

Order on minimum protection of certain categories of persons on board ships

Pursuant to section 70(1) and section 75(2) and (3) of the act on seafarers' conditions of employment, etc. (*lov om søfarendes ansættelsesforhold m.v.*), cf. consolidated act no. 73 of 17 January 2014, as amended by act no. 740 of 1 June 2015, section 3(1)(vi) and (vii), section 16(3) and section 32(8) of the act on safety at sea (*lov om sikkerhed til søs*), cf. consolidated act no. 72 of 17 January 2014, and section 6(3) and section 27(3) of the act on the manning of ships (*lov om skibes besætning*), cf. consolidated act no. 74 of 17 January 2014, and by authority, the following provisions are laid down:

Scope of application

Section 1. The persons mentioned in annex 1 shall not be considered seafarers and are covered by the provisions of this order.

Section 2. This order shall not apply to the persons mentioned in annex 2, cf. however subsection 2.

Subsection 2. Irrespective of the provisions of subsection 1, it may be agreed in writing between the parties that the persons mentioned in annex 2, paragraph 2, are to be covered by the provisions of this order.

Section 3. In case of doubt whether a category of persons shall be considered to be covered by section 1, cf. annex 1, or section 2, cf. annex 2, this issue shall be decided by the Danish Maritime Authority following consultation with the shipowner and seafarer organisations affected by the issue.

Section 4. The annexes mentioned in sections 1 and 2 may be adjusted by the Danish Maritime Authority following a joint approach by the shipowner and seafarer organisations affected or as the Danish Maritime Authority considers necessary. If the annex is adjusted without any previous approach by the organisations affected, the Danish Maritime Authority shall consult these before adjusting the annex.

Minimum age

Section 5. Nobody younger than 16 years of age shall work or perform tasks on board ships.

Complaint procedure

Section 6. As regards the rights that have, pursuant to this order, been bestowed on employees other than seafarers, the persons concerned shall – just like seafarers – be entitled to complain about these rights. Regulations on complaints laid down in pursuance of the act on seafarers' conditions of employment, etc. (*lov om søfarendes ansættelsesforhold m.v.*) shall also apply.

Employment or supplementary agreement

Section 7. The employee shall have a written employment agreement meeting the requirements following from:

- 1) the act on employment agreements (*ansættelsesbevisloven*);
- 2) regulations implementing in another EU/EEA member State Council directive (91/533/EEC) of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship; or
- 3) regulations in force in the place where the person concerned is employed or has his main employment.

Subsection 2. In case no written employment contract has been drawn up as mentioned in subsection 1, the employee shall be entitled to an employment agreement meeting the conditions on the employer's obligation to conclude a written contract with the seafarer on the conditions of employment stipulated pursuant to the act on seafarers' conditions of employment, etc. (*lov om søfarendes ansættelsesforhold m.v.*).

Subsection 3. Furthermore, all employees shall be informed in writing about the minimum rights following from this order as well as on the complaint procedure, cf. section 6.

Minimum rights

Section 8. As regards persons who are not considered seafarers, but who are covered by section 1, the following provisions shall also apply, which have been laid down in or in pursuance of the act on seafarers' conditions of employment, etc. (*lov om søfarendes ansættelsesforhold m.v.*) as well as the act on safety at sea (*lov om sikkerhed til søs*), when the persons concerned are on board:

- 1) The regulations on seafarers' right to hours of rest;
- 2) The regulations on seafarers' right to care;
- 3) The regulations on occupational health on board ships;
- 4) The regulations on the right to a free journey home with subsistence when the journey home takes place immediately after the person concerned has performed tasks on board or has been working on board or from a ship;
- 5) The regulations on the right to retire in case of a risk of war or other ominous situation, in case of pregnancy and maternity/paternity leave as well as when compelling family reasons necessitate this.
- 6) The regulations on compensation for belongings that have gone lost in a shipwreck or other average with the maximum following from section 3(1)(iv) of order no. 130 of 6 February 2013 with any subsequent adjustments unless a higher amount has been agreed.

Section 9. Everybody working or performing tasks on board or from a ship, cf. sections 1 and 2, shall be secured the necessary access to food and drinking water, which shall be free of charge to the employee, cf. section 55 of the act on seafarers' conditions of employment, etc. (*lov om søfarendes ansættelsesforhold m.v.*). The provisions on food in Danish ships stipulated pursuant to the act shall also apply to the quality of the food and drinking water made available.

Section 10. The employer shall ensure that those who work or perform tasks on or from a ship, cf. section 1, are allocated the minimum rights following from sections 6-9. In cases where the employer is a person other than the shipowner, the obligation shall also rest with the shipowner.

Health and qualification requirements

Section 11. The persons mentioned in section 1 shall, prior to the stay on board, be in possession of certificate stating that they have been subjected to a medical examination in pursuance of regulations laid down pursuant to the act on seafarers' conditions of employment, etc. (*lov om søfarendes ansættelsesforhold m.v.*) and the act on the manning of ships (*lov om skibes besætning*) and that they have, in the examination, been found fit for service on board ships.

Subsection 2. Subsection 1 shall not apply to the persons mentioned in annex 1, paragraphs 1 and 2, who merely in exceptional cases perform tasks on or from a ship for a shorter period of time.

Section 12. Persons covered by annex 1 shall have completed basic safety- and security-related instructions meeting the requirements of section A-VI/1, paragraph 1, as well as section A-VI/6, paragraph 1, of the STCW Code.

Subsection 2. Persons covered by annex 1, paragraph 1(a)-(d) and (h)-(j), shall have completed a safety course in accordance with section A-VI/1, paragraph 2, of the STCW Code. However, this shall not apply if the work takes place on board passenger ships or ships approved in accordance with the Special Purpose Ships Code.

Subsection 3. If a cargo ship carries persons who are not engaged in the operation of the ship in a wider sense and who are not passengers, the Danish Maritime Authority may – in connection with the approval of the ship or the renewal of it – make supplementary requirements for the relevant persons' safety- and security-related education and training as well as their participation in the safety work on board, etc. No more than 12 of the categories of persons mentioned in annex 1, paragraph 2, shall be carried on such cargo ships.

Section 13. The Danish Maritime Authority may upon request approve equivalent measures instead of the requirements mentioned in sections 11 and 12.

Penalty provisions

Section 14. To the extent that the provisions to which reference is made and that apply by analogy are subject to punishment, violators of sections 5-9, section 11, section 12 and section 16(2) shall be liable to punishment by fine.

Subsection 2. Companies etc. (legal persons) may be liable to punishment in accordance with the provisions of part 5 of the penal code (*straffeloven*).

Entry into force and interim provisions

Section 15. This order shall enter into force on 1 July 2017.

Section 16. The provision of section 1 shall apply to conditions of employment agreed after the entry into force of the order.

Subsection 2. If the employment concerning the categories of persons mentioned in annex 1 has been concluded before the entry into force of the order, the persons concerned shall – no later than by 1 October 2017 – be secured the rights following from sections 5-10. Section 3, section 10 and sections 12-14 shall also apply to these conditions of employment from this date.

Subsection 3. However, section 11 shall not apply until 1 January 2018.

Danish Maritime Authority, 8 June 2017
Rasmus Høy Thomsen / Anders Fredrik Mihle

Categories of persons covered by section 1

1. The following persons shall be covered by section 1 when they do not perform work on board a ship that is of importance to the operation of the ship in a wider sense if they are, via their shore-based conditions of employment, secured in accordance with regulations, collective agreements or individual contracts at a level corresponding to the level of protection stipulated in the act on seafarers' conditions of employment, etc. (*lov om søfarendes ansættelsesforhold m.v.*) and orders issued in pursuance hereof:
 - 1) Offshore specialists, including:
 - a) Wind turbine fitters, wind turbine repairmen and wind turbine technicians, including on day-time voyages.
 - b) Surveyors and survey teams.
 - c) ROV operators.
 - d) Cable trenchers.
 - e) Customer representatives.
 - f) Marine warranty surveyors.
 - g) Insurance representatives.
 - h) Tow masters.
 - i) Special positioning technicians.
 - j) Divers.
 - 2) Journalists, researchers and similar groups of personnel.
 - 3) Medical teams.
 - 4) Maritime accident investigation teams.

2. The following categories of persons shall be covered by section 1 if they only occasionally perform tasks on board or from ships for a shorter period of time:
 - 1) Company, operational and ship surveyors and other supernumerary company employees.
 - 2) Super cargo and salvage surveyors.
 - 3) Supernumerary workmen, sales consultants, equipment and service technicians and other repairmen solving a specific task, testers.
 - 4) Journalists, researchers and similar groups of personnel.

Categories of persons covered by section 2

1. The following categories of persons, who are considered seafarers, shall be covered by section 2:
 - 1) Persons forming part of the ship's operational crew.
 - 2) Persons who have tasks in the ship's emergency preparedness.
 - 3) Persons who perform tasks related to the ship's general operation in a wide sense, including painting and repair teams, permanent servicing personnel on passenger ships, such as hairdressers, casino staff, orchestras, etc.

2. Furthermore, the following groups of persons shall be covered by section 2:
 - 1) Apprentices whose practical training does not take place as a part of the employment contract.
 - 2) Guest artists.
 - 3) Pilots, pilot trainees.
 - 4) Surveyors, i.e. ship surveyors, operational surveyors and company surveyors who merely perform inspection tasks as well as surveyors from public authorities or classification societies.