact done to satisfy the duty or requirement.

19. (1) If any person –

(a) admits to the Director-General that he has contravened any provision of these regulations or Act, or that he has failed to comply with any such provision with which it was his duty to comply; and

(b) agrees to abide by the decision of the Director- General; and

(c) deposits with the Authority such sum as may be required of him, but not exceeding the maximum fine which may be imposed upon a conviction for the contravention or failure in question,

the Director-General may, after such enquiry as deems necessary, determine the matter summarily and may, without legal proceedings, order by way of penalty the whole or any part of the said deposit to be forfeited.

(2) The imposition of a penalty under sub-regulation (1) shall be deemed to be a conviction of a criminal offence, but no prosecution for the relative offence shall thereafter be competent.

(3) Nothing in this regulation shall in any way affect liability to forfeiture of ships, shares therein or cargo.

20. The Merchant Shipping (Safe Manning) Regulations, 2014 are revoked.

Director General
may impose
penalty upon
admission of guilt.

Revocation of
L.N. 91... of
2014.

FIRST SCHEDULE

(R. 5(2))

Form 1

Number

MINIMUM SAFE MANNING DOCUMENT



Issued under the provisions of regulation V/14 of the
INTERNATIONAL CONVENTION FOR THE SAFETY OF LIFE AT SEA, 1974, as
amended
under the authority of the Government of
KENYA
by
KENYA MARITIME AUTHORITY

Particulars of the ship:

<i>Name of Ship</i>	<i>Port of Registry</i>	<i>IMO Number</i>	<i>Official Number</i>
Gross Tonnage	Main Propulsion Power – (KW)	Type of Ship	Call Sign
Operating Company			

Periodically unattended machinery space: Yes/No
Trading Area:

The ship named in this document is to be considered to be safely manned, if, when it proceeds to sea, it carries not less than the number and grades/capacities of personnel specified in the table below, subject to any attached conditions.

<i>GRADE/CAPACITY</i>	<i>Certificate (STCW regulation)</i>	<i>Number of Persons</i>
Special requirements or conditions if any:		

Issued at..... on Day of 20.....

REGISTRAR OF KENYAN SHIPS AND SEAFARERS

SECOND SCHEDULE

Form 1

FORMAT OF SHIPBOARD WATCH SCHEDULES

(R. 11(5))



THE REPUBLIC OF KENYA

KENYA MARITIME AUTHORITY

MERCHANT SHIPPING (MINIMUM SAFE MANNING) REGULATIONS, 2016

TABLE OF SHIPBOARD WORKING ARRANGEMENTS

Name of Ship: _____ Flag of Ship: _____ IMO Number:

_____ Last updated: _____

The minimum hours of rest are applicable in accordance with the Merchant Shipping (Maritime Labour) Regulations, 2014 and with any applicable collective agreement registered or authorized in accordance with that convention and the STCW 1978, as amended.

Minimum Hours of Rest: Minimum Hours of Rest shall not be less than (i) 10 hours in any 24-hour period; and (ii) 77 hours in any 7-day period. _____

Other Requirements:

Position / Rank 1	Schedule Daily Work Hours at Sea		Schedule Daily Work Hours in Port		Comments	Total Daily Rest Hours	
	Watch keeping (from-to)	Non – Watching Duties (from – to)	Watch keeping (from-to)	Non – Watching Duties (from – to)		At Sea	In Port

Signature of Master _____

