

Chapter:	478Q	MERCHANT SHIPPING (SEAFARERS) (REPATRIATION) REGULATION	Gazette Number	Version Date
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		Empowering section		30/06/1997
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(Cap 478 sections 86, 104, 119 and 134)

[2 September 1996]

(Originally L.N. 607 of 1995)

Section:	1	(Omitted as spent)		30/06/1997
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(Omitted as spent)

(Enacted 1995)

Section:	2	Interpretation		30/06/1997
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In this Regulation, unless the context otherwise requires-

"employer" (僱主), in relation to a seafarer, means the last employer of the seafarer before the seafarer was left behind or shipwrecked;

"master" (船長), in relation to a seafarer, means the master of the ship in which the seafarer was last employed immediately before he was left behind or shipwrecked;

"ship" (船、船舶) means a Hong Kong ship.

(Enacted 1995)

Section:	3	Application		30/06/1997
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(1) Subject to subsection (2), this Regulation shall apply to every seafarer employed under a crew agreement who-

- (a) is left behind in any place outside Hong Kong or is taken to such a place on being shipwrecked; or
- (b) became so employed outside Hong Kong and who is left behind in Hong Kong or is taken to Hong Kong on being shipwrecked.

(2) Sections 12 and 13 shall also apply to any seafarer who became employed under a crew agreement entered into in Hong Kong and who leaves his ship in Hong Kong, otherwise than on being discharged therefrom.

(Enacted 1995)

Section:	4	Return and relief of seafarers left behind or shipwrecked		30/06/1997
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(1) The employer of a seafarer shall, if his obligation to return the seafarer has arisen under subsection (2)-

- (a) as soon as practicable after the seafarer is left behind or brought ashore after shipwreck, make such provision as is necessary for his return to a place ascertained under section 7; and
- (b) from the time when the seafarer is left behind or brought ashore after shipwreck and until he is returned or until the employer's obligation to return him ceases in accordance with subsection (3), make such provision for the seafarer's food and lodging and such other relief and maintenance as may be necessary having regard to the personal circumstances of the seafarer and of any requirement special to him:

Provided that the employer shall not be under any obligation to return or make provision for any seafarer who is absent for a period of more than 3 months from the date when he was left behind if, during that period, the employer did not know and could not reasonably have known of the seafarer's whereabouts.

(2) The obligation of the employer to return a seafarer under subsection (1)(a) shall arise-

- (a) as soon as the seafarer is available for return;
- (b) as soon as the seafarer informs his employer, his employer's agent or the Superintendent of his

- whereabouts and asks to be returned by his employer; or
- (c) if the seafarer is unable by reason of illness, incapacity or other cause beyond his control so to inform any of the persons referred to in paragraph (b), as soon as one of those persons obtains from him confirmation that he wishes to be returned by his employer.
- (3) The obligation to return a seafarer under subsection (1)(a) shall cease if the seafarer-
- (a) being fit and able to undertake employment in a ship, fails to comply with a reasonable request made of him by his employer that he should enter into a crew agreement for employment in any ship in which he is, in accordance with provision made by his employer, to be carried in the course of his return;
- (b) without reasonable cause, fails to comply with any other reasonable arrangement made for him by his employer in relation to the provision for his return; or
- (c) informs his employer in writing that he does not wish to be returned by him.
- (4) In deciding whether the seafarer is to be returned by land, sea or air (or by which combination of any of those means), his employer shall have regard to all the circumstances including the personal circumstances of the seafarer and of any requirement special to him.
- (5) Without prejudice to the generality of subsection (1)(b), the provision for relief and maintenance to be made in accordance with that subsection shall include-
- (a) clothing;
- (b) toilet and other personal necessities;
- (c) surgical or medical treatment and such dental or optical treatment (including the repair or replacement of any appliance) as cannot be postponed without impairing efficiency;
- (d) in cases where the seafarer is not entitled to legal aid, or legal aid is insufficient, reasonable costs for the defence of the seafarer in any criminal proceedings in respect of any act or omission within the scope of his employment, being proceedings where neither the employer nor the employer's agent is a party to the prosecution; and
- (e) sufficient money to meet any minor ancillary expenses necessarily incurred or likely to be so incurred by the seafarer for his relief and maintenance.
- (6) The provisions to be made by an employer in accordance with this section shall include-
- (a) the repayment of expenses incurred in bringing a shipwrecked seafarer ashore and maintaining him until he is brought ashore; and
- (b) the payment of the expenses of the burial or cremation of a seafarer who dies before he can be returned to a place ascertained under section 7.
- (7) An employer who fails to comply with an obligation imposed on him under subsection (1) commits an offence and is liable on conviction to a fine at level 2.

(Enacted 1995)

Section:	5	Other provisions relating to seafarers left behind and shipwrecked seafarers		30/06/1997
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(1) Except where, if the seafarer has been discharged from his ship, notice of his discharge has been given to the Superintendent in accordance with regulations made under section 82 of the Ordinance, the employer of a seafarer shall, within 48 hours after the seafarer is left behind or it has come to his notice that the seafarer has been brought ashore after being shipwrecked (as the case may be), or if it is not practicable within that time, as soon as practicable thereafter, make provision to ensure that the Superintendent is informed of the particulars specified in subsection (2).

(2) The particulars referred to in subsection (1) are-

- (a) the name of the seafarer;
- (b) his home address as stated in the list of crew;
- (c) the name and address of his next of kin as stated in the list of crew;
- (d) in the case of a seafarer left behind-
- (i) the name of the ship from which he was left behind;
- (ii) the date on which he was left behind;
- (iii) the place where he was left behind and, if known to the employer, the present whereabouts of the seafarer;
- (iv) the reason (if known to the employer) for his being left behind; and
- (v) the name and address of the employer and the name and address of the employer's agent, if any,

- at or nearest to the place where the seafarer was left behind; and
- (e) in the case of a shipwrecked seafarer-
- (i) the name of the ship from which he was shipwrecked;
 - (ii) the dates on which he was shipwrecked and on which he was brought ashore;
 - (iii) the place where he was brought ashore and (if known to the employer) the name and address of the person by whom he was brought ashore and the present whereabouts of the seafarer; and
 - (iv) the name and address of the employer and the name and address of the employer's agent, if any, at or nearest to the place where the seafarer was brought ashore.
- (3) The master shall make entries, in relation to any seafarer left behind, recording-
- (a) both in the official log book and in the list of crew, the date on which and the place at which the seafarer was left behind and the reason (if known to the master) for his being left behind; and
 - (b) in the official log book, any provision which he has made on the employer's behalf to ensure that the Superintendent is informed of the particulars referred to in subsection (1).
- (4) An employer who fails to comply with an obligation imposed on him under subsection (1) commits an offence and is liable on conviction to a fine at level 2.
- (5) The master of a ship who fails to comply with an obligation imposed on him under subsection (3) commits an offence and is liable on conviction to a fine at level 1.

(Enacted 1995)

Section:	6	Obligation to keep Superintendent informed of arrangements made in respect of seafarer		30/06/1997
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(1) The employer shall ensure that the Superintendent is kept informed of the arrangements he has made (including any changes in those arrangements) pursuant to his obligation to make provision for the seafarer's return, relief and maintenance specified in section 4.

(2) An employer who fails to comply with an obligation imposed on him under subsection (1) commits an offence and is liable on conviction to a fine at level 2.

(Enacted 1995)

Section:	7	Place of return		30/06/1997
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A seafarer who is to be returned pursuant to this Regulation shall be returned-

- (a) in the case of a seafarer who is resident in Hong Kong, to Hong Kong;
- (b) in the case of a seafarer who is not resident in Hong Kong, to a place in the country in which he is resident being-
 - (i) if he joined the ship from which he was left behind or shipwrecked in that country, the place where he joined the ship; or
 - (ii) if he did not join the ship in that country, the place in that country at which he was employed to join the ship; or
- (c) to any other place which may be agreed between the seafarer and his employer.

(Enacted 1995)

Section:	8	Provision for a seafarer's return, relief and maintenance by Superintendent		30/06/1997
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Where it appears to the Superintendent that a seafarer's employer has failed to make or to continue to make any or sufficient provision with respect to any matter for which he is required to make provision for that seafarer under section 4, the Superintendent shall make that provision.

(Enacted 1995)

Section:	9	Conveyance orders and directions		30/06/1997
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(1) Where the Superintendent is requested by an employer who is under an obligation under section 4 to make provision for a seafarer's return, he shall or, where he is himself under an obligation under section 8 to make provision

for the return of a seafarer, he may, subject to subsection (2)-

(a) by means of a conveyance order in writing require the master of a ship (which, where the order is made at the request of the employer, shall be specified by the employer) to convey the seafarer from any place specified in the order to such other place so specified as lies on a reasonable route between the place specified in the order and the place ascertained under section 7 to which he is to be returned; and

(b) give to the master of that ship such directions as may be necessary for the purpose of that requirement, and more than one such order may be made in the course of the seafarer's return.

(2) The master of a ship shall not be required under subsection (1) to convey a seafarer in the ship or to obey any direction given for the purpose of the requirement-

(a) if the ship is a fishing vessel;

(b) if any provision of an enactment would be infringed by reason of that seafarer being conveyed in the ship in addition to other persons carried in the ship;

(c) if his ship would be required to go to any place to which it would not otherwise go in the course of the voyage then being undertaken or about to be undertaken;

(d) if, by reason of compliance with such requirement or direction, his ship would be unreasonably delayed; or

(e) if the master has other reasonable cause for objecting to the requirement or direction, as the case may be.

(3) The master of a ship who fails to comply with a requirement made of him by a conveyance order under subsection (1)(a) or with a direction given to him under subsection (1)(b) for the purpose of that requirement commits an offence and is liable on conviction to a fine at level 2.

(Enacted 1995)

Section:	10	Entries in official log book for purposes of section 9	30/06/1997
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(1) The master of a ship shall make entries in the official log book recording the particulars of any requirement made of him under section 9 and of any directions given to him by the Superintendent for the purpose of that requirement.

(2) The master of a ship who fails to comply with an obligation imposed on him under subsection (1) commits an offence and is liable on conviction to a fine at level 1.

(Enacted 1995)

Section:	11	Payment to master for conveyance	30/06/1997
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(1) The master of a ship in which a seafarer is conveyed in accordance with section 9 shall be entitled to payment for the conveyance at a rate not exceeding \$100 per day for every day (including part of a day) on which that seafarer is on board the ship; and payment shall be made to him or to his order by the person specified in subsection (2) upon presentation both of the conveyance order and of an account showing the total amount claimed and how that amount is calculated.

(2) The person by whom payment is to be made to the master in accordance with subsection (1) is the seafarer's employer or, where the conveyance is required by the Superintendent pursuant to his obligation under section 8, the Government.

(Enacted 1995)

Section:	12	Wages of seafarers, employed in ships, who are left behind	30/06/1997
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(1) The wages due under a crew agreement to a seafarer in respect of his employment in a ship in the case of a seafarer left behind in any place shall (except when he leaves the ship on being discharged therefrom and is accordingly entitled to receive his wages and an account thereof under sections 84 and 85 of the Ordinance) be paid to him in full and an account thereof shall be delivered to the seafarer and to the Superintendent by the employer (or the master acting in that behalf) within 28 days from the time when the seafarer was returned to a place ascertained under section 7.

(2) Where the amount shown in the account delivered to a seafarer and the Superintendent pursuant to subsection (1) as being the amount payable is replaced by an increased amount shown in a further account delivered to

the seafarer and to the Superintendent, the balance shall be paid to the seafarer by the employer (or the master acting in that behalf) within the time specified in that subsection.

(3) When the employer's obligation to return a seafarer ceases pursuant to section 4(3), the wages shall be paid and an account thereof delivered to the seafarer and to the Superintendent by the employer within 28 days from the date the obligation ceased and, if the employer does not know of the seafarer's current address, an account thereof and notice that they may be had on application to the employer shall be sent by the employer to the seafarer's last known address and to the Superintendent.

(4) A person who fails, without reasonable excuse, to comply with subsection (1), (2) or (3) commits an offence and is liable on conviction to a fine at level 1.

(Enacted 1995)

Section:	13	Circumstances in which wages to be paid to seafarer's next of kin, etc.		30/06/1997
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Where wages cannot be paid to a seafarer in accordance with section 12 and the seafarer is not known to be dead, then, notwithstanding anything contained in sections 84 and 85 of the Ordinance or this Regulation, the wages shall be paid to the person named in the list of crew as the seafarer's next of kin, and accounts thereof delivered to that person and to the Superintendent as soon as is practicable after the expiration of 4 months from the time for payment specified in that section.

(Enacted 1995)

Section:	14	Other records and accounts		30/06/1997
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(1) The employer of a seafarer and the Superintendent shall each keep records of all expenses respectively incurred and sums respectively paid by them in the discharge of their respective obligations under this Regulation.

(2) Where, in respect of any expense incurred or sum paid by him in discharge of his obligations under this Regulation, the employer of a seafarer makes a deduction authorized by regulations made under section 86(a) of the Ordinance to be made from the wages due to a seafarer under a crew agreement, the employer shall render an account of all such expenses and sums to the seafarer and to the Superintendent or, if the wages are payable by virtue of section 13 to the seafarer's next of kin as named in the list of crew, to that next of kin and to the Superintendent.

(3) An employer who fails to comply with an obligation imposed on him under this section commits an offence and is liable on conviction to a fine at level 2.

(Enacted 1995)

Section:	15	Property of seafarers left behind and of shipwrecked seafarers		30/06/1997
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(1) Subject to subsection (2), this section applies to any property (including money) left on board a ship by a seafarer.

(2) In the case of any such property left on board a ship by a seafarer who has been shipwrecked-

- (a) if the ship is lost, this section shall have no effect; and
- (b) if the ship is not lost, but, as a result of the shipwreck, no person is master of the ship, this section shall have effect as if the duties and powers thereby imposed on the master were instead imposed on the employer and subsections (3)(b) and (5)(a) were omitted.

(3) The master shall-

- (a) take charge of that property; and
- (b) enter in the official log book-
 - (i) a list of all the property so taken into his charge;
 - (ii) in the case of the sale under subsection (4)(a) of any part of the property, a description of each article sold and the sum received for it; and
 - (iii) in the case of the destruction or disposal of any part of the property under subsection (4)(b), a description of each article destroyed or disposed of and the name of any person to whom disposal was made.

(4) The master may at any time-

- (a) sell, by public auction or otherwise, any part of the property which is of a perishable or deteriorating nature; and the proceeds of sale shall form part of the property; and
 - (b) destroy or otherwise dispose of any part of the property which, in his opinion, endangers or is likely to endanger the health or safety of any person on board the ship.
- (5) Subject to subsection (6)-
- (a) the master shall, when directed by the employer, cause the property to be delivered to the employer at an address in the place to which the seafarer is to be returned in accordance with section 7; and
 - (b) the employer shall notify the seafarer or, if the seafarer's wages are payable by virtue of section 13 to his next of kin as named in the list of crew, notify that next of kin, that the property is available for collection, and will be delivered to him, at an address specified by the employer.
- (6) If a seafarer or his next of kin notified under subsection (5)(b) so requests, the employer shall deliver the property to an address specified by the seafarer or next of kin, as the case may be, and the expense of such delivery shall be borne by the person to whom the property is delivered.
- (7) The employer, when delivering the property to a seafarer or his next of kin in accordance with subsection (5)(b) or (6), shall also deliver to the seafarer or his next of kin, as the case may be, a record of all the property delivered and-
- (a) where any property has been sold under subsection (4)(a), a description of each article sold and the sum received for it; and
 - (b) where any property has been destroyed or disposed of under subsection (4)(b), a description of each such article.
- (8) The master of a ship who fails to comply with an obligation imposed on him under-
- (a) subsection (3)(a) or (5)(a) commits an offence and is liable on conviction to a fine at level 2; and
 - (b) subsection (3)(b) commits an offence and is liable on conviction to a fine at level 1.
- (9) An employer who fails to comply with an obligation imposed on him under subsection (5)(b), (6) or (7) commits an offence and is liable on conviction to a fine at level 2.

(Enacted 1995)

Section:	16	Official log book entries	30/06/1997
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All entries in the official log book required to be made by the master of a ship under section 5(3) or 15(3)(b) shall be signed by the master and by a member of the crew.

(Enacted 1995)