

# Maritime Labour Act<sup>1</sup> (*Seearbeitsgesetz – SeeArbG*<sup>2</sup>)

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## **Part 1**

### **General provisions**

#### Section 1

##### **Scope**

(1) The present Act regulates the working and living conditions of seafarers on board merchant vessels flying the German flag. It shall not apply to recreational craft used on a commercial basis which are less than 24 meters long if no more than two persons are employed on them.

(2) The labour regulations that are applicable in inland water transport shall apply to employees on board a vessel which

1. does not leave, or is not intended to leave, the waterways of zones 1 and 2 in accordance with Annex I of the Inland Waterway Vessel Inspection Code (*Binnenschiffsuntersuchungsordnung*) of 6 December 2008 (Federal Law Gazette [BGBl.] Part I p. 2450), in the respectively valid version, seawards, or
2. may only leave the waterways designated in Number 1 seawards on the basis of a special permit under the law on ship safety.

(3) Sections 139 to 141 shall apply to seafarers on ships flying a foreign flag, and sections 137 and 138 shall apply to ships flying a foreign flag.

#### Section 2

##### **Definitions**

Within the meaning of the present Act, and unless expressly provided otherwise,

1. the Maritime Labour Convention shall be the Maritime Labour Convention, 2006, of the International Labour Organization of 23 February 2006 (Federal Law Gazette [BGBl.] 2013 Part II p. 763, 765) ,
2. the STCW Convention shall be the International Convention of 7 July 1978 on Standards of Training, Certification and Watchkeeping for Seafarers (Federal Law Gazette [BGBl.] 1982 Part II p. 297) in the respectively valid version,
3. a ship flying a foreign flag shall be a ship under another flag than the German flag which is used in commercial maritime transport,
4. the Occupational Accident Insurance Fund shall be the Social Accident Insurance Institution for Commercial Transport, Postal Logistics and Telecommunication (*Berufsgenossenschaft Verkehrswirtschaft Post-Logistik Telekommunikation*),
5. the Maritime Medical Service of the Occupational Accident Insurance Fund shall be a dependent working unit of the Occupational Accident Insurance Fund that is staffed with doctors carrying out maritime medical tasks,
6. hours of work shall be the hours during which a crew member must carry out work,
7. hours of rest shall be the hours outside of the hours of work, this term not including brief interruptions of work (rest breaks) in accordance with section 45 subs. 2 and section 53 subs. 5,
8. public holidays shall be, in Germany, the statutory public holidays of the berthing location, and abroad and at sea the public holidays of the port of registration of the ship,



9. service staff shall be crew members who work in food and catering, care, entertainment or nursing of other crew members or of passengers or who work as salespersons on the ship,
10. recognized organization shall be an organization that is recognized in accordance with section 135.

### Section 3

#### **Crew members**

(1) Seafarers within the meaning of the present Act shall be all persons working on board the ship, regardless of whether they are employed by the shipowner or by another person or are self-employed, including those employed for the purpose of their vocational training (crew members).

(2) The provisions contained in Part 4 on vocational training on board shall apply to those employed for their vocational training. Unless especially regulated by the provisions contained in Part 4, the provisions contained in the present Act shall be applicable in all other respects with the proviso that the "seafarer's employment agreement" shall be replaced by the "vocational training agreement", "engagement" shall be replaced by "vocational training agreement" and "wages" shall be replaced by "remuneration". Sentences 1 and 2 shall apply accordingly to interns and other persons who are employed in order to obtain vocational knowledge and skills, abilities or vocational experience without this constituting vocational training.

(3) The following persons shall not be deemed to be seafarers within the meaning of subs. 1

1. pilots, as well as persons carrying out advisory or inspection activities on board on behalf of the Federal Government, of a Federal State or of another public-law corporation,
2. persons who work on board on behalf of a shipyard or of a systems manufacturer as a rule for no longer than 96 hours in order to implement warranty or guarantee work or other work necessary on board or to give instructions to the crew,
3. persons who work on board as a rule for no longer than 96 hours in order to carry out repairs or maintenance work which is urgently needed and which cannot or may not be carried out by the crew members themselves,
4. shipowners' superintendents and cargo inspectors who, on the basis of the itinerary, are not to work on board for more than 72 hours as a rule,
5. artists who work on board for the entertainment of the passengers for no more than 72 hours,
6. scientists who work on board ships temporarily,
7. persons who are on a ship in order to carry out special activities from there in order to construct, alter or operate structures, artificial islands or other systems at sea,
8. students at technical schools or students at universities or universities of applied sciences undergoing training at training facilities established in accordance with Federal State law and undergoing practical training and sea-service experience on a ship for this purpose,
9. pupils who are serving an internship on board within the provisions of Federal State law,
10. pupils who, through the mediation of the German Shipowners' Association, are granted an insight into the practice of seafaring professions during the school holidays on a contractual basis without such persons working on board,

11. helmsmen on the Kiel Canal, and
12. security staff of private security companies licensed in accordance with the Trade Regulation Act (*Gewerbeordnung*).

Deviating from sentence 1 Number 2 or 3, the Occupational Accident Insurance Fund shall permit, on request of the other employer or of the shipowner, that a person belonging to these groups of individuals may work on board beyond the period of time designated therein without being a crew member, provided that

1. the activity is carried out or is to be carried out on a specific voyage of the ship,
2. an activity on board is necessary beyond the period of time designated in sentence 1 Number 2 or 3 in order to perform a specific task which cannot or may not be performed by the crew members working on board in accordance with the provisions under the law on ship safety, and
3. the intended deployment does not exceed three weeks.

The permit shall be restricted to the period likely to be necessary for the activity, which may not exceed three weeks. A copy of the permit shall be kept on board.

(4) Section 10, as well as sections 120 to 126, shall apply to the groups of persons designated in subs. 3 sentence 1, as shall the legal ordinances enacted on the basis of these provisions. In addition to the provisions designated in sentence 1, sections 11 to 20, 42 to 55, 73 to 80, 93 to 113, 117, 118, 127 and 128 shall apply to the groups of persons designated in subs. 3 sentence 1 Numbers 8, 9 and 10, as shall the legal ordinances enacted on the basis of these provisions. In addition to the provisions designated in sentence 1, sections 11 to 20 and 36 shall apply to the group of persons designated in subs. 3 sentence 1 Number 11, as shall the legal ordinances enacted on the basis of these provisions. In addition to the provisions designated in sentence 1, sections 11 to 20 shall apply to the groups of persons designated in subs. 3 sentence 1 Number 12, as shall the legal ordinances enacted on the basis of these provisions. The shipowner shall ensure that the groups of individuals designated in subs. 3 sentence 1 Numbers 6 to 10 and 12 receive instruction regarding the statutory occupational safety and health regulations, as well as the mandatory safety training. The shipowner shall ensure that the group of individuals designated in subs. 3 sentence 1 Number 10 is insured against accidents in the statutory accident insurance.

(5) The name and purpose, as well as the beginning and end of the period spent on board by persons who are not crew members in accordance with subs. 3 and are not passengers shall be noted in the logbook without delay.

#### Section 4

#### **Shipowners**

(1) The following shall be deemed to be a shipowner within the meaning of the present Act

1. the owner of the ship, or
2. any other organisation or person having assumed the responsibility for the operation of the ship from the owner of the ship and having undertaken, on assuming this responsibility in the contract with the owner, to carry out the tasks and obligations which are imposed on the shipowner in accordance with the present Act and with the other legal provisions for the implementation of the Maritime Labour Convention.

(2) The shipowner shall be responsible for adherence to the rights and obligations in accordance with the present Act and with the other legal provisions for the implementation of the Maritime Labour Convention. This shall also apply if

1. another organisation or person performs specific tasks and obligations on behalf of the shipowner, or
2. another organisation or person is the employer or trainer of a crew member (other employer).

(3) Independently of the responsibility of the shipowner in accordance with subs. 2, the other employer shall also be responsible for adherence to the rights and obligations of the shipowner in accordance with the present Act and with the other legal provisions for the implementation of the Maritime Labour Convention. The shipowner shall ensure the exercise of his/her responsibility in accordance with subs. 2 by way of a agreement concluded with the other employer stating that the other employer performs the tasks and obligations incumbent on him/her towards the crew member in accordance with sentence 1.

(4) The shipowner shall also be liable for payment obligations of the other employer resulting from the engagement or the vocational training relationship; the provisions on the guarantor who has waived benefit of execution shall apply in this respect. The liability of the shipowner for the obligation to pay wages or remuneration shall cover the customary remuneration unless a derogating claim emerges from a copy of the seafarers' employment agreement or the vocational training agreement signed by the shipowner.

(5) The labour courts shall have exclusive jurisdiction for civil disputes between employees or apprentices and shipowners about claims based on the responsibility of the shipowner in accordance with subs. 2 sentence 1, read in conjunction with subs. 2 sentence 2 Number 2 or subs. 4.

## Section 5

### **Masters and deputies**

(1) The master shall be the crew member appointed by the shipowner to command the ship.

(2) The master must hold a state certificate of competency which entitles him/her to command the ship.

(3) If no master is available, or if he/she is unable to attend, the First Officer of the deck department or the sole mate shall perform the duties and powers of the master.

## Section 6

### **Ships' officers**

Ships' officers shall be deemed to be crew members from the nautical or technical department, who shall require a state certificate of competency, as well as the ships' medical doctors, radio operators and electrical engineers and pursers.

## Section 7

### **Young crew members**

Young crew members are crew members who have not reached the age of 18.

## Section 8

### **Data protection**

(1) The shipowner and the master shall ensure that seafarers' employment agreements, payslips, certificates of medical fitness for sea service, medical files, as well

as all other documents containing personal data, are stored on board in such a way that no unauthorised third person can gain knowledge of them.

(2) The shipowner shall ensure that the crew members' personal data are only transmitted to the person for whom the data are intended for official or private purposes. The transmission of personal data, in particular copies of seafarers' employment agreements, to the master on board a ship shall be permissible.

## Section 9

### **Derogating agreements**

It shall only be possible to derogate from the provisions contained in the present Act to the disadvantage of the crew member if this is laid down by law. The minimum requirements concerning the working and living conditions of the Maritime Labour Convention within the meaning of Articles III, IV and VI Number 1 sentence 1 shall also be complied with if a derogating choice of the applicable legislation has been made.

## **Part 2**

### **Minimum requirements for work of crew members on ships**

#### Chapter 1

#### Minimum age

#### Section 10

#### **Minimum age of the crew member**

(1) Persons below the age of 16 or persons subject to compulsory full time schooling may not be employed or permitted to work as crew members on ships by the shipowner.

(2) Persons below the age of 18 may not work as ship's cooks.

(3) Derogating from subs. 1, persons aged above 15 who are no longer subject to compulsory full time schooling may be employed on fishing vessels for the purpose of vocational training.

#### Chapter 2

#### Medical fitness for sea service

#### Section 11

#### **Requirement of medical fitness for sea service**

Only those persons may work as crew members who are able in terms of their health to carry out the activity at sea which they are to carry out (medically fit for sea service). Persons shall be deemed medically fit for sea service who in terms of their state of health are suited and sufficiently resilient for the activity on board ships and meet the particular requirements of their department with regard to maintaining ship safety. A shipowner may only permit a crew member to work if he/she is medically fit for sea service.

## Section 12

**German Medical Certificate**

(1) The crew member shall document his/her medical fitness for sea service prior to taking up his/her activity through a certificate issued by an authorised physician (German Medical Certificate). The shipowner may not employ a crew member on ships without a valid certificate of medical fitness for sea service.

(2) Prior to each examination of medical fitness for service at sea, the authorised physician shall ascertain the identity of the person to be examined and shall inspect data from the register of medical fitness for sea service collected for the person in accordance with section 19 subs. 6. He/she may only carry out an examination of medical fitness for sea service, and may only issue a German Medical Certificate if no blocking notice has been entered in the register of medical fitness for sea service.

(3) The authorised physician may only certify medical fitness for sea service if he/she has ascertained medical fitness for sea service on the basis of a medical examination. On the basis of an examination carried out by a doctor of the Maritime Medical Service of the Occupational Accident Insurance Fund, the German Medical Certificate can also be issued by the latter insofar as this is determined in the present Act or on the basis of the present Act.

(4) Each examination of medical fitness for sea service, as well as each issuance of a German Medical Certificate, shall be reported electronically to the Occupational Accident Insurance Fund by the authorised physician without delay on conclusion of the examination for the purpose of entry in the register of medical fitness for sea service in accordance with sentence 2. The report shall include the data designated in section 19 subs. 3 Numbers 1 to 7 and 9 to 16.

(5) The period of validity of the German Medical Certificate shall be two years, and one year for young crew members. In derogation of sentence 1, the authorised physician or the doctor of the Maritime Medical Service can order a shorter period of validity of the German Medical Certificate if

1. in accordance with the examination result, medical fitness for sea service is only foreseeable until this time,
2. only a temporary activity is to be carried out, or
3. a shorter period of validity is appropriate by reason of the specific duties to be performed on board.

(6) If the period of validity of a German Medical Certificate expires in the course of a voyage, it shall remain in force until the next port of call is reached where the crew member can obtain a medical certificate from a qualified medical practitioner, provided that the period does not exceed three months.

(7) A certificate of medical fitness for sea service issued by the competent agency of another state shall be equivalent to a German Medical Certificate in accordance with subs. 1 if the certificate meets the requirements of the STCW Convention.

## Section 13

**Refusal to ascertain medical fitness for sea service, findings by the Occupational Accident Insurance Fund**

(1) If a person has been refused a German Medical Certificate by an authorised physician on examination because of a lack of medical fitness for sea service, or if the authorised physician has imposed a restriction on his/her medical fitness for sea service in particular with respect to time, field of work or trading area, this person shall be given the opportunity to have this decision reviewed on request by the Occupational Accident

Insurance Fund. The Occupational Accident Insurance Fund shall have the decision of the authorised physician reviewed by the doctors of the Maritime Medical Service of the Occupational Accident Insurance Fund

1. according to the files on record on the basis of the results of previous medical examinations or of other medical findings,
2. on the basis of an examination by a doctor of the Maritime Medical Service of the Occupational Accident Insurance Fund, or
3. on the basis of an expert report provided by a medical specialist.

In individual cases, the Occupational Accident Insurance Fund shall be empowered to request the examination results of this person from the doctor who carried out the previous examination.

(2) If the review reveals that the person is medically fit for sea service, the Occupational Accident Insurance Fund shall issue a certificate of medical fitness for sea service.

(3) If it is found on the basis of the examination that the person examined is not medically fit for sea service, or only to a restricted degree, the Occupational Accident Insurance Fund shall issue an official notice to this effect. An objection and an action for annulment against a notice in accordance with sentence 1 shall not have a suspensory effect.

#### Section 14

##### **Powers of the Occupational Accident Insurance Fund to issue orders**

(1) Insofar as it is necessary in order to

1. avoid multiple examinations,
2. take account of the need for a special medical assessment,
3. monitor the work of the authorized physicians,

the Occupational Accident Insurance Fund may order with regard to a person who is to be examined that an examination of medical fitness for sea service be carried out exclusively by doctors of the Maritime Medical Service of the Occupational Accident Insurance Fund and that the certificate of medical fitness for sea service be issued by the latter. The order shall additionally be registered as a blocking notice in the register of medical fitness for sea service.

(2) If the Occupational Accident Insurance Fund has reason to presume that a crew member no longer satisfies the requirements as to medical fitness for sea service, it may order that the crew member must undergo an examination by a doctor of the Maritime Medical Service of the Occupational Accident Insurance Fund within a specific period. In addition to the examination in accordance with sentence 1, the Occupational Accident Insurance Fund may consult an expert report by a specialist doctor. In individual cases, it shall be empowered to request examination results on this crew member from the doctor who carried out the previous examination. A reason within the meaning of sentence 1 is always given in cases falling under section 17 subs. 2.

(3) If the examination ordered in accordance with subs. 2 sentence 1 reveals that the crew member is no longer medically fit for sea service, or if the deadline designated in subs. 2 sentence 1 is not adhered to, the Occupational Accident Insurance Fund shall declare the certificate of medical fitness for sea service to be invalid. If there is considerable doubt as to medical fitness for sea service in cases falling under subs. 2 sentence 1, the Occupational Accident Insurance Fund may already declare the certificate of medical fitness for sea service to be provisionally invalid when issuing an order in accordance with subs. 2

sentence 1. The shipowner and the master shall be informed without delay by the Occupational Accident Insurance Fund of declarations in accordance with sentence 1 or 2. A certificate of medical fitness for sea service that has been declared invalid or provisionally invalid shall be confiscated by the Occupational Accident Insurance Fund. During the time of employment on a ship, the master shall forward the confiscated certificate of medical fitness for sea service to the Occupational Accident Insurance Fund on request, otherwise the crew member shall do so. The certificate shall be destroyed when the decision on the invalidity of the certificate of medical fitness for sea service is incontestable.

(4) In the event of a certificate of medical fitness for sea service that is equivalent in accordance with section 12 subs. 7, subs. 2 and 3 shall apply accordingly with the modification that the declaration of the invalidity of the certificate of medical fitness for sea service shall be replaced by the order that the crew member may not work on a ship flying the German flag; the order shall be noted in the certificate of medical fitness for sea service.

(5) An objection or action for annulment against orders in accordance with subs. 2 and 3, also read in conjunction with subs. 4, shall not have any suspensory effect.

## Section 15

### **Administrative Appeal Proceedings**

(1) The ruling on the objection in accordance with section 73 of the Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung*) shall be issued by the objection committee.

(2) The objection committee shall be formed at the Occupational Accident Insurance Fund, and shall consist of a staff member of the Occupational Accident Insurance Fund, who must have qualification for judicial office or for the higher administrative service, as chairperson, as well as of two associates, one of whom must be a doctor in the Maritime Medical Service of the Occupational Accident Insurance Fund and the other from the occupational group of the appellant. The objection committee shall rule with the majority of its members. Sections 63 to 69, 71, 89 and 90 of the Administrative Procedure Act (*Verwaltungsverfahrensgesetz*) shall apply to the proceedings before the objection committee in other respects.

(3) In the objection proceedings, the appellant shall, where ordered by the Occupational Accident Insurance Fund or at his/her own request, be examined by a specially-appointed expert who has particular expertise as to the health issues that are to be assessed.

(4) The objection proceedings shall be free of charge. Section 80 of the Administrative Procedure Act shall apply with the modification that the costs of the proceedings may only be imposed on the appellant insofar as the objection was unsuccessful due to grossly negligent conduct on the part of the appellant.

## Section 16

### **Authorization of physicians**

(1) A physician shall be authorized by the Occupational Accident Insurance Fund for the ascertainment of medical fitness for sea service if she or he

1. has the specialist knowledge necessary for the examination and the ascertainment of medical fitness for sea service, and
2. is independent and reliable, and hence guarantees proper performance of the tasks.

The data referred to in section 19 subs. 3 Number 8 shall be stated in the application for authorization. Subsequent changes to the data shall be reported without delay. The Occupational Accident Insurance Fund shall publish the authorization in the Transport

Gazette (*Verkehrsblatt*) and on its website, stating the name, address and telephone number.

(2) The authorization shall be limited to three years, first authorizations to one year. Auxiliary provisions may be added to the authorization, also subsequently.

(3) The authorization shall be withdrawn if the doctor has obtained the authorization

1. by fraudulent misrepresentation, threat or bribery, or
2. with intent or gross negligence by providing information that was incorrect or incomplete in an essential respect.

The authorization shall be revoked if the doctor no longer has the necessary specialist knowledge, the necessary independence or the necessary reliability. Sections 48 and 49 of the Administrative Procedure Act shall remain unaffected in other respects. In place of withdrawal or revocation until the reasons for withdrawal or revocation have been remedied, the Occupational Accident Insurance Fund may, also in cases coming under sentences 1 and 2, order the suspension of the authorization for a specific period insofar as it can be anticipated that the reasons for withdrawal or revocation will be eliminated within the period set.

## Section 17

### Monitoring of physicians

(1) An authorized physician shall be subject to monitoring by the Occupational Accident Insurance Fund. Over and above the powers laid down in section 143, doctors of the Maritime Medical Service of the Occupational Accident Insurance Fund may

1. require that the Occupational Accident Insurance Fund be provided with medical results and the certificates of medical fitness for sea service based on these in such a manner that it is not possible to attribute them to the person examined,
2. demand to be informed of the examinations carried out and the certificates of medical fitness for sea service issued,
3. order attendance at examinations insofar as the person to be examined has consented to this prior to the examination.

The doctors of the Maritime Medical Service of the Occupational Accident Insurance Fund shall be obliged to observe confidentiality with regard to the facts and other information which have come to their notice when exercising their powers in accordance with sentence 2 to the same degree as the monitored doctor. Where the data designated in sentence 2 Number 2 are stored in electronic form, they shall be printed out at the request of the Occupational Accident Insurance Fund. The Occupational Accident Insurance Fund shall return to the authorized physician, or destroy, all documents which contain personal data, in particular medical data, and of which it has become aware contrary to sentence 2 Number 1. Any data which it has already stored shall be deleted.

(2) If the Occupational Accident Insurance Fund establishes in the course of monitoring in accordance with subs. 1 that an evidently unsuitable applicant has been issued with a certificate of medical fitness for sea service and it is necessary in order to avert considerable disadvantages for the common welfare or another danger directly threatening public safety, the authorized physician shall enable the Occupational Accident Insurance Fund on request in an individual case to attribute the data to the person of the applicant in order to be able to take the necessary measures for danger prevention towards the holder of this certificate of medical fitness for sea service.

(3) The authorized physician shall tolerate the measures in accordance with subs. 1 sentence 2 and subs. 2.



(4) Where necessary in the context of issuing authorization to physicians, the doctors of the Maritime Medical Service of the Occupational Accident Insurance Fund may carry out examinations for medical fitness for sea service and issue certificates of medical fitness for sea service. During these examinations, the physicians to be trained shall be entitled to attend the examinations insofar as the person to be examined has consented prior to the examination. Subs. 1 sentence 3 shall apply accordingly to the physicians to be trained.

## Section 18

### **Payment of the examination costs**

(1) The Occupational Accident Insurance Fund shall pay the costs of the examinations designated in sections 12 and 13 if

1. the person to be examined is in an engagement with a member of the Occupational Accident Insurance Fund,
2. the person to be examined enters into an engagement within the meaning of Number 1, or
3. a member of the Occupational Accident Insurance Fund has requested the examination.

The Occupational Accident Insurance Fund may allocate the costs which it has paid in accordance with sentence 1 to its members in accordance with a more detailed provision of its statutes.

(2) Where the prerequisites of subs. 1 do not apply, the obligation to pay the costs shall be incumbent on anyone who has undertaken to pay them through a declaration made at the Occupational Accident Insurance Fund, or a notification communicated to it, or who applied for the examination.

(3) The costs of the examinations for young crew members shall be refunded by the Federation to the Occupational Accident Insurance Fund.

## Section 19

### **Register of medical fitness for sea service**

(1) The Occupational Accident Insurance Fund shall keep a register of all examinations of medical fitness for sea service that have been carried out (register of medical fitness for sea service).

(2) The register of medical fitness for sea service shall be kept in order to store data with the purpose of

1. guaranteeing the implementation of examinations of medical fitness for sea service and the issuance of the medical certificates,
2. ensuring the monitoring of the work of the authorised physicians,
3. guaranteeing the settlement of accounts with the authorized physicians in respect of examinations of medical fitness for sea service,
4. avoiding multiple examinations of medical fitness for sea service being carried out by different authorised physicians,
5. establishing the authenticity and validity of medical certificates,
6. facilitating statistical or scientific evaluations in an anonymised form.

(3) The register of medical fitness for sea service shall store the following insofar as this is necessary for the purposes designated in subs. 2:

1. surname, forename, sex,

2. date of birth,
3. place and country of birth,
4. nationality,
5. address and telecommunication data,
6. function or capacity on board,
7. name of a physician applying for authorization or of the authorized physician,
8. address, telecommunication data, age, qualification, bank account details, access data to the register, date of authorization of a physician applying for authorization or of the authorized physician, as well as names and addresses of the practice staff, of the deputy physicians and of the medical consultants of the examining authorized physician,
9. medical case examples in anonymised form,
10. examination date(s),
11. conclusion of the examination and date of conclusion,
12. institution meeting the costs of the examination of medical fitness for sea service,
13. medical fitness for sea service for certain departments,
14. period of validity of the certificate of medical fitness for sea service,
15. number of the certificate of medical fitness for sea service,
16. diagnosis groups in anonymised form,
17. blocking notices of the Occupational Accident Insurance Fund.

(4) Anyone applying for an examination of medical fitness for sea service shall submit proof of identity to the authorized physician, as well as the data listed in subs. 3 Numbers 1 to 6, and shall prove them on request.

(5) For the purpose of subs. 2 Numbers 1 to 6, data in accordance with subs. 3 may be processed and used by the Occupational Accident Insurance Fund.

(6) For the purpose of subs. 2 Numbers 1 and 4, data in accordance with subs. 3 Numbers 1, 2, 5, 15 and 17 may be transmitted to the authorized physicians and used by them insofar as this is necessary to carry out the tasks that are incumbent on them. In the first examination of medical fitness for sea service of a crew member, an authorized physician may collect data in accordance with subs. 3 Numbers 1 to 6 and 10 to 16. In a follow-up examination, an authorized physician may store data in accordance with subs. 3 Numbers 6, 10 and 12 to 16, as well as modify data in accordance with subs. 3 Numbers 1, 4, 5 and 6.

(7) For the purpose of subs. 2 Number 5, data in accordance with subs. 3 Numbers 1, 2, 13 to 15 may be transmitted to the Federal Maritime and Hydrographic Agency and used by the latter insofar as this is necessary for the performance of the tasks incumbent on it.

(8) For the purpose of subs. 2 Number 5, data in accordance with subs. 3 Numbers 1, 2, 14 and 15 may be transmitted on request to enterprises, competent authorities of other states or international or European organisations and used by them insofar as this is necessary for the performance of the tasks incumbent on them. If data are transmitted to a foreign public body or to an international or European organisation, the recipient shall be notified that the data transmitted may only be processed and used for the purpose for which they are transmitted. Transmission shall not be carried out if legitimate interests of the persons concerned are impaired thereby, in particular if a suitable data protection standard at the recipient is not guaranteed.

(9) For the purpose of subs. 2 Number 6, data in accordance with subs. 3 Numbers 2 to 4, 6, 9, 10, 13 and 16 may be transmitted in anonymised form to institutions carrying out scientific research, as well as to public bodies.

(10) The personal data stored in accordance with subs. 3 and transmitted in accordance with subs. 4 to 8 shall be deleted insofar as they are no longer necessary for the tasks in accordance with subs. 2, but at the latest ten years after the date on which the last event occurred which led to the storage of the data. If a doctor's application for authorization is refused, the data in accordance with subs. 3 Number 8 shall be deleted without delay when the decision on the application becomes incontestable.

(11) The crew member or the authorized physician shall, on request, be provided in writing with information free of charge on the content of the register of medical fitness for sea service that relates to them. The applicant shall enclose a proof of identity with the application.

## Section 20

### Legal ordinances

(1) The Federal Ministry of Transport and Digital Infrastructure is herewith empowered to regulate, in agreement with the Federal Ministry of Labour and Social Affairs, by means of a legal ordinance without the consent of the Bundesrat

1. the detailed requirements as to medical fitness for sea service, including the necessary follow-up examinations by the Occupational Accident Insurance Fund,
2. the execution of the required examinations,
3. the design of the certificate of medical fitness for sea service,
4. prerequisites for the authorization of the physicians, in particular the requirements as to their qualification and personal aptitude, as well as the necessary certificates,
5. the need of further training of the authorized physicians,
6. details of the collection, processing and use of the data from the register of medical fitness for sea service,

as well as the respective proceedings. Provisions can be handed down in legal ordinances in accordance with sentence 1 Number 4 or 5 on verifying the expertise, including provisions on the conduct and content of the examination, the evaluation of performance and the composition of the examination committee. Legal ordinances in accordance with sentence 1 Number 6 can provide that the respective data that are to be transmitted to the respective recipients can be transmitted to them by means of retrieval from an automatic procedure or can be entered by them directly, insofar as

1. measures are taken which correspond to the respective state of the art to ensure data protection and data security, in particular for the protection of confidentiality and integrity of the data,
2. encoding procedures are applied where generally-accessible networks are used, and
3. the permissibility of the direct submission or the retrievals is controlled.

(2) Legal ordinances in accordance with subs. 1 shall require the agreement of the Federal Ministry of Food and Agriculture where they relate to sea fishing.

## Chapter 3

## Manning levels, crew list, qualifications

## Section 21

**Ships' manning levels**

The shipowner and the master shall, without prejudice to the provisions contained in the Ship Safety Act (*Schiffssicherheitsgesetz*), procure a crew that is adequate in terms of size, qualification and fitness to ensure a safe, efficient and secure operation of the ship under all operating conditions. The details may be regulated in a legal ordinance in accordance with section 9 subs. 1 Number 3 of the Federal Maritime Responsibilities Act (*Seeaufgabengesetz*).

## Section 22

**Crew list**

(1) On ships in international voyages, the master shall be obliged to draw up and carry on board a crew list which reflects the complete status of the composition of the crew at all times, stating the crew members' forenames and surnames, dates and places of birth, nationalities, identity card numbers and functions on board or capacities. The crew list must correspond to the model published by the Occupational Accident Insurance Fund in the Transport Gazette or Federal Gazette.

(2) On ships in national voyages, the master shall be obliged either to draw up and carry on board a crew list in accordance with subs. 1 or to enter the composition of the crew in the logbook in accordance with subs. 1 sentence 1.

(3) The shipowner shall be obliged to keep the crew lists and the logbooks for the respective ship for at least five years. The period shall commence for crew lists from the date on which they are issued, and for logbooks from the date of the last entry. Storage periods in accordance with other legal provisions shall remain unaffected thereby.

(4) The Occupational Accident Insurance Fund may require of the master and the shipowner at any time that

1. the crew list,
2. a copy of the crew list, or
3. an excerpt from the logbook reflecting the crew of the ship

be submitted or transmitted for the purpose of verifying the maintenance of safe manning under the applicable provisions. The master and the shipowner shall be obliged to comply with the request in accordance with sentence 1 without delay.

## Section 23

**Certificates and documents of competency, safety training**

Only persons holding certificates of competency, certificates of proficiency or other evidence of qualification in accordance with the provisions of maritime transport regulations may work as a crew member. The master shall ensure that crew members receive safety training on board with the content prescribed in Regulation VI/1 of the Annex to the STCW Convention.

Chapter 4  
Placement

Section 24

**Obligations of the shipowner**

(1) A shipowner may only use a private placement service for seafarers (placement agent) domiciled in Germany for placing seafarers if the placement agent has submitted to him/her a written statement from the Occupational Accident Insurance Fund that the placement agent meets the requirements of section 25.

(2) Prior to conclusion of a placement agreement, the shipowner shall confirm in writing to a placement agent domiciled in Germany that

1. the seafarer's employment agreement to be concluded meets the requirements of sections 28 and 29,
2. the shipowner meets his obligations in accordance with sections 73 to 76, and
3. the shipowner has obtained insurance coverage in order to compensate persons who have been placed on board a ship for financial losses incurred due to a violation of duty under the employment agreement for which the shipowner is responsible.

(3) A shipowner may only use a placement agent domiciled in states which have not ratified the Maritime Labour Convention for placing seafarers if the placement agent has assured the shipowner in writing that it complies with the provisions for recruitment and placement in accordance with Regulation 1.4 of the Maritime Labour Convention.

Section 25

**Requirements for placement agents**

(1) A placement agent may only place persons who are to work on board a ship if it

1. does not use any means, procedures or lists in order to prevent them from taking up employment matching their qualification,
2. does not demand from them, neither directly nor indirectly, payment for the placement,
3. requires, prior to the placement, that they submit all documents that are necessary for the activity in which they are to be placed,
4. keeps a continually updated list of all recruited or placed persons,
5. has established a complaint management system and always keeps this up to date, as well as informs the Occupational Accident Insurance Fund of unresolved complaints without delay,
6. receives from each shipowner prior to conclusion of a placement a confirmation in accordance with section 24 subs. 2,
7. receives from each shipowner who operates ships flying a foreign flag, prior to conclusion of a placement, written confirmation that the employment agreement that is to be concluded complies with the requirements stipulated in the Maritime Labour Convention,
8. has obtained insurance coverage in order to compensate persons who have been placed on board a ship for financial losses incurred by them as a result of a violation of duty for which the shipowner is responsible.

(2) Sections 296 to 301 of the Third Book of the Social Code (*Drittes Buch Sozialgesetzbuch*) shall remain unaffected.

## Section 26

**Procedure**

(1) On written application by a placement agent, the Occupational Accident Insurance Fund shall issue a certificate of compliance with the requirements of section 25 subs. 1 if there are no indications that the placement agent will not satisfy the requirements. In its application, the placement agent shall provide the Occupational Accident Insurance Fund with all information necessary for the assessment of the prerequisite according to sentence 1. If, on the basis of facts which are known to it, the Occupational Accident Insurance Fund has doubts as to the correctness of the information provided by the applicant, it may hear the associations of shipowners and seafarers prior to issuing the certificate in accordance with sentence 1. In doing so, the Occupational Accident Insurance Fund shall also take account of complaints that have come to its attention.

(2) The certificate in accordance with subs. 1 sentence 1 shall be issued for a period of three years.

(3) Anyone who places persons who are to work on board a ship shall require the certificate in accordance with subs. 1.

(4) The Occupational Accident Insurance Fund should by suitable means make the public aware of problems, without revealing personal data, which may arise when signing on on a ship which flies the flag of a state that has not ratified the Maritime Labour Convention.

## Section 27

**Legal ordinances**

The Federal Ministry of Labour and Social Affairs is herewith empowered to regulate, in agreement with the Federal Ministry of Transport and Digital Infrastructure, by means of a legal ordinance without the consent of the Bundesrat details of the procedure for the application and for the issuance of the certificate in accordance with section 26 subs. 1.

**Part 3****Conditions of employment**

## Chapter 1

## Seafarer's employment agreement, duty of service

## Section 28

**Seafarer's employment agreement**

(1) The shipowner may employ a crew member only on the basis of a valid seafarer's employment agreement. The seafarer's employment agreement serves to establish an engagement between the shipowner and the crew member. The shipowner shall hand over or transmit to the crew member, in sufficient time prior to the intended conclusion of the agreement, a draft of the agreement, including the collective bargaining agreements, company agreements or shipboard agreements to be referred to in accordance with subs. 2 Number 11. The seafarer's employment agreement shall require the written form; electronic form shall be ruled out. The shipowner and the crew member shall receive one copy each of the seafarer's employment agreement which they have signed.

(2) The seafarer's employment agreement shall include the essential contents of the engagement, in particular:

1. the full name and address of the shipowner; in the case of another employer the full name and address of the employer and of the shipowner,
2. the full name, date of birth, birthplace and address of the crew member,
3. the designation or description of the services to be provided by the crew member, insofar as envisioned, the restriction of the duty of service to specific ships or trading areas,
4. the time of commencement of the engagement, the place and date of taking up service, with designation of the ship,
5. if the seafarer's employment agreement has been concluded for a definite period, the envisioned duration of the engagement,
6. the composition and the amount of the wages, including the surcharges, bonuses, awards and special payments or the formula to be used for calculating the wages, as well as the due date of the wages,
7. the agreed hours of work and hours of rest,
8. the duration of paid annual leave,
9. if the seafarer's employment agreement has been concluded for an indefinite period, or if the possibility to terminate an engagement concluded for a definite period has been agreed on: the conditions for terminating it, as well as the required notice periods and dates for termination,
10. the crew member's entitlement to repatriation,
11. reference to the collective bargaining agreements, company agreements or shipboard agreements which are applicable to the engagement,
12. the health care services and social security protection benefits provided, or to be provided, to the crew member by the shipowner or the other employer,
13. the place and date of conclusion of the seafarers' employment agreement.

(3) The following shall be included in the seafarer's employment agreement for crew members of fishing vessels:

1. in addition to subs. 2 Number 3, the name and the registration number of the fishing vessel or the names and the registration numbers of the fishing vessels on which the crew member is to work,
2. in addition to subs. 2 Number 4 the voyage(s) which are to be undertaken if they can be stated at the time of the conclusion of the agreement,
3. in derogation of subs. 2 Number 6, the amount of the wages or the amount of the share and the formula used for calculating the latter if the pay consists of a share, or the amount of the wages and the amount of the share and the formula used for calculating the latter if the two forms of pay are combined with one another, and any agreed minimum wages.

(4) If the crew member is likely to work abroad ashore or on board a ship flying a foreign flag for more than one month, the following shall be additionally included in the seafarer's employment agreement:

1. the expected duration of the activity to be carried out abroad or on board a ship flying a foreign flag,
2. the currency in which the wages are paid,
3. the additional benefits granted in the context of the stay abroad or the stay on board a ship flying a foreign flag,
4. the conditions for the crew member's return.

(2) The information in accordance with subs. 2 Numbers 6 to 10, 12 and subs. 4 Numbers 2 to 4 may be replaced by stating the collective bargaining agreements, company agreements or shipboard agreements applicable to the engagement. If the respective statutory provision is material in such cases, reference may be made to the latter.

(3) Subs. 1 to 5 shall apply accordingly when essential contractual conditions are amended. Sentence 1 shall not apply to an amendment of the statutory provisions, collective bargaining agreements, company agreements or shipboard agreements applicable to the engagement.

## Section 29

### **Information regarding conditions of employment**

(1) The shipowner shall take suitable measures to ensure that crew members are able to obtain by simple means unambiguous information on the conditions laid down in their agreement, in particular on the content of this Act. To this end, a copy of this Act, of the Maritime Labour Convention and of the Agreement concluded by the European Community Shipowners' Associations and the European Transport Workers' Federation on the Maritime Labour Convention, 2006, at least in German, shall be kept on board in a suitable place. One copy of each individual seafarer's employment agreement shall be carried on board. If the seafarer's employment agreement has been concluded with another employer, an original copy shall be kept on board, on which the shipowner has confirmed, by signing, his responsibility in accordance with section 4 subs. 2. The crew member shall be entitled to inspect the copy of his/her seafarer's employment agreement at any time.

(2) Where the seafarer's employment agreement makes reference to a collective bargaining agreement, a company agreement or a shipboard agreement, these documents shall be displayed in a suitable place on board.

(3) The shipowner shall keep on board a copy of an English translation of this present Act, of the Maritime Labour Convention, of the Agreement concluded by the European Community Shipowners' Associations and the European Transport Workers' Federation on the Maritime Labour Convention, 2006, of a model agreement of the seafarer's employment agreements, as well as of the collective bargaining agreements, company agreements or shipboard agreements to which reference is made in the seafarer's employment agreements. Sentence 1 shall not apply to ships which only call at German ports.

## Section 30

### **Taking up service**

(1) The shipowner shall inform the crew member in good time of the point in time when he/she must arrive on board. In doing so, the berth of the ship or a reporting place shall be indicated to the crew member.

(2) When the crew member is unable to take up service because of an inevitable incident, he/she shall notify the shipowner or the master about this immediately, stating the reasons.

## Section 31

### **Travel expenses**

If the ship on which the crew member is to take up his/her service is in another place than where the engagement was established, the crew member shall be entitled to be refunded the necessary travel and luggage transportation costs, as well as to a suitable daily allowance and overnight allowance. The crew member shall be entitled to the same



refunds if travel from the place in which the engagement was established to another reporting place or place of taking up service becomes necessary prior to taking up service.

## Section 32

### **Duty of service**

The crew member shall perform the duties to which he/she is obliged within the framework of the engagement. He/she shall obey the orders of the responsible superior in doing so.

## Section 33

### **Record of employment**

(1) The crew member shall be entitled to receive from the shipowner a statement providing information about the duties performed on board the ship. The statement shall be handed over or transmitted to the crew member in German and English language at the latest on the day of termination of service on board. In case of ships on which the crews change at short intervals or which regularly call at the same ports, in particular in ferry and tug service, the record of employment only needs to be handed over or transmitted at the request of the crew member, as well as at the end of the engagement.

(2) The record of employment shall include:

1. the forename and surname, date of birth, place of birth and address of the crew member,
2. the name and address of the shipowner; in the case of another employer, the name and address of the employer and of the shipowner,
3. the name of the ship, type of ship, identification number, tonnage, engine capacity and trading area,
4. the time of commencement and termination of the service on board,
5. the nature and duration of the duties performed by the crew member.

(3) The issuance of the record of employment in electronic form shall be permissible insofar as the crew member has consented thereto.

(4) The record of employment may not contain any assessment of the performance and conduct of the crew member or any information on the wages. The right to a testimonial in accordance with section 109 of the Trade Regulation Act (*Gewerbeordnung*) shall remain unaffected.

(5) The shipowner shall be obliged to retain (electronic) copies of the crew members' records of employment for at least five years from the date of issuance. The Occupational Accident Insurance Fund may require the shipowner to submit or transmit copies of records of employment at any time in order to examine compliance with safe manning levels in accordance with the applicable provisions. The shipowner shall be obliged to comply with the request in accordance with sentence 2 without delay.

## Chapter 2

## Presence on board, shore leave, dangers to the ship

## Section 34

**Compulsory presence on board**

Crew members shall be obliged to be on board also during their off-duty time unless the master, or in his/her place the responsible superior, has given them permission to leave the ship. Permission shall be given insofar as the crew member is entitled to shore leave in accordance with section 35.

## Section 35

**Shore leave**

(1) Crew members shall be entitled to shore leave in their off-duty time outside the hours of work in port while in the port or while the ship lies at anchor in the roads.

(2) Crew members shall also be entitled to shore leave in their off-duty time within the hours of work in port while in the port or while the ship lies at anchor in the roads insofar as this is permitted by the operation of the ship.

(3) The entitlement to shore leave in accordance with subs. 1 and 2 shall only exist insofar as permitted by the departure time and by the safety of the ship and of the crew members.

(4) The master shall, where reasonable, ensure a connection to land if there is no or no suitable possibility of obtaining transport from third parties for the persons on shore leave.

(5) The master shall ensure that the watchkeeping that is necessary outside the hours of work while in port or in the roads is shared equally among the crew members.

## Section 36

**Prevention of dangers to the ship**

(1) The crew member shall obey any order of the master intended to avert imminent danger to people, the ship or the cargo, to avoid major damage, to prevent serious disturbances in the operation of the ship or to satisfy public-law provisions on ship safety. The same shall apply in urgent cases to orders of a superior who is on-site. Helmsmen on the Kiel Canal shall be deemed to be equivalent to crew members in this respect.

(2) The provisions contained in subs. 1 shall also apply in the case of imminent danger to other ships and people.

(3) In case of maritime perils, in particular if the ship is in danger of foundering, the crew member may not leave the ship without the consent of the master as long as the latter remains on board.

(4) In case of foundering, crew members shall be obliged to assist in accordance with the orders of the master to the best of their abilities to ensure the rescue of people and their belongings, as well as to secure the ship's parts, equipment and cargo, and to assist in salvage operations.

## Chapter 3

## Wages

## Section 37

**The right to wages**

(1) The crew member shall be entitled to the payment of the agreed wages for the duration of the engagement.

(2) Prior to commencement of the engagement, the crew member shall be entitled to payment of the wages for the duration of the necessary journey to the agreed place of commencement of duties. The right shall also exist for periods by which the arrival of the ship is delayed.

## Section 38

**Calculation and due date of the wages**

(1) The wages shall be calculated on the basis of calendar months. When calculating the wages for individual days, this shall be done on the basis of a calendar month of 30 days.

(2) The wages shall be due at the end of each calendar month or on termination of the engagement. If variable elements of the wages have not yet been ascertained at the end of the calendar month, they shall be due at the end of the calendar month during which they are ascertained or can be reasonably ascertained for the first time. If shares of cargo, profit or proceeds have not yet been ascertained at the end of the calendar month, the crew member may demand an advance payment approximately equal to the share of the wages earned until that time.

## Section 39

**Payment of the wages**

(1) The wages shall be calculated and disbursed in euros unless another legal currency has been agreed in the seafarer's employment agreement. If the shipowner and the crew member agree that the wages are to be paid in another legal currency than euros, the rate of currency exchange has to correspond to the rate published by the European Central Bank, and may not be unfavourable to the crew member.

(2) The crew member may require the shipowner to pay the wages or a part thereof determined by the crew member

1. in cash to the crew member in port or in the roads, or
2. as a cashless payment to the crew member or to a recipient designated by the crew member.

(3) The shipowner cannot demand that the crew member refunds the costs incurred by the cashless payment.

(4) No deductions may be made from the crew member's wages for obtaining or maintaining employment.

## Section 40

**Account of payments**

(1) On the due date of payment the shipowner shall draw up and issue to the crew member an account of the wages becoming due (section 38) in text form (section 126b of the Civil Code [*Bürgerliches Gesetzbuch*]) and hand this to him/her without delay.

(2) The account of payment shall refer to the respective accounting period and contain full information on the composition of the wages. As to the composition, information shall be provided, in particular, on the nature and amount of the supplementary allowances, extra payments, bonuses and special payments, as well as the deductions and advance payments that have been made, including the amounts paid to third parties. If payments are made not in euros, but in another legal currency, the shipowner shall also state in the account the rate of currency exchange used as a basis in the account.

(3) If the crew member complains about the account, the shipowner shall note the reason for the complaint on the account.

## Section 41

**Sale of goods and provision of services**

If the shipowner sells goods to crew members or provides services to them, the prices shall be calculated such that no surplus arises after the costs have been covered.

## Chapter 4

## Hours of work and hours of rest

## Section 42

**Principles for the arrangement of working time**

(1) Provisions on the hours of work at sea shall be applied from the time when the ship starts to leave its berth in port or in the roads to start or continue the voyage. Provisions on the hours of work in port shall be applied from the time when the ship is properly moored in port or anchored in the roads. If hours of work at sea and hours of work in port are in concurrence in any one day, the total work done on this day shall be taken as a basis for the calculation of the daily maximum hours of work.

(2) Crew members with health problems which according to a medical certificate are caused by night work shall, where possible, be transferred to a suitable position in day-work service.

(3) The master shall ensure adherence to the regulations on the crew members' hours of work. For crew members who are not employed by the shipowner, their employer or trainer and the master shall jointly ensure adherence to the regulations on hours of work. For these crew members, in place of the master, the employer or the trainer or the person representing him/her on board may issue orders for the hours of work with the consent of the master. Sentence 3 shall not apply in cases coming under section 47 subs. 1.

(4) As far as possible, the master should take as an orientation in his/her hours of work the regulations on hours of work of this Chapter. The minimum hours of rest in accordance with section 48 subs. 1 Number 2 may not be fallen below. This shall not apply insofar as a derogating provision in accordance with section 49 subs. 1 Number 3 or 4 exists, in each case also read in conjunction with subs. 2 or 3, or an extension of hours of work is permissible in the special cases under section 47 subs. 1 or 2. Section 50, as well as section 45 subs. 3 and 4, shall be applicable unless a derogating provision exists in

accordance with section 49 subs. 1 Number 2 or 4. Sections 51 and 52 shall not apply. If the master is on sea-watch duty, sections 43 to 49 shall apply.

(5) In addition to sections 43 to 48, the hours of work of crew members of a fishing vessel may not exceed an average of 48 hours per week within twelve months.

### Section 43

#### **Hours of work at sea**

(1) The hours of work at sea of crew members assigned to watchkeeping duties may not exceed eight hours per day as a rule. The sea working time arranged in the three-watch system. Crew members may not carry out any other work in addition to watchkeeping while being on bridge watch. Apart from that, during the watch on weekdays between the time of 18 and 6 hours, as well as on Sundays and public holidays, in addition to watchkeeping, crew members may only be engaged in occasional maintenance work, as well as with work which is imperative for the safety of the ship and its voyage, for the securing of the cargo or for boat duty.

(2) The hours of work at sea of crew members not designated for watchkeeping, with the exception of the service staff, may as a rule not exceed eight hours on working days, and must be between the time of 6 and 18 hours. These crew members may only be employed on Sundays and on public holidays in special cases in accordance with section 47.

(3) The hours of work at sea of the service staff may not exceed eight hours per day as a rule. The hours of work may be extended by up to one hour if the hours of work regularly include a considerable amount of stand-by work. The hours of work must be between the time of 6 and 20 hours. Furthermore, this period may be exceeded for the service staff on passenger ships on the order of the master and for the nursing staff on the order of the ship's medical doctor. The service staff may only be engaged in work on Sundays and public holidays which is imperative for food and catering or nursing of the persons on board, as well as in sales and for the care or entertainment of passengers.

### Section 44

#### **Hours of work in port**

(1) With the exception of the service staff, crew members' hours of work in port may not exceed eight hours per day from Monday to Friday as a rule. The hours of work in port on Saturdays may not exceed five hours as a rule and, for watchkeeping duty, eight hours. Apart from watchkeeping, the hours of work in port must be from Monday to Friday between the time of 6 and 18 hours and on Saturdays between the time of 6 and 13 hours.

(2) On working days outside the times designated in subs. 1 sentence 3, as well as on Sundays and public holidays, the crew members designated in subs. 1 may only be engaged in necessary watchkeeping duties, as well as in work that is inevitable and may not be postponed. Deployment on inevitable work which cannot be postponed may not exceed five hours as a rule on Sundays and public holidays.

(3) The hours of work in port of the service staff must be between the time of 6 and 18 hours. Additionally, section 43 subs. 3 shall apply accordingly in other respects.

### Section 45

#### **Rest breaks and hours of rest**

(1) The crew members shall be permitted rest breaks and hours of rest which must be sufficiently long to guarantee the safety and health of the crew members.

(2) Unless hours of rest are granted at the latest after six and a half hours of work, the hours of work must be interrupted by a rest break after six hours at the latest. The rest break must be at least:

1. 30 minutes in the case of more than six and up to nine hours of work,
2. 45 minutes in the case of more than nine hours of work.

The rest breaks in accordance with sentence 2 may be broken down into sections of at least 15 minutes each.

(3) The hours of rest in accordance with section 48 subs. 1 Number 2 (a) may be broken down into no more than two periods, one of which shall be at least six hours in length, and the other a minimum of one hour. The interval between two consecutive hours of rest shall not exceed 14 hours. For the service staff, in cases coming under section 43 subs. 3 sentence 4, also read in conjunction with section 44 subs. 3, one of the periods for the hours of rest in accordance with sentence 1 must be at least eight hours.

(4) If the crew member has to be on standby during his/her scheduled hours of rest, and if the hours of rest are disturbed by calls to work, the crew member shall be granted appropriate hours of rest in compensation. The hours of rest given as compensation have to correspond at least to the duration of the interruptions in the hours of rest. Six hours' uninterrupted rest shall be guaranteed.

#### Section 46

##### **Derogating hours of work arrangements for two-watch ships, salvage vessels and tugs**

(1) On ships with a gross tonnage of up to 2,500 travelling in the Baltic Sea, in the North Sea and along the Norwegian coast up to 64° North latitude, in other respects up to 61° North latitude and 7° West longitude, as well as to ports in the United Kingdom, Ireland and the Atlantic coast of France, Spain and Portugal, not including Gibraltar, as well as for fishing vessels of the same size also beyond these trading areas, where the voyage takes longer than ten hours, the hours of work of the deck and engine department personnel assigned to watchkeeping at sea may be extended to up to twelve hours per day and broken down according to the two-watch system in derogation of section 43 subs. 1. Sentence 1 shall also apply to ships with a gross tonnage of over 2,500 which adhered, prior to 1 July 2002, to the threshold value applicable to tonnage until that date. If the hours of work are extended accordingly, the crew members shall be entitled to an appropriate supplementary allowance towards the basic wages.

(2) Subs. 1 sentence 1 shall apply to the hours of work of crew members on watch duty on salvage vessels, as well as seagoing and salvage tugs, travelling the North Sea and Baltic Sea up to 61° North latitude. If the vessel is deployed at the scene of salvage, the hours of work may be determined by the master in derogation of section 43, in particular taking account of the turn of the tide and of the weather.

#### Section 47

##### **Extension of hours of work in special exceptional cases**

(1) The master shall be entitled to order for crew members the hours of work which are necessary for the immediate safety of the ship and of the persons on board, in case of imminent danger to the cargo, or for the purpose of giving assistance to other ships or persons who are in distress at sea. The master may temporarily suspend the schedule of hours of work or hours of rest and require crew members at any time to perform any hours of work necessary until the normal situation has been restored.

(2) 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 minimises the disturbance of rest periods and does not induce fatigue.

(3) Sections 43 to 46 and 48 shall not apply in cases coming under subs. 1 and 2. As soon as practicable after the normal situation has been restored, the master shall ensure that any crew members who have performed work or participated in a drill during a scheduled rest period are provided with an adequate period of rest. The compensatory hours of rest must at least correspond to the duration of the interruption of the hours of rest.

(4) Apart from cases falling under subs. 1 and 2, the master can in other urgent cases order an extension to the daily hours of work that are determined in sections 43, 44 and 46. The same shall apply to watchkeeping duties in port. The provisions contained in sections 43, 44 and 46 on the scheduling of the hours of work and the restrictions as to the permitted duties shall not apply in such cases.

## Section 48

### **Maximum hours of work and minimum hours of rest**

(1) The shipowner and the master shall ensure that the following hours of work and hours of rest of crew members are adhered to on the ship:

1. Maximum hours of work shall not exceed:
  - a) 14 hours in any 24-hour period and
  - b) 72 hours in any seven-day period
 and
2. Minimum hours of rest shall not be less than:
  - a) ten hours in any 24-hour period and
  - b) 77 hours in any seven-day period.

(2) On a ship which calls at several ports in close succession, it shall be possible to derogate from the maximum hours of work in accordance with subs. 1 Number 1 (b) during the days of frequent port calls. A close succession of ports shall be deemed to apply if there are fewer than 36 hours between the seaward pilot transfer positions of the area to be left and of the area to be called at. After the ship has left the trading area with a frequent succession of ports, the master shall ensure that all crew members who performed more than the maximum hours of work permissible in accordance with subs. 1 Number 1 (b) during this period are provided without delay with additional hours of rest in the amount of the additional number of hours worked. The compensation can also be granted in conjunction with leave.

## Section 49

### **Derogating working time regulations arranged through collective bargaining agreement**

(1) The following may be agreed in a collective bargaining agreement, or on the basis of a collective bargaining agreement in a company agreement or shipboard agreement,

1. the entitlement of the master to order, in derogation of section 47 subs. 4, an extension of the daily hours of work determined in sections 43 and 44 by up to two hours also in other cases, and to be able to derogate in such cases from the provisions on the scheduling of the hours of work and the restrictions as to the permitted duties,
2. derogating from section 45 subs. 3 sentence 1, to break down the minimum hours of rest in accordance with section 48 subs. 1 Number 2 (a) into three parts, one of which

must have a minimum length of six hours and the two others a minimum length of one hour each; this exceptional arrangement may be taken up for a maximum of two 24-hour periods in any seven-day period,

3. provisions derogating from sections 43 and 44 for hours of work at sea and hours of work in port, as well as provisions derogating from section 48 subs. 1 for the maximum hours of work and for the minimum hours of rest, provided that the hours of rest are not less than 70 hours in any seven-day period; derogations from the minimum hours of rest may be permitted for a maximum of two consecutive weeks; there must be an interval between two periods spent on board to which the exceptional arrangement applies which is at least twice as long as the period falling under the exceptional arrangement, unless the period to which the exceptional arrangement applies is followed by an exemption from duties of at least the same duration,
4. for crew members of fishing vessels, derogating provisions from section 42 subs. 5 as well as, over and above Numbers 2 and 3, also derogating provisions from section 45 subs. 3 and from section 48 subs. 1 Number 2, as to the hours of work during the catch and its processing on board,
5. for crew members of fishing vessels, as well as of passenger ships and ferries, also derogating provisions from section 51 as to remuneration and from section 52 as to compensation for work on Sundays and public holidays.

(2) Within the scope of a collective bargaining agreement containing a provision in accordance with subs. 1 Numbers 1 to 5, this collectively agreed provision can be adopted through a company agreement or shipboard agreement in the business of a shipowner not bound by collective bargaining agreements, or if there is no employees' representation, by written agreement between the shipowner and the crew members if the application of the entire collective bargaining agreement has been agreed.

(3) For crew members of fishing vessels, as well as of passenger ships and ferries for whom collective bargaining agreements are customarily not concluded, exceptions may be authorised by the Occupational Accident Insurance Fund generally or in individual cases in line with the provisions outlined in subs. 1 Numbers 2 to 5.

(4) The derogations in accordance with subs. 1 Numbers 2 to 4, as well as with subs. 2 and 3, must be in concordance with the general principles for the safety and health protection of crew members and must be necessary for technical reasons or reasons of work organisation. As far as possible, they must be in line with the statutory provisions, but may take account of more frequent or longer periods of leave or the granting of compensatory leave for crew members.

(5) Subs. 1 shall not apply to collective bargaining agreements which are concluded in accordance with section 21 subs. 4 sentence 2 of the Law of the Flag Act (*Flaggenrechtsgesetz*).

## Section 50

### **Table of shipboard working arrangements, records of hours of work**

(1) On every ship, a table of shipboard working arrangements shall be kept which shall contain the following:

1. the schedule of service at sea and service in port for all crew members employed on board,
2. the maximum hours of work and the minimum hours of rest in accordance with section 48, as well as derogations therefrom agreed in accordance with section 49.

The master shall ensure that the table of the shipboard working arrangements is displayed at an easily-accessible place on board.



(2) On each ship, working time records shall be kept indicating separately for each crew member the daily hours of work and hours of rest.

(3) The master shall be obliged to maintain the table of the shipboard working arrangements and the working time records. He/she may assign this job to a ship's officer or another superior.

(4) The crew members shall be obliged to give to the master or the person appointed by him/her the necessary information for the table of the shipboard working arrangements as well as for the working time records.

#### Section 51

##### **Remuneration for overtime and night work, as well as work on Sundays and public holidays**

(1) If crew members are employed in overtime work beyond the limits on the daily hours of work determined in sections 43, 44 and 53 subs. 2, apart from the cases falling under section 47 subs. 1 and 2, they shall be paid for each hour a remuneration of at least one twohundredth of the basic wage, as well as an appropriate supplementary allowance. If the amount of the supplementary allowance is not stipulated by a collective bargaining agreement, it shall be one-quarter of one twohundredth of the basic wage for each of the first 60 hours of overtime work of the month, as well as for overtime worked on watch duty in port, and one half of one twohundredth of the basic wage for each of the following 30 hours, and for each further hour of overtime work it shall be one twohundredth of the basic wage. Derogating from sentence 1, in cases coming under section 46, the limit on the daily hours of work determined therein shall apply.

(2) Where overtime work which is performed in cases coming under section 47 subs. 1 sentence 1 involves commercial salvage, this shall be adequately remunerated.

(3) Apart from watchkeeping, the crew members shall be paid

1. in case of work on Sundays and public holidays, at sea with the exception of work in accordance with section 43 subs. 3 sentence 5,
2. in case of work which is performed on working days in cases coming under section 43 subs. 1 sentence 4 between the time of 18 and 6 hours or in port outside the periods determined in section 44 subs. 1 sentence 3 and subs. 3 sentence 1,

for each hour of work a supplementary allowance of at least one quarter of a twohundredth of the basic wage. If this work is at the same time work in accordance with Numbers 1 and 2, the supplementary allowance shall only be paid once. If this work is at the same time overtime work within the meaning of subs. 1, the rates determined in the collective bargaining agreement or in subs. 1 sentence 2 shall apply to the remuneration provided that the minimum supplementary allowance for work in accordance with Number 1 shall increase by one quarter of one twohundredth of the basic wage in each case.

#### Section 52

##### **Compensation for Sundays and public holidays**

(1) Each crew member shall be given compensation in the form of a working day off for each Sunday and for each public holiday on which he/she has worked or on which the ship was in port for fewer than twelve hours. A crew member of the service staff shall be granted at least two days off per month.

(2) The compensation shall be granted as soon as possible. If this is not possible within the same week, the day off should be given in one of the following weeks. Days off not given until starting leave shall be combined with leave, or if leave cannot be extended because of imperative operational reasons, shall be paid off.

(3) Days off shall be given in a port in which shore leave is permissible and possible. Days off can also be given at sea at the request of the crew member.

(4) The provisions contained in section 58 subs. 1 sentence 1 and section 61 subs. 1 and 2 shall apply to days off accordingly.

### Section 53

#### **Working time regulations for young crew members**

(1) Sections 42, 48, 50 and 51, as well as the subsections below, shall apply to young crew members. Sections 43 and 44 shall apply subject to the provisos of subs. 2 to 4.

(2) In port young crew members are allowed to work on not more than five days per week, up to eight hours per day and up to 40 hours per week. The days off should be Saturday and Sunday where possible.

(3) At sea young crew members are allowed to work on a maximum of six days per week, up to eight hours per day and up to 48 hours per week.

(4) When on watch duty at sea, young crew members may be employed on each day for up to eight hours daily and during the week from the time of 5 hours. However, this shall only apply if young crew members are only engaged in occasional maintenance work during the watch in addition to watchkeeping, as well as in work which is imperative for the safety of the ship and its voyage, for safeguarding the cargo or for boat duty. The commencement of work can be set at the time of 4 hours if the effective training of the young crew members in accordance with established programmes and schedules would otherwise be impaired.

(5) The young crew members must be granted rest breaks of an appropriate length, specified in advance. Only an interruption of work of at least 15 minutes shall be deemed to constitute a rest break. The rest breaks must total at least:

1. 30 minutes in case the hours of work are between four and a half and up to six hours,
2. 60 minutes in case the hours of work are more than six hours.

The rest breaks must be granted at an appropriate time. Young crew members may not work for more than four and a half consecutive hours without a rest break. Sufficient time shall be allowed for all meals.

(6) During the time between 20 hours and 6 hours work of young crew members is prohibited subject to the regulation in subs. 4. Furthermore, young crew members on passenger ships may participate in performances for the entertainment of the passengers until the time of 23 hours if an uninterrupted rest period of at least nine hours is guaranteed afterwards. The Occupational Accident Insurance Fund may permit exceptions from the prohibition contained in sentence 1

1. if the effective training of the young crew members concerned, in accordance with established programmes and time schedules, would be impaired, or
2. if the specific nature of the duty or a recognised training programme requires that the crew members covered by the exception perform duties at night and it is determined, after consultation with the shipowners' and seafarers' organizations, that the work will not be detrimental to the health or well-being of the young crew members.

(7) Overtime work for young crew members shall only be permissible in cases coming under section 47 subs. 1 and 2, but only insofar as no adult crew member can be found to do the work in question. The provisions of subs. 5 on rest breaks and of subs. 6 on night time rest shall not apply in this case. Such exceptional situations shall be recorded in writing, stating the reasons, and signed by the master. The overtime work shall be compensated within the following three weeks by reducing the hours of work accordingly. If it is no longer possible to grant compensation for the hours of work because of termination of the

contractual relationship, the overtime work shall be remunerated, the supplementary allowance for young crew members, in derogation of section 51 subs. 1, being for each overtime hour at least one quarter of a twohundredth of the basic wage.

(8) If young crew members work on more than five days, they shall be granted another day off for the work on the sixth and seventh day in the week respectively. The provisions of section 52 on compensation for work on Sundays and public holidays shall be applied. Where a day off is to be granted in accordance with sentence 1 as compensation for employment on a working day, section 52 subs. 2 to 4 shall apply accordingly. Financial compensation in lieu of days off shall not be permissible.

#### Section 54

##### **Derogating working time regulations for young crew members arranged through collective bargaining agreement**

(1) The following may be agreed for young crew members in a collective bargaining agreement or – on the basis of a collective bargaining agreement – in a company agreement or shipboard agreement,

1. derogating from section 53 subs. 2, to break down the hours of work differently with up to nine hours per day, 44 hours per week and up to five and a half days per week, however, only subject to adherence to an average of 40 hours of work per week in a compensation period of two months;
2. derogating from section 53 subs. 4 sentence 1, to employ young crew members also in watchkeeping in port; section 53 subs. 8 shall be applied;
3. derogating from section 53 subs. 5 sentence 3 Number 2, to reduce the total duration of the rest breaks to up to 45 minutes;
4. derogating from section 53 subs. 6, to employ young crew members once per week in the time from 20 hours to 24 hours if uninterrupted hours of rest of at least nine hours is guaranteed afterwards; the hours of rest period may be reduced to eight hours if the effective training of the young crew members in accordance with established programmes and schedules would otherwise be impaired;
5. on passenger ships, ferries, salvage vessels and seagoing and salvage tugs, derogating provisions from section 53 subs. 2 to 8 as to the hours of work, as well as for young crew members on passenger ships and ferries, derogating provisions also with regard to remuneration and compensation for work on Sundays and public holidays, as well as other overtime work; this shall also apply accordingly to young crew members on fishing vessels; with regard to the hours of work, however, only during the catch and its processing on board.

The following additional requirements shall be adhered to in the case of sentence 1 Number 5. In case of a derogation from section 53 subs. 6, at least a period of nine hours, which shall include the time between 0 and 5 hours, shall be time off work. Derogations must be in compliance with the general principles for the safety and health protection of the young crew members, and be necessary for objective, technical or work-organisational reasons. They must be in line with the statutory provisions as far as possible, but may take account of more frequent or longer periods of leave or the granting of compensatory leave for the crew members.

(2) Within the scope of a collective bargaining agreement which contains a provision in accordance with subs. 1 Numbers 1 to 5, this collectively agreed provision may be adopted in the operations of a shipowner not bound by collective agreements, through a company agreement or shipboard agreement, or if there is no employees' representative body, by written agreement between the shipowner and the crew members if the application of the entire collective bargaining agreement has been agreed.

(3) For crew members of passenger ships, ferries or fishing vessels for whom collective bargaining agreements are not customarily concluded, exceptions may be authorized by the Occupational Accident Insurance Fund either in general or in individual cases in line with the provisions outlined in subs. 1 Number 5.

(4) Subs. 1 shall not apply to collective bargaining agreements which are concluded in accordance with section 21 subs. 4 sentence 2 of the Law of the Flag Act.

## Section 55

### **Legal ordinances**

The Federal Ministry of Labour and Social Affairs is herewith empowered to act in agreement with the Federal Ministry of Transport and Digital Infrastructure and, by means of a legal ordinance without the consent of the Bundesrat,

1. determine the detailed requirements for maintaining the table of shipboard working arrangements and the records of hours of work in accordance with section 50 subs. 1 and 2,
2. issue further provisions regarding the table of shipboard working arrangements and the records of hours of work in accordance with section 50,
3. allow provisions in derogation of sections 43, 44, 45 and 48 for the hours of work, as well as for the rest breaks and for the hours of rest for crew members on ships, from which special activities are performed to construct, alter or operate constructions, artificial islands or other installations at sea (offshore activities), and determine the conditions necessary to protect the crew members.

Legal ordinances in accordance with sentence 1 shall require the agreement of the Federal Ministry of Food and Agriculture insofar as sea fishing is concerned.

## Chapter 5

### Leave

## Section 56

### **Entitlement to leave**

(1) A crew member shall be entitled to paid leave for each year of employment. Financial compensation in lieu of leave may only be granted subject to the requirements provided for in section 64 subs. 3.

(2) The Federal Leave Act (*Bundesurlaubsgesetz*) shall apply unless otherwise provided for below.

## Section 57

### **Duration of leave**

(1) Crew members' leave shall be at least 30 calendar days for each year of employment.

(2) Young crew members' leave for each year of employment shall be at least

1. 34 calendar days if they are not yet 17 years old at the beginning of the year of employment,
2. 32 calendar days if they are not yet 18 years old at the beginning of the year of employment.

(3) The following shall not be counted as part of leave

1. statutory public holidays which apply at the port of registry,
2. times of incapacity for work due to illness or accident, as well as absence from work because of maternity,
3. shore leave in accordance with section 35, and
4. compensatory time off in accordance with section 52.

## Section 58

### **Determination of leave**

(1) The wishes of the crew member for leave shall be taken into account when determining the time when leave is taken unless they cannot be accommodated because of pressing operational reasons or wishes for leave of other crew members employed by the shipowner who under consideration of social aspects deserve preference. If possible, leave shall be granted after six months of consecutive service on board, at the latest by the end of the employment year. If, instead of the shipowner, another person is the crew member's employer or trainer, and if the other person fails to comply with his/her contractual obligation in accordance with sentence 2, the shipowner shall be obliged to grant leave on behalf of and with effect for the other person.

(2) The shipowner and the master shall grant young crew members leave at the latest after six months of uninterrupted service on board.

(3) Leave shall be granted as an uninterrupted period unless urgent operational reasons or personal reasons of the crew member necessitate a division of the leave.

(4) Leave shall commence at the earliest on the day following the day of arrival of the crew member at the place of leave. If the place of resumption of service on board or another place for the resumption of service determined by the shipowner is not the place of leave, the crew member shall commence his/her journey to this place on the day following the end of leave.

## Section 59

### **Place of leave**

Based on the crew member's choice, the place of leave shall be

1. the domicile of the crew member,
2. the place at which the seafarer's employment agreement was concluded,
3. the place determined by collective bargaining agreement, or
4. any other place agreed upon in the seafarer's employment agreement.

## Section 60

### **Travel expenses**

The shipowner shall pay the travel expenses to the place of leave and from the place of leave to the place of resumption of service on board or another place determined by the shipowner. Section 31 shall apply accordingly as to the amount of the travel expenses.

## Section 61

**Holiday pay**

(1) The crew member shall continue to receive the wages within the meaning of section 37 as holiday pay. A suitable compensatory payment shall be granted for remuneration in kind.

(2) One thirtieth of the wages shall be paid for each day of leave, as well as for each public holiday falling within the leave within the meaning of section 57 subs. 3 Number 1. Elements of wages the amounts of which depend on the extent of the work, success or similar fluctuating bases for assessment shall be appropriately included when calculating the holiday pay.

## Section 62

**Illness during leave**

(1) If a crew member becomes ill and unfit for work during leave, these sick days shall not be counted towards the leave insofar as the illness is proven by a medical certificate. If it is to be presumed that the illness will continue beyond the end of the leave, the crew member shall be obliged to notify the shipowner of this without delay.

(2) The crew member shall make his/her capacity to work available to the shipowner once the leave granted to him/her has elapsed or, insofar as the illness lasts longer, after the recovery of fitness for work. The shipowner shall determine the time from which the remaining leave will be granted; the wishes of the crew member shall be taken into account in this regard.

## Section 63

**Leave on termination of the engagement**

(1) If the engagement of the crew member ends prior to the end of the employment year, the crew member shall be entitled to one twelfth of the annual leave for each month of employment that has started.

(2) If the crew member has received more than the leave to which he/she is entitled on termination of the engagement, the holiday pay that the crew member received cannot be claimed back.

## Section 64

**Extension of the engagement, payment in lieu of leave**

(1) If the crew member has not yet received the leave to which he/she is entitled on termination of the engagement, the engagement shall be extended by the duration of the leave that has not yet been granted, unless

1. an extension of the engagement is not possible as a result of the conclusion of a new legal relationship, or
2. the crew member is unable to take the leave during the period of the extension for reasons beyond his/her control.

The leave shall be granted in the period of the extension of the engagement.

(2) If an employment relationship exists with the shipowner after termination of the engagement, the shipowner shall grant the crew member any leave to which he/she remains entitled from the engagement within this employment relationship.

(3) The shipowner shall compensate the crew member insofar as the leave cannot be granted because of termination of the engagement. Sentence 1 shall not apply if the prerequisites of subs. 1 or 2 are met.

## Chapter 6

### Notice and termination of the engagement

#### Section 65

##### **Right to give notice**

- (1) The shipowner and the crew member may give notice in respect of the engagement.
- (2) Notice of the termination of the engagement shall be given in writing in order to be effective. It may not be given in electronic form.
- (3) Ordinary notice of termination towards a master or a ship's officer may only be given by the shipowner.
- (4) The general provisions on the termination of employment relationships shall apply to the termination of the engagement unless otherwise provided in this Chapter.

#### Section 66

##### **Notice periods**

(1) Notice may be given with regard to the engagement during the first three months with a term of one week. If the first voyage takes more than three months, notice may still be issued during the first six months with a term of one week during the first three days following the termination of the voyage. After expiry of the periods designated in sentences 1 and 2, the notice period shall be four weeks to the 15th day of or to the end of a calendar month. The notice period shall be extended to two months to the end of a calendar month if the engagement in the company or enterprise has existed for two years. Sentences 1 and 2 shall not apply to the master; the periods in accordance with sentence 3 shall apply to him/her from the beginning of the engagement.

(2) Derogating from subs. 1, the engagement of a crew member on a fishing vessel with a gross tonnage of up to 1,300 may be terminated with a notice period of 48 hours. This shall not apply to the master.

(3) Where notice is given by the shipowner, the notice period shall be as follows if the engagement in the company or enterprise

1. has lasted for eight years, three months to the end of a calendar month,
2. has lasted for ten years, four months to the end of a calendar month,
3. has lasted for twelve years, five months to the end of a calendar month,
4. has lasted for 15 years, six months to the end of a calendar month,
5. has lasted for 20 years, seven months to the end of a calendar month.

(4) Section 622 subs. 3 to 6 of the Civil Code shall apply accordingly.

(5) Unless agreed otherwise, the engagement shall continue beyond the expiry of the notice period until the arrival of the ship in a port in which the repatriation of the crew member and his/her replacement by a substitute can be carried out safely using generally-accessible means of transport.

## Section 67

**Extraordinary notice by the shipowner**

(1) The shipowner may terminate the engagement for a compelling reason without adherence to a notice period in accordance with section 626 of the Civil Code. A compelling reason shall exist in particular if the crew member

1. is unsuited to perform the service assigned to him/her for reasons which existed prior to the establishment of the engagement unless the shipowner was aware of these reasons at that time or ought to have been aware of them under the circumstances,
2. fails to disclose an infectious disease by which he/she places others at risk, or does not state that he/she permanently excretes typhus or paratyphus pathogens,
3. persistently or particularly grossly breaches his/her duties under the engagement,
4. commits a criminal offence making his/her further presence on board unacceptable,
5. becomes unfit for work as the result of a criminal offence committed by him/her.

(2) The master shall be obliged to record the extraordinary notice and its reason in the ship's logbook without delay and to hand the crew member a copy of the entry signed by the master.

(3) If the extraordinary notice is given at sea or if the crew member remains on board after an extraordinary notice, he/she shall pay the board which corresponds to the compensatory payment for food not provided during leave (section 61 subs. 1 sentence 2).

## Section 68

**Extraordinary notice by the crew member**

(1) The crew member may terminate the engagement for a compelling reason without adherence to a notice period in accordance with section 626 of the Civil Code. A compelling reason shall exist in particular if

1. the shipowner or the master commits a serious breach of duty towards the crew member,
2. the master violates the crew member's honour in a serious manner, mistreats the crew member or tolerates the crew member's mistreatment by other persons,
3. the ship changes flag,
4. leave is not granted in contravention of the provision of section 58 subs. 1 sentences 2 and 3,
5. the ship is to call at a contaminated port or fails to leave a port without delay after the outbreak of an epidemic and this may cause serious health risks to the crew member,
6. the ship is to sail in an area in which it is exposed to particular dangers from armed conflicts, or if the ship does not leave such an area without delay,
7. the ship is not seaworthy,
8. the living spaces are harmful to the health of the crew,
9. the food supplies or drinking water carried on board for the ship's crew are insufficient or spoiled, or
10. the ship is inadequately manned.

However, in the cases of sentence 2 Numbers 7 to 10, the crew member shall only be entitled to give extraordinary notice if the breach is not remedied within a reasonable period after the complaint has been made. The right to give notice in accordance with sentence 2 Number 5 or 6 shall cease to apply if the crew member was aware of the reasons providing



justification to give notice prior to the start of the voyage or should have been aware of them under the circumstances.

(2) In cases coming under subs. 1, the crew member shall be entitled to payment of the wages for one month from the time notice has been given. Claims for damages on the basis of other provisions shall remain unaffected thereby.

#### Section 69

##### **Extraordinary notice by the crew member because of an urgent family matter**

The crew member may terminate the engagement without adherence to a notice period if this is necessary because of an urgent family matter or because of another urgent personal reason. Urgent family matters shall be in particular

1. wife or partner giving birth to a child,
2. death of the wife or husband, of a child, of a parent or of the partner,
3. severe illness of the wife or husband, of a child, of a parent or of the partner.

#### Section 70

##### **Compensation for unemployment because of the ship's loss or foundering**

If the shipowner terminates the engagement because of the ship's loss or foundering, the crew member shall be entitled, beyond the end of the engagement for a maximum of two months after receipt of the notice, to payment of the wages for each day of unemployment. The crew member shall count against the wage claim what he/she

1. is entitled to in terms of unemployment insurance benefits, or
2. has earned through other work or has maliciously failed to earn.

#### Section 71

##### **Termination of the engagement in case of assumed loss of ship and crew**

(1) If it is not possible to ascertain the whereabouts of a ship and its crew, and if under the circumstances it has to be presumed that the ship has been lost, the engagement of the crew member shall be considered to have been terminated if a month has passed since the last officially recorded message regarding the ship.

(2) If the whereabouts of surviving crew members are ascertained later, sections 73, 75 and 76 on repatriation and continuation of payment of wages shall be applied to these crew members.

#### Section 72

##### **Leaving behind**

(1) Without prejudice to the provision of section 101, a crew member may not be left behind in a place abroad without the consent of the Occupational Accident Insurance Fund. A crew member shall be deemed to have been left behind if the crew member must leave the ship on the orders of the master.

(2) If a crew member is left behind and it is to be feared that he/she will be in need of assistance, the Occupational Accident Insurance Fund may give its consent subject to the payment of an amount guaranteeing the subsistence of the crew member for a period of three months after he/she was left behind.

(3) If a young crew member shall be left behind, the consent of his/her legal representative is also required.

## Chapter 7

### Repatriation and abandonment<sup>3</sup>

#### Section 73

##### **Entitlement to repatriation**

The crew member is entitled to repatriation to the destination that is determined in accordance with section 75

1. in the event of illness or injury in accordance with section 105,
2. when the engagement is terminated; in the event of ordinary notice after expiry of the notice period under section 66,
3. in the event of the shipowner no longer fulfilling his/her legal or contractual obligations as an employer due to insolvency, sale of the ship, change of ship's registration or any other similar reason,
4. if the ship is to sail in an area in which particular dangers are imminent because of armed conflicts, and to which the crew member does not want to sail, or if the ship does not leave such an area without delay,
5. when the shipowner abandons the crew member (section 76a subs. 1 sentence 3).

#### Section 74

##### **Repatriation of a young crew member**

If a young crew member has served on a ship for at least four months during his/her first foreign-going voyage, and if during this time it turns out that he/she is unsuited for life at sea, he/she shall be entitled to repatriation from a port from which the repatriation can be carried out safely using generally accessible means of transport.

#### Section 75

##### **Destination of repatriation**

(1) The destination of the repatriation by choice of the crew member shall be

1. the domicile of the crew member,
2. the place at which the seafarer's employment agreement was concluded,
3. the place determined by collective bargaining agreement, or
4. any other place agreed upon in the seafarer's employment agreement.

(2) In derogation of subs. 1, when the shipowner abandons a crew member (section 76a subs. 1 sentence 3), the exclusive destination of the repatriation shall be the crew member's domicile.

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3 Note: This chapter serves the implementation of Standard A2.5 of the Maritime Labour Convention, 2006

## Section 76

**Implementation and costs of repatriation**

(1) The shipowner shall make the arrangements for the implementation of repatriation. He/she shall ensure that the crew member receives the passport and other identity papers necessary for repatriation. The mode of transport of the crew member shall in principle be by air. The crew member shall be entitled to continuation of payment of wages for the time from leaving the ship until arriving at the destination.

(2) The right to repatriation shall include

1. passage to the destination,
2. accommodation and food,
3. transportation of up to 30 kg of personal luggage to the repatriation destination, and
4. medical treatment, as necessary, to enable the crew member to travel to the repatriation destination.

The shipowner bears the necessary costs of repatriation. The recovery of the costs of repatriation from the crew member's wages or other entitlements shall be ineffective. Shipowners may not require an advance payment for covering the costs of repatriation; such an agreement is ineffective.

(3) Time spent awaiting repatriation and repatriation travel time may not be deducted from paid leave.

(4) A crew member shall be deemed to have been repatriated when he/she has arrived at the destination. The right to repatriation shall cease to apply if it has not been claimed within three months, calculated from the date on which the crew member could have claimed it for the first time.

(5) If the engagement was terminated by a notice in accordance with section 67, the shipowner may require the crew member to refund the costs of repatriation. Subs. 1 sentence 4 and subs. 2 sentence 3 shall not apply.

(6) If the shipowner is unable to make arrangements for repatriation, the crew member shall be entitled to payment of the amount of money necessary for his/her repatriation.

(7) The right of the shipowner to have the costs of repatriation refunded on the basis of contractual agreements with third parties shall remain unaffected.

(8) For the protection of the crew members employed on board the ship, the shipowner shall be obliged to give proof of a declaration of willingness to pay for cases of repatriation in accordance with section 73 Numbers 1 to 4 which is covered by a bond or guarantee through an association of shipowners or any other financial security.

## Section 76a

**Obligation to provide financial security for cases of abandonment**

(1) The owner of a ship that is not a fishing vessel shall have an insurance or another financial security in accordance with subs. 2 and 3 to cover cases in which crew members are abandoned. Proof of the insurance or other financial security shall be presented to the Occupational Accident Insurance Fund when inspections are made. A crew member is abandoned in particular if the shipowner

1. fails to cover the costs of repatriation in accordance with section 76 subs. 2 sentence 2,
2. fails to meet the crew member's entitlement to medical care in accordance with sections 99 to 103,
3. has failed to pay wages in accordance with section 37 for at least two months,

4. makes available accommodation that is harmful to health,
5. provides spoiled food or drinking water supplies or supplies that are not sufficient for the crew or
6. fails to supply essential fuel for survival on board the ship.

(2) The insurance or other financial security shall financially secure the statutory entitlements of the crew members and benefits that are due to them under the employment agreement as prescribed in section 28, under the agreement on vocational training as prescribed in section 82 or under the applicable collective bargaining agreement. The insurance contract or the contract for the other financial security may be limited to financially securing four months of outstanding benefits from the engagement. This shall not apply to entitlements which, if not met by the shipowner, would lead to the abandonment of a crew member according to subs. 1 sentence 3 Numbers 1, 2, 4, 5 or 6.

(3) The insurance contract or the contract for the other financial security shall provide that

1. crew members may turn directly to the insurer or security provider to assert their claims,
2. insurance coverage or coverage by the other financial security does not end before expiry of the agreed duration of the contract unless the insurer or security provider has given prior notification of at least 30 days to the Occupational Accident Insurance Fund.

(4) In accordance with the provisions of subs. 5, the insurer or security provider shall supply the owner of a ship within the meaning of section 130 subs. 1 or 8 with a certificate in German, accompanied by an English translation, to prove that the shipowner has insurance or another financial security. The certificate shall be carried on board by the shipowner. A copy of the certificate shall be posted in a suitable place on board in a language that is suitable for the crew members.

(5) The certificate shall include at least the following:

1. name of the ship,
2. port of registry of the ship,
3. call sign of the ship,
4. IMO number of the ship,
5. name and address of the insurer or security provider,
6. contact details of the persons or entity responsible for handling seafarers' requests for relief,
7. name of the shipowner,
8. period of validity of the insurance or other financial security and
9. a declaration from the insurer or security provider that the insurance or other financial security meets the requirements of Standard A2.5.2 of the Maritime Labour Convention.

(6) To the extent that the insurer or security provider satisfies the crew member's or, in the case covered by section 77 sentence 1 read in conjunction with sentence 3, the Occupational Accident Insurance Fund's claim, the crew member's claim against the shipowner is transferred to the insurer or security provider. The shipowner shall meet the claim by making a payment. If the shipowner has a claim for damages, this claim is transferred to the insurer or security provider to the extent that the latter provides the benefits.

(7) A crew member's claim against the insurer or security provider to the payment of wages that the shipowner owes him/her is reduced to the extent that these wage claims are transferred to the Federal Employment Agency in accordance with section 169 of Book Three of the German Social Code.

## Section 77

**Administrative implementation measures in case of repatriation**

If the shipowner fails to carry out his/her obligation in accordance with section 76 and if the insurer or security provider also fails to satisfy the crew member's claim in the event of the crew member's abandonment within the meaning of section 76a subs. 1, the Occupational Accident Insurance Fund shall arrange for repatriation and shall advance the costs. They shall be refunded by the shipowner. The crew member's claims against the insurer or security provider in the event of abandonment within the meaning of section 76a subs. 1 shall be transferred to the Occupational Accident Insurance Fund.

## Section 78

**Availability of legal provisions on repatriation**

The shipowner shall ensure that the crew member has access on board to a copy of the applicable legal provisions on repatriation in a language that is suitable for the crew member.

## Chapter 8

## Procedure in the event of death of crew members

## Section 79

**Death of a crew member**

(1) The master shall make arrangements for the burial if a crew member died on board or during the voyage abroad. If the body cannot be carried on board to a port in the state in which the destination is situated in accordance with section 75, but the ship can reasonably reach a port within 24 hours after the death and if there are no health concerns against the transport of the body, the burial shall be carried out ashore. If a burial at sea is necessary, it shall be carried out in a dignified form.

(2) The shipowner bears the costs of the burial if a crew member died in connection with his/her employment or as a result of it.

## Section 80

**Care of the effects and the wage balance of a deceased or missing crew member**

(1) The master shall hand the effects of a deceased or missing crew member to the local representative of the shipowner. The shipowner shall ensure that the effects are dispatched to the heirs of the deceased or to the relatives of the missing crew member without delay.

(2) The shipowner shall transfer the wage balance of a crew member who died or has been declared dead to his/her heirs, in the case of a missing crew member to his/her relatives.

**Part 4**  
**Vocational training on board**

Section 81

**Agreement for vocational training for an occupation on board**

The shipowner may only provide vocational training for a crew member for an occupation on board if the latter has a vocational training contract the form and content of which satisfy the requirements of section 82. The vocational training agreement shall establish a vocational training relationship. The provisions contained in section 10 subs. 2 to 5 of the Vocational Training Act (*Berufsbildungsgesetz*) on the conclusion and effectiveness of the vocational training agreement and collaborative training shall apply accordingly.

Section 82

**Form and content of the agreement for vocational training on board**

(1) The agreement for vocational training for an occupation on board shall be in writing; it may not be concluded in electronic form. The Shipowner shall hand the apprentices and their legal representatives a draft of the agreement in good time prior to the envisioned conclusion of the agreement, including the collective bargaining agreements, company agreements or shipboard agreements to be stated in accordance with subs. 3 sentence 1 Number 12. The agreement for vocational training shall be concluded prior to the commencement of vocational training and shall be signed by the shipowner, the apprentices and their legal representatives. All signatories must receive a copy of the agreement for vocational training on board without delay.

(2) If vocational training in accordance with the Vocational Training Act initially begins ashore, and if the practical part is to be carried out on board, the agreement in accordance with subs. 1 shall be concluded at the latest prior to the beginning of the practical training on board. Section 11 of the Vocational Training Act shall remain unaffected.

(3) The agreement for vocational training on board shall include at least the following:

1. the name and address of the shipowner; in case of another trainer his/her full name and address, as well as the name and address of the shipowner,
2. the forename and surname, date of birth, birthplace and address of the apprentice,
3. the time of the commencement of the vocational training,
4. the nature, the structure in terms of subject-matter and time, as well as the objective of the vocational training, in particular the occupation for which the training is to be provided,
5. the duration of the vocational training,
6. the training measures outside the training facility,
7. the duration of the daily regular training and of the hours of rest,
8. the duration of the probationary period,
9. the due date and amount of the remuneration,
10. the duration of paid annual leave,
11. the prerequisites under which the vocational training agreement may be terminated,

12. a reference to the collective bargaining agreements, company agreements or shipboard agreements which are applicable to the vocational training relationship on board,
13. the medical care and social security benefits which the shipowner as trainer or the other trainer is required to grant to the apprentice,
14. the apprentice's entitlement to repatriation,
15. the place and date where the agreement for vocational training on board was concluded.

The apprentice shall be informed in good time in writing of the place of starting service on board.

(4) For crew members on fishing vessels,

1. in addition to subs. 3, the name and the registration number of the fishing vessel or the names and the registration numbers of the fishing vessels on which the crew member is to serve,
2. in addition to subs. 3, the voyage(s) to be undertaken if they can be stated at the time of the conclusion of the agreement,
3. derogating from subs. 3 sentence 1 Number 9, the amount of the share and the formula used for calculating it if a share in the proceeds of the catch is granted,

shall be included in the vocational training agreement.

(5) If the training is likely to be carried out on board a ship flying a foreign flag for more than one month, the agreement shall also include the following:

1. the duration of the training on board the ship flying a foreign flag,
2. the currency in which the remuneration is to be paid,
3. the additional benefits granted in connection with the training on a ship flying a foreign flag,
4. the conditions for the return of the apprentice.

The provisions on the suitability and the registration of a ship flying a foreign flag as a training facility shall remain unaffected.

(6) The information in accordance with subs. 3 sentence 1 Numbers 7, 9 to 11, 13 and 14, and subs. 4, may be replaced by a reference to the collective bargaining agreements, company agreements or shipboard agreements, as well as similar provisions applicable to the vocational training relationship on board. If the respective statutory provision is pertinent in such cases, reference may be made thereto.

(7) Subs. 1 to 5 shall apply accordingly when major contractual terms and conditions are amended. Sentence 1 shall not apply when the statutory provisions, the collective bargaining agreements, company agreements or shipboard agreements applicable to the vocational training agreement are amended.

(8) The provisions of sections 12 to 16 of the Vocational Training Act on void agreements, on the duties of apprentices and trainers during vocational training, on exemption from duties in order to participate in vocational school lessons and on certificates shall apply accordingly.

### Section 83

#### **Agreement for vocational training on vessels engaged in small distance fleet fishing or coastal fishing**

If vocational training is provided on a vessel engaged in small distance fleet fishing or coastal fishing, sections 81 and 82 of the Vocational Training Act shall apply instead of

sections 10 and 11 of the said Act; the other provisions of this Part shall not apply. The provisions contained in the other Parts of the present Act shall apply to the vocational training agreement insofar as nothing else is indicated by the nature and purpose of the agreement and by the Vocational Training Act.

#### Section 84

##### **Entitlement to remuneration**

Shipowners shall pay apprentices an appropriate remuneration, which shall be such that it increases as the vocational training progresses, at least annually related to the year of training.

#### Section 85

##### **Calculation and due date of the remuneration**

(1) The remuneration shall be based on calendar months. When calculating remuneration for individual days, the calendar month is calculated as a period of 30 days.

(2) The remuneration shall be due at the end of each calendar month or on termination of the vocational training relationship. The provision of section 19 of the Vocational Training Act on the continuation of payment of the remuneration shall apply accordingly.

#### Section 86

##### **Probationary period**

The vocational training relationship shall commence with the probationary period. It shall be at least one month and not longer than five months. In derogation of sentence 2, a shorter probationary period may be agreed upon with the persons designated in section 3 subs. 2 sentence 3.

#### Section 87

##### **Termination**

(1) The vocational training relationship shall end on expiry of the training period. If apprentices pass the final examination prior to expiry of the training period, the vocational training relationship shall end on the announcement of the result by the examination committee.

(2) If apprentices do not pass the final examination, the vocational training relationship shall be extended at their request until the repeat examination scheduled by the examination committee takes place, at most by one year.

#### Section 88

##### **Notice**

(1) During the probationary period, the vocational training relationship may be terminated with a notice period of one week. If notice is given while the ship is at sea, the vocational training relationship shall continue after expiry of the notice period as an engagement within the meaning of section 28 until the arrival of the ship in a port from which repatriation of the apprentice is possible with generally accessible means of transport. If the apprentice does not agree with the engagement as continuation of the vocational training relationship, he/she shall pay the board resulting from section 67 subs. 3 during their presence on board.



(2) After the probationary period, the vocational training relationship may only be terminated

1. for a compelling reason within the meaning of section 67 subs. 1 or of section 68 subs. 1 without adherence to a notice period,
2. by apprentices with a notice period of four weeks if they wish to give up the vocational training or wish to be trained for a different occupation.

In the case of notice being given for a compelling reason within the meaning of sentence 1 Number 1, section 67 subs. 3 shall apply accordingly if notice is given by the shipowner, and section 68 subs. 2 shall apply accordingly if notice is given by the apprentice. In the case of notice being given by the apprentice in accordance with sentence 1 Number 2, the vocational training relationship shall continue after expiry of the notice period until the arrival of the ship at a port from which the repatriation of the apprentice using generally accessible means of transport is guaranteed.

(3) Notice shall be given in writing and, in cases coming under subs. 2, the reasons for giving notice must be stated.

(4) A notice for a compelling reason shall be ineffective if the underlying facts have been known to the party entitled to give notice for more than two weeks.

## Section 89

### **Compensation in case of premature termination**

(1) If the vocational training relationship is terminated prematurely after the probationary period, the shipowner or apprentice may demand compensation if the other person is responsible for the reason for the termination. This shall not apply in the case of section 88 subs. 2 Number 2.

(2) The claim shall lapse if it is not asserted within three months after the termination of the vocational training relationship, calculated from the day on which the crew member was able to assert the claim for the first time.

(3) Subs. 1 and 2 shall not apply to the persons designated in section 3 subs. 2 sentence 3.

## Section 90

### **Vocational training on ships of the Federal Government and of Federal States**

Sections 81 to 89, as well as the legal ordinances issued on the basis of section 92, shall apply accordingly if vocational training is provided on ships flying the service flag of a Federal State or the service flag of the Federal Government and which are deployed in sea service.

## Section 91

### **Competent agency**

The vocational training center in Bremen (*Berufsbildungsstelle Seeschifffahrt e. V.*) shall be the competent agency for vocational training in occupations in accordance with section 92.

## Section 92

**Legal ordinances**

The Federal Ministry of Transport and Digital Infrastructure is herewith empowered to recognize vocational training occupations in the maritime shipping sector by legal ordinance, in agreement with the Federal Ministry of Education and Research, without the consent of the Bundesrat, after consulting the competent supreme authorities of the coastal Federal States, and to enact provisions on

1. the designation of the training occupation to be recognized,
2. the composition and the tasks of the competent agency,
3. the duration of training which should not be less than two years,
4. the vocational skills, knowledge and abilities which are to be the minimum elements of the vocational training (occupational profile of the training),
5. instructions for the curriculum and schedule for imparting the vocational skills, knowledge and abilities (framework plan of training),
6. consideration of previous vocational training for the training period,
7. the suitability of the trainers and of the training facility, the personal and technical aptitude of the trainers,
8. the examination system, in particular with regard to the examination committee, the subject-matter of the examinations and the examination regulations.

**Part 5****Accommodation and recreational facilities, food and catering**

## Chapter 1

**Accommodation and recreational facilities**

## Section 93

**Right to accommodation**

(1) For the duration of their engagement, crew members shall have a right to safe, healthy and decent accommodation and facilities, including safe storage of their clothes and other items of everyday use on the ship insofar as the duration of the voyage and the deployment conditions of the ship require this. Proper account shall be taken here of the social, cultural and religious needs of the crew members.

(2) Crew members shall be obliged to treat rooms and facilities made available to them with care.

(3) The master or a ship's officer assigned by him/her shall inspect the accommodation and the recreational facilities at least once per month in order to ensure that these rooms and facilities are clean, suitably comfortable and in a good general condition. As regards spaces used as accommodation, the inspection may only take place with the consent of the individual crew member concerned. The results of each inspection shall be entered in the logbook and be available for checks.

(4) If it is not possible to grant accommodation on the ship to crew members for special reasons beyond their control, they shall be entitled to other appropriate accommodation or to the amount of money necessary to cover their expenses.

## Section 94

**Access to communication facilities**

The master shall grant to the crew members at their request appropriate and reasonably priced access to ship-to-shore telephone communications, email and Internet services insofar as such facilities are available on board. The shipowner shall ensure that

1. the mail addressed to a crew member is delivered without delay, and
2. crew members shall not be required to pay additional postage when their mail has to be readdressed owing to circumstances beyond their control.

## Section 95

**Visits, accompanying partners**

Unless otherwise required by operational matters, as well as by national or international legal provisions for danger prevention, the master shall permit the crew members, at their request,

1. to receive visits on board from their partners, relatives and friends when in port without delay,
2. to be accompanied occasionally by their partners on voyages.

Accompanying partners shall be obliged to obtain adequate insurance coverage against accident and illness. The shipowner shall support the crew members in obtaining such insurance coverage.

## Section 96

**Legal ordinances**

The Federal Ministry of Labour and Social Affairs is herewith empowered to determine, in agreement with the Federal Ministry of Transport and Digital Infrastructure, by legal ordinance without the consent of the Bundesrat

1. the detailed requirements as to accommodation and living spaces, sanitary facilities, washing facilities and galley spaces, as well as recreational facilities on board the ships, including the dedicated appliances and supply units, and their readiness for use,
2. the detailed requirements as to the medical spaces on board the ships and their operational readiness, also for the purpose of ensuring adequate medical treatment and care.

Legal ordinances in accordance with sentence 1 shall require the agreement

1. of the Federal Ministry of Food and Agriculture insofar as they relate to sea fishing,
2. of the Federal Ministry of Health in cases falling under sentence 1 Number 1.

## Chapter 2

## Food and catering

## Section 97

**Right to food, instruction**

(1) Crew members shall be entitled, for the duration of their engagement, to free, adequate and sufficient meals and beverages (food), as well as drinking water. The food

shall be deemed to be adequate if it guarantees a diet that is suitable and balanced as to nutritional value, quality and variety. Adequate account shall be taken of the number of crew members on board, their cultural differences and religious practices, as well as the duration and nature of the voyage.

(2) The shipowner shall ensure that

1. the drinking water, the water supply unit and its operation comply with the valid legal provisions on drinking water,
2. the food complies with the valid legal provisions on food.

He/she shall ensure that the galley and catering staff are properly instructed. In particular, he/she shall ensure that staff who are to be engaged in the activities designated in section 42 subs. 1 of the Infection Protection Act (*Infektionsschutzgesetz*) involving food are instructed when taking up service on board and subsequently every two years within the meaning of section 43 subs. 4 of the Infection Protection Act on bans on work and reporting obligations. The instructions shall be documented in the logbook. Where the services are rendered on varying ships, a duplicate or copy shall be included in the logbook of the respective ship. Section 43 subs. 1 of the Infection Protection Act shall not apply.

## Section 98

### Inspections

The master or a person determined by him/her shall ensure that inspections

1. of the food and drinking water supplies,
2. of all spaces and equipment used for the storage of food and drinking water, and
3. of the galleys and other equipment for the preparation and serving of meals

are carried out at least monthly and entered in the logbook without delay, stating the date and the result of the inspection.

## Part 6

### Safety and health protection at work, medical care and welfare

#### Chapter 1

#### Entitlement to medical care on board ship and ashore

## Section 99

### Entitlement to medical care

(1) Crew members shall be entitled to prompt and adequate medical care, as is generally available to employees ashore, at the expense of the shipowner for the duration of the engagement in the event of an illness or injury until their health is restored or until the illness or invalidity has been graded as permanent unless provided otherwise in sections 100, 102 and 103. If the ship is berthed in a domestic port, crew members shall be entitled in accordance with sentence 1 to preventive measures which are necessary for the prevention and early diagnosis of illnesses and their progression and which include programmes for health promotion and health education.

(2) A crew member who is prevented from serving as a result of a not unlawful sterilisation or of a not unlawful termination of pregnancy shall be deemed to be equivalent

to a sick or injured crew member. The same shall apply to an abortion if the pregnancy is terminated by a doctor within twelve weeks after conception, the pregnant woman requests the abortion and has proven to the doctor by means of a certificate that she has received counselling from a recognised counselling agency at least three days prior to the operation.

(3) The entitlement to medical care in accordance with subs. 1 sentence 1 shall include all necessary measures providing for health protection and curative treatment, including necessary dental treatment, as well as food and accommodation for the sick or injured crew member. Medical care shall also include the supply of the necessary medicines and remedies, access to medical equipment and facilities for diagnosis and treatment and to medical information and expertise.

(4) Crew members shall have the right to visit a qualified medical doctor or dentist in ports of call immediately.

(5) The entitlement in accordance with subs. 1 shall not exist if

1. the engagement was established abroad and the crew member does not commence the voyage because of an illness or injury that already existed at the beginning of the engagement,
2. the crew member intentionally failed to disclose an illness or an affliction when concluding the seafarer's employment agreement, or
3. the crew member's illness or injury is the result of a criminal offence intentionally committed by him/her.

## Section 100

### **Particularities of medical care in German ports**

(1) If the ship is berthed in a domestic port, a crew member who is insured in the statutory health insurance or private substitutive health insurance shall have the choice between medical care at the expense of the shipowner or of the health insurance as long as he/she remains on board.

(2) The shipowner may refer crew members who are insured in the statutory health insurance or the private substitutive health insurance to the health insurance if

1. a ship's doctor or a doctor commissioned by the shipowner is not available,
2. the illness or the conduct of the crew member does not permit him/her to remain on board or makes this unacceptable, or
3. the success of the treatment is placed at risk.

## Section 101

### **Particularities of medical care abroad**

(1) If a crew member had to leave the ship abroad because of an illness or injury, the crew member may require the shipowner to arrange curative treatment and food in an acceptable hospital.

(2) In cases coming under subs. 1, the shipowner shall pay a suitable daily allowance to the crew member to cover necessary personal needs, unless payment of the wages is to be continued in accordance with section 104.

## Section 102

**Suspension of the entitlement to medical care at the expense of the shipowner**

If a crew member refuses to accept the curative treatment or hospital treatment offered without a legitimate reason, the entitlement to medical care at the expense of the shipowner shall be suspended for the duration of the unjustified refusal.

## Section 103

**Termination of medical care at the expense of the shipowner**

(1) Medical care at the expense of the shipowner shall terminate as soon as a crew member who is insured in statutory health insurance or private substitutive health insurance leaves the ship at a place in Germany. If an interruption entails a risk, however, medical care shall be continued until the competent health insurance or the competent accident insurance starts to provide benefits.

(2) If a crew member has been left behind abroad, medical care at the expense of the shipowner shall terminate when a crew member who is in statutory health insurance or private substitutive health insurance has been repatriated or has returned to Germany. Medical care at the expense of the shipowner shall terminate for each crew member at the latest at the end of the 26th week after he/she has left the ship. In the case of injury as a result of an accident at work, medical care shall end as soon as the competent accident insurance starts to provide benefits.

## Chapter 2

## Continuation of wage payments and other entitlements in case of illness

## Section 104

**Continuation of wage payments in case of illness**

(1) A crew member who is unfit for work as a result of illness or injury shall be entitled to continued wage payments from the beginning of the incapacity for work at least until the day on which he/she leaves the ship. The provisions contained in the Continuation of Wage Payments Act (*Entgeltfortzahlungsgesetz*) shall apply in other respects. As long as the crew member is on board a ship at sea or abroad, however, section 5 of the Continuation of Wage Payments Act shall only apply insofar as the crew member is obliged to notify his/her incapacity for work and its probable duration.

(2) The shipowner shall pay to a sick or injured crew member who is unfit for work and who is no longer entitled to continued wage payments in accordance with subs. 1 an amount corresponding to the sick pay to which the crew member would be entitled in accordance with the Fifth Book of the Social Code (*Fünftes Buch Sozialgesetzbuch*), for a period of up to 16 weeks from the beginning of the incapacity for work or treatment in a hospital, if he/she was insured in statutory health insurance and had become sick in Germany. The right in accordance with sentence 1 shall not exist for a crew member who has left the ship and is entitled to sick pay in Germany from the statutory health insurance.

## Section 105

**Repatriation in case of illness**

(1) A crew member who has been left behind abroad because of illness or injury may be repatriated in accordance with section 73 with his/her consent and that of the doctor in attendance. If the crew member is incapable of consenting, or if he/she refuses to consent

without an adequate reason, the Occupational Accident Insurance Fund may consent instead of the crew member after consulting a doctor who does not belong to the Maritime Medical Service of the Occupational Accident Insurance Fund.

(2) A crew member who is unable to return on board the ship after having completed medical or curative treatment abroad shall be entitled to repatriation in accordance with sections 73 and 76. Where the crew member is not entitled to wages on the basis of other provisions, he/she shall be entitled, for the duration of the repatriation journey, to an appropriate daily allowance to meet necessary personal needs.

#### Section 106

##### **Care of the effects and wage balance of a sick or injured crew member**

(1) If it is necessary to leave a crew member behind ashore because of illness or injury, the master shall hand his/her effects and his/her wage balance without delay to the local representative of the shipowner for safekeeping unless the crew member has determined otherwise. The crew member must consent to these items being handed over to the representative of the shipowner if he/she is able to do so. The crew member shall in any case be informed of the handing over.

(2) The master shall ensure without delay that a list of the effects and the wage balance of the crew member is drawn up in two copies, stating the place of safekeeping. This list shall be signed by the master and another crew member. One copy of the list shall be left at the place of safekeeping and one shall be given to the crew member who has been left behind.

#### Section 106a

##### **Obligation to provide compensation in the event of occupational injuries or illnesses**

(1) The owner of a ship that is not a fishing vessel shall have insurance or another financial security in accordance with subs. 2 which, in the event of a crew member's occupational disability or death due to an occupational injury or illness, provides compensation for the crew member or his/her survivors. Proof of the insurance or other financial security shall be presented to the Occupational Accident Insurance Fund when inspections are made.

(2) The insurance or the contract for another financial security shall provide that

1. the crew member's claims may be brought directly to the insurer or security provider,
2. interim payments are made if such payments are necessary to avoid special hardship for the crew member,
3. insurance coverage or coverage by another financial security does not end before expiry of the agreed duration of the contract unless the insurer or security provider has given prior notification of at least 30 days to the Occupational Accident Insurance Fund.

(3) In accordance with the provisions of subs. 4, the insurer or security provider shall supply the shipowner with a certificate in German, accompanied by an English translation, to prove that the shipowner has insurance or another financial security. The shipowner shall carry the certificate on board. A copy of the certificate shall be displayed on board in a suitable place and in an appropriate language for the crew members.

(4) The certificate shall include at least the following:

1. name of the ship,
2. port of registry of the ship,

3. call sign of the ship,
  4. IMO ship identification number,
  5. name and address of the insurer or security provider,
  6. contact details of the persons or entity responsible for handling seafarers' requests for relief,
  7. name of the shipowner,
  8. period of validity of the insurance,
  9. a declaration from the insurer or security provider that the insurance or other financial security meets the requirements of Standard A4.2.1 of the Maritime Labour Convention.
- (5) If insurance coverage or coverage by another financial security is about to end,
1. the shipowner shall inform the crew members,
  2. the insurer or security provider shall inform the Occupational Accident Insurance Fund.

### Chapter 3

#### Guarantee of medical care by the shipowner

#### Section 107

##### **Medical spaces and medical equipment**

(1) The shipowner shall ensure that the ship is equipped with the spaces necessary for adequate medical care of the persons on board (medical spaces). The medical spaces include

1. the sickbays, treatment rooms and operating rooms,
2. the equipment of these spaces, in particular the medicine chest, sanitary facilities and communication facilities, as well as lighting and ventilation.

The shipowner shall ensure that the medical spaces are kept in a constant ready-for-use condition.

(2) The shipowner shall ensure that, in accordance with sentences 2 and 3, the ship, as well as the survival craft and rescue boats belonging to the ship, are supplied with suitable medical equipment taking into account the requirements of the respective type of ship, of the purpose and of the trading area, as well as appropriate to the nature, duration and destination of the voyages and the number of persons on board. The medical equipment shall include in particular

1. the medicines, medical devices and aids kept in the ship's dispensary, in medicine chests or in first-aid kits and other medical material,
2. the necessary documents for the daily or ad hoc records of the treatments and the use of the ship's dispensary and the other medical material, in particular journals and medical report forms, and
3. the necessary medical instructions.

The medical equipment shall be suitable as to its content, storage, labelling and application, including the possibilities for making records, to guarantee the protection of the health of the persons on board and their prompt suitable medical treatment and care on board. If in each case the medical equipment satisfies the medical requirements in maritime shipping (state of medical knowledge) most recently published in the Transport Gazette or in the



Federal Gazette, the medical equipment shall be deemed to satisfy the requirements of sentence 3.

## Section 108

### **Committee for medical equipment in the maritime shipping sector**

(1) The Federal Ministry of Transport and Digital Infrastructure shall establish a Committee for medical equipment in the maritime shipping sector (Committee). It shall be incumbent on the Committee to

1. keep following developments in the field of medical equipment,
2. investigate and ascertain the state of medical knowledge,
3. give recommendations for the equipment of the medical spaces.

When establishing the state of medical knowledge, in particular the respective type of ship, the number of persons on board, the deployment, trading area, nature, duration and destination of the voyages, as well as relevant medical standards recommended nationally and internationally, shall be taken into account.

(2) The Federal Ministry of Transport and Digital Infrastructure shall notify the state of medical knowledge established by the Committee in the Transport Gazette or in the Federal Gazette. The Occupational Accident Insurance Fund may publish a notification in accordance with sentence 1 on its website for information purposes.

(3) The Committee shall consist of a representative

1. of the Maritime Medical Service of the Occupational Accident Insurance Fund,
2. of the radio medical advice or satellite radio medical advice service providing specialist medical advice,
3. of the authority of the Free and Hanseatic City of Hamburg that is responsible for health-related matters, who is experienced in maritime medicine,
4. of the Working Group of Coastal Federal States for Ship Hygiene established on the basis of the Agreement between the Federal States on Cooperation in the Field of Maritime Medicine (*Abkommen der Länder über die Zusammenarbeit auf dem Gebiet der Schifffahrtsmedizin*), who is experienced in maritime medicine,
5. of the Federal Institute for Drugs and Medical Devices,
6. of the Drug Commission of German Pharmacists,
7. of the Drug Commission of the German Medical Association,
8. of the Federal Maritime and Hydrographic Agency,
9. of the shipowners, and
10. of the seafarers.

In addition, the following persons shall belong to the Committee in an advisory capacity:

1. a further representative of the Occupational Accident Insurance Fund with qualification for judicial office,
2. two pharmacists nominated by the Federal Chamber of Pharmacists (*Bundesapothekerkammer*) who are experienced in the equipment of ships,
3. a representative of the German Maritime Health Association (*Deutsche Gesellschaft für Maritime Medizin*) who does not at the same time belong to the institutions named in sentence 1.

The Committee shall be chaired by a representative of the Federal Ministry of Transport and Digital Infrastructure, who shall not have a voting right. The persons designated in sentence 1 Numbers 1 to 7 must have expertise in the medical treatment and care of persons on board or as to the approval and registration of medicines, anaesthetics and medical devices; the persons designated in sentence 1 Numbers 8 to 10 must hold a certificate of competency for nautical service on merchant vessels or have equivalent seafaring experience, including practical knowledge of medical care on board.

(4) The Committee shall be independent in the performance of its tasks. The Committee shall meet in private sittings. Confidentiality shall be observed regarding the proceedings, with the exception of the resolutions that are adopted. The Committee shall have a quorum if more than one-half of the members entitled to vote are present; it shall adopt its resolutions with a majority of two-thirds of the members entitled to vote who are present. Outside of meetings, resolutions can be adopted in written proceedings if no member entitled to vote contradicts; in this case, a resolution shall require a majority of two-thirds of all members entitled to vote.

(5) The Federal Ministry of Transport and Digital Infrastructure shall appoint the members of the Committee on the proposal of the authorities and other institutions which are entitled to delegate representatives for a term of three years. A deputy shall be appointed for each member. Re-appointment shall be permissible. The Federal Ministry of Transport and Digital Infrastructure may only reject a proposal if the person proposed does not have the necessary expertise. The Federal Ministry of Transport and Digital Infrastructure shall furthermore appoint one representative as advisory member of the Committee

1. of the Bernhard Nocht Institute for Tropical Medicine with regard to issues related to tropical medicine,
2. of the Paul Ehrlich Institute with regard to immunisation protection and the application of sera and vaccines,
3. of the Robert Koch Institute with regard to the fight against and prevention of infectious diseases, or
4. of the Federal Office for Agriculture and Food with regard to special issues related to sea fisheries;

on the proposal of the designated institutions, where there is particular need for expertise in individual cases; sentences 2 and 3 shall apply accordingly. Moreover, the Federal Ministry of Transport and Digital Infrastructure may nominate further individuals who can attend meetings of the Committee in an advisory capacity in case of other needs.

(6) The management of the Committee shall be incumbent on the Occupational Accident Insurance Fund; it shall attend the meetings.

## Section 109

### **Implementation of medical care and inspections on board**

(1) The following persons shall be responsible for the implementation of medical treatment and care on board and for the maintenance, administration and confidential treatment of the records, in particular the medical report forms:

1. the ship's medical doctor, or
2. on a ship without a ship's medical doctor, the master.

In the case of sentence 1 Number 2, the master may charge a ship's officer with the performance of the tasks in accordance with sentence 1. The master, and in case of sentence 2 also the ship's officer, must have training which guarantees suitable medical treatment and care on board. The persons referred to in sentence 3 must undergo approved

medical refresher courses in this field at five-year intervals. The providers of medical refresher courses shall ensure that the participants are taught the current knowledge and abilities for the provision of appropriate medical treatment and care on board. A medical refresher course shall be approved by the Occupational Accident Insurance Fund if it is guaranteed that the requirements of sentence 5, read in conjunction with a legal ordinance in accordance with section 113 sentence 1 Number 4, are satisfied.

(2) The shipowner shall ensure that the tasks listed in subs. 1 sentence 1 are carried out by the persons designated therein. The shipowner shall furthermore ensure that his/her ship is inspected by the Occupational Accident Insurance Fund with regard to the medical spaces and the medical equipment

1. on commissioning,
2. on change of flag, or
3. in the framework of an inspection by the flag state in accordance with section 129 subs. 2.

The Occupational Accident Insurance Fund may avail itself of the services of recognised organisations.

(3) In addition to the inspection by the Occupational Accident Insurance Fund, the shipowner shall ensure through internal checks carried out at least every twelve months that the medical spaces and the medical equipment are always in a proper state. When checking and where necessary replenishing the medical equipment with medicines and medical devices, the shipowner shall avail him/herself of the services of a public pharmacy. The persons designated in subs. 1 sentences 1 and 2 shall keep up-to-date records of carrying out the internal checks and of the involvement of the pharmacy, and shall keep them on board for at least five years from the date of their issuance.

(4) The person who is responsible in accordance with subs. 1 sentence 1 or 2 shall record the medical care provided for a sick or injured person on board without delay in writing or electronically in the documents specified in section 107 subs. 2 sentence 2 Number 2. The documents and the information contained therein shall be treated confidentially and shall only be used to guarantee the treatment of the sick or injured person. The Occupational Accident Insurance Fund may order in general that the persons who are responsible in accordance with subs. 1 sentence 1 or 2 are obliged to pass on documents in an anonymized form to the Occupational Accident Insurance Fund at certain times to the extent that this is necessary to further develop the state of medical knowledge. Data from the documents may be passed on by the Occupational Accident Insurance Fund in an anonymized form to institutions engaged in scientific research and to public bodies for the purpose of statistical or scientific evaluations.

## Section 110

### **Monitoring**

In addition to the powers laid down in section 143, the Occupational Accident Insurance Fund and persons employed by it may order in particular that

1. the medical spaces are equipped and maintained in such a way that they meet the requirements of section 107 subs. 1 sentence 1,
2. the medical equipment which does not correspond to the state of medical knowledge within the meaning of section 107 subs. 2 sentence 4 is changed or replenished in such a way that it meets the requirements of section 107 subs. 2 sentence 3 or of an order in accordance with section 111 subs. 2.

## Section 111

**Exceptions**

(1) On application in individual cases, the Occupational Accident Insurance Fund may permit exceptions to the requirements of this Chapter and of the legal ordinances handed down on the basis of the provisions contained in this Chapter insofar as this is compatible with the state of medical knowledge and the medical treatment and care of the persons on board is not placed at risk.

(2) With the consent of the Federal Ministry of Transport and Digital Infrastructure, the Occupational Accident Insurance Fund may issue an order intended for the shipowners that, derogating from the state of medical knowledge published in the Transport Gazette or in the Federal Gazette, the medical equipment has to meet specific requirements insofar as this is necessary in order to take account of more recent knowledge which has not yet been taken into account in the state of medical knowledge. An order in accordance with sentence 1 shall apply until the publication of a more recent state of medical knowledge, at most for two years. The order shall be made public in the Transport Gazette or in the Federal Gazette; it may be additionally published on the website of the Occupational Accident Insurance Fund.

## Section 112

**Radio and satellite radio communication medical care**

The radio or satellite radio medical service providing specialist medical advice that has been established by the Federal Government in accordance with section 1 Number 7a of the Federal Maritime Responsibilities Act (*Seeaufgabengesetz*) shall be available free of charge and at all times to all ships at sea, regardless of their flag, for radio and satellite radio medical advice, including specialist medical advice.

## Section 113

**Legal ordinances**

In order to ensure adequate medical treatment and care on board a ship, the Federal Ministry of Transport and Digital Infrastructure is herewith empowered to

1. regulate the rules of procedure for the Committee for medical equipment in the maritime shipping sector; in doing so, the formation of preparatory subcommittees and their tasks and composition may be determined,
2. enact detailed regulations on the manning of ships with ship's doctors,
3. determine the detailed requirements as to the training and further education of the persons within the meaning of section 109 subs. 1 sentence 1 Number 2 and sentence 2, including examinations and issuance of statements and certificates,
4. determine the detailed requirements as to the approval and quality assurance of medical refresher courses,
5. issue detailed regulations for monitoring the provisions contained in this Chapter and the legal ordinances handed down on the basis of the provisions contained in this Chapter, in particular on duties to report, duties to make records, duties to keep business documents, duties to provide information, to tolerate inspections of the business premises and operational facilities, and duties to provide support,
6. regulate details of the nature, scope and frequency of the internal checks in accordance with section 109 subs. 3, as well as the necessary supporting documents, records and safekeeping periods

by means of a legal ordinance without the consent of the Bundesrat.

The administrative procedure may be regulated in detail in legal ordinances in accordance with sentence 1 Numbers 3, 4 and 6. Legal ordinances in accordance with sentence 1 shall require the consent

1. of the Federal Ministry of Food and Agriculture insofar as sea fisheries are concerned,
2. of the Federal Ministry of Health insofar as infectiological or hygienic matters are regulated.

## Chapter 4

### Safety and health protection at work

#### Section 114

##### **General protection against operational hazards**

(1) The shipowner shall be obliged to arrange and maintain the entire operation of the ship and all tools, devices and systems on board, as well as to regulate employment and the workflow in such a way that the crew members are protected against maritime and fire risks, work-related health risks, as well as against other risks to life, health and morals to the extent permitted by the type of ship operation. In particular, the shipowner shall ensure that the master is provided with the necessary means to guarantee an adequate manning level of the ship and adherence to the statutory regulations in respect of occupational safety and health and hours of work. The obligations relating to the maintenance and safe operation of the ship and of the work areas, systems and devices on board, as well as to the regulation of employment and the workflow, shall also be incumbent on the master.

(2) The crew members shall adhere to the occupational safety and health measures.

#### Section 115

##### **Ship safety committee**

(1) The shipowner shall establish a ship safety committee on ships with five or more crew members. This Committee shall consist of

1. the master,
2. one member of the crew members' representation appointed by the crew members' representation, and
3. the safety representative in accordance with section 116.

If there is no crew members' representation, the member in accordance with sentence 2 Number 2 shall be nominated by the master after consultation with the crew.

(2) The ship safety committee has the task to deliberate on matters of occupational safety and health, as well as accident prevention. The ship safety committee shall meet at least once every three months.

#### Section 116

##### **Safety representative**

(1) The shipowner shall appoint a safety representative on ships with five or more crew members. Appointment and dismissal shall be effected with the consent of the crew members' representation, if such exists.

(2) The safety representative shall support the shipowner in implementing measures for the prevention of occupational accidents and occupational diseases, and in particular

shall satisfy him/herself of the existence and the proper use of the compulsory protective devices and personal protective equipment, as well as draw the attention to accident risks and health hazards for the crew members.

(3) The safety representative may not be discriminated against because of carrying out the tasks assigned to him/her.

## Section 117

### **Special protection for young crew members**

(1) The employment or engagement of young crew members with work that may endanger their health or safety is prohibited.

(2) Young crew members may not be employed with or assigned work

1. which is beyond their physical or mental ability,
2. in which they are exposed to moral dangers,
3. which entails accident risks that young crew members are probably unable to recognise or avert because of a lack of safety awareness or a lack of experience,
4. in which their health is endangered by exceptional heat or cold or excessively wet conditions,
5. in which they are exposed to harmful effects from noise, vibrations or radiation,
6. in which they are exposed to harmful effects from hazardous substances within the meaning of the Ordinance on Hazardous Substances (*Gefahrstoffverordnung*),
7. in which they are exposed to harmful effects from biological agents within the meaning of the Ordinance on Biological Agents (*Biostoffverordnung*),
8. in the engine department if they have not yet passed the final examination in a recognised vocational training occupation for the engine department.

Sentence 1 Numbers 3 to 8 shall not apply to young crew members insofar as

1. this is necessary in order to achieve the objective of their training,
2. their protection is guaranteed by a qualified person supervising them,
3. the air limit value for hazardous substances in accordance with Number 6 is not reached.

Sentence 2 shall not apply to specific activities involving biological agents of risk groups 3 and 4 within the meaning of the Ordinance on Biological Agents, as well as to the employment of crew members who are at least 15 years old on fishing vessels in accordance with section 10 subs. 3.

(3) The master shall take the necessary precautions and issue the necessary orders for the protection of young crew members against dangers to life, limb and health, as well as for avoiding harm to their physical or mental and emotional development. Account shall be taken of the lack of safety awareness and experience, as well as of the state of development of young crew members and the generally recognised regulations on technical safety and occupational medicine, as well as other established ergonomic findings shall be observed. The master shall in particular examine in the case of the following activities whether work by young crew members is excluded in accordance with subs. 1 and 2:

1. lifting, moving or carrying heavy loads or objects,
2. entering boilers, tanks and cofferdams,
3. operating hoisting gear and other power-driven devices and tools or working as a signaller for communication with the persons who operate such devices,

4. handling mooring lines, towing hawsers or anchor gear,
5. work in the rigging,
6. working aloft or on deck in heavy weather,
7. watchkeeping duties during the night,
8. maintenance of electrical systems and devices,
9. cleaning of kitchen devices,
10. handling or taking charge of ships' boats.

(4) Before young crew members take up work, and in case of a major change to the working conditions, the master shall assess the hazards to young crew members associated with the work. The provisions contained in the Safety and Health at Work Act (*Arbeitsschutzgesetz*) shall apply in all other regards.

(5) Before young crew members take up work, and in case of a major change to the working conditions, the master shall provide instructions to the young crew members about the accident and health risks to which they are exposed during work, as well as about the facilities and measures for averting these dangers. Before young crew members take up work for the first time at machinery and dangerous workplaces or engage in work in which they come into contact with substances that are harmful to health, the master shall provide instructions to the young crew members about the particular risks posed by this work, as well as the necessary conduct when carrying it out. The instructions shall be repeated at appropriate intervals, but at least every six months.

(6) The shipowner shall involve the company physicians as well as the specialists for safety and health at work in the planning, implementation and monitoring of the provisions applicable to the safety and health protection at work of young crew members.

(7) For crew members who are not employed by the shipowner, their employers or trainers and the master shall together ensure adherence to the provisions in accordance with subs. 1 to 5. Instead of the master, the employer, the trainer or the person representing them on board may give orders to these crew members with regard to occupational safety and health with the consent of the master.

(8) The Occupational Accident Insurance Fund may determine in individual cases whether a task falls under the work bans or work restrictions in accordance with subs. 1 and 2 or a legal ordinance issued in accordance with section 118. In individual cases, it may prohibit or restrict work by young crew members involving specific activities over and above the banned or restricted activities of subs. 1 and of a legal ordinance in accordance with section 118 if this work entails risks to the life and limb, health or physical or mental-emotional development of the young crew members.

## Section 118

### **Legal ordinances**

The Federal Ministry of Labour and Social Affairs is herewith empowered to determine, in agreement with the Federal Ministry of Transport and Digital Infrastructure, by means of a legal ordinance without the consent of the Bundesrat, the work bans or restrictions under section 117 subs. 1 to 3 for young persons in respect of work which entails particular risks to life and limb, health or physical or mental-emotional development. Legal ordinances in accordance with sentence 1 shall require the consent of the Federal Ministry of Food and Agriculture insofar as they relate to sea fisheries.

## Chapter 5

## Access to shore-based welfare facilities

## Section 119

**Shore-based welfare facilities for seafarers**

(1) Welfare facilities for seafarers in the ports shall ensure that they are easily accessible to all seafarers without discrimination, regardless of the flag of the ship.

(2) The welfare facilities shall include

1. meeting and recreational rooms,
2. sports facilities and other outdoor facilities, also for competitions,
3. educational facilities, and
4. facilities for the exercise of religion and for personal counselling.

(3) The welfare facilities should establish welfare boards. Representatives of the associations of shipowners and seafarers, of the competent agencies and of voluntary organisations and welfare bodies should belong to the welfare boards. Where appropriate, consuls of the maritime states and the local representatives of foreign welfare organisations should be invited to cooperate with the welfare boards working in the ports.

(4) To fulfil their tasks, welfare facilities in domestic ports shall receive an annual financial subsidy from the Federal Government as institutional funding to cover current expenses and investments; this subsidy shall be granted within the framework of available budgetary means. The Occupational Accident Insurance Fund shall be the competent authority for awarding the grant.

**Part 7****Order on board and right of complaint**

## Chapter 1

## Observance of order on board

## Section 120

**Conduct on board**

The ship's crew shall work together in a spirit of trust and mutual respect and consideration for each other in order to ensure the operation of the ship and to guarantee public safety and order on board and in connection with the operation of the ship.

## Section 121

**Responsibility of the master for maintaining safety and order**

(1) The master shall be the superior of all crew members. He/she shall have the highest authority to give orders to the crew members and the other persons present on board.

(2) The master shall maintain public safety and order on board and in connection with the operation of the ship, and shall be entitled within the framework of the provisions below and the other legal provisions to take the measures necessary for this purpose. He/she may



not be prevented by the shipowner from taking all decisions which, in the professional judgement of the master, are necessary for the safety of the ship and its safe voyage, its safe operation or the safety of the crew members and of the other persons on board.

(3) If there is an imminent danger to people or to the ship, the master may, where necessary, enforce the orders given to avert the danger by recourse to the necessary coercive means; temporary arrest shall be permissible. The fundamental rights of Article 2 para. 2 sentences 1 and 2 and of Article 13 paras. 1 and 2 of the Basic Law (*Grundgesetz*) shall be restricted in this respect. If recourse to several means can be considered, the means shall be selected which least affects those concerned.

(4) The application of physical force or temporary arrest shall only be permissible if other means appear from the outset to be inadequate or have proven to be inadequate. They may only be applied in this respect and for as long as required for the performance of the tasks of the master in accordance with subs. 2 and 3.

(5) The master may transfer the exercise of the rights arising from subs. 1 to 4 to the first officer of the deck department and to the head of the engine department within their departments if he/she is unable to exercise these rights him/herself. Any exercise of the rights shall be notified to the master at the latest within 24 hours. The transfer shall be notified to the crew members in a suitable manner.

(6) The master shall enter measures in accordance with subs. 3 and 4 and the transfer of the rights in accordance with subs. 5 in the ship's logbook without delay, stating the circumstances.

## Section 122

### **Authority of the ship's officers and the other superiors to give orders**

(1) The ship's officers and the other superiors shall have authority to give orders for the maintenance of public safety and order on board and in connection with the operation of the ship within their field of responsibility.

(2) The ship's officers shall be the superiors of the crew members working within their department unless the latter are heads of departments, as well as of persons working within their department in accordance with section 3 subs. 3. Heads of departments shall be the superiors of all crew members working in their department and of persons in accordance with section 3 subs. 3.

(3) The master may also appoint other crew members as superiors within the individual departments. The appointment shall be announced by posting.

(4) The duty ship's officer of the engine department and the other crew members who are heads of departments shall implement the orders of the duty nautical ship's officer which are given within watchkeeping, in their area of duty.

## Section 123

### **Duties of the superiors**

(1) The master and the other superiors shall treat the persons subordinated to them with fairness and understanding, and shall counter violations of the law and common decency. The master and the superiors may not punish crew members physically, treat them in a degrading manner, or coerce or abuse them, and shall protect them against physical punishment, degrading treatment, coercion and mistreatment by other crew members and moral dangers caused by them. They shall ensure that young crew members are also protected during their leisure time against health and moral risks wherever possible.

(2) The master shall ensure that the vocational further training of the young people is promoted in the framework of the ship's operation.

## Section 124

**Duties of the crew members and the other persons staying on board**

(1) Every crew member shall be obliged to promptly comply with executable orders from the superiors. In particular, crew members shall be obliged to promptly comply with an executable order of a competent superior which serves to avert an imminent danger to persons, to the ship or its cargo, to prevent serious interruptions of the ship's operation or to comply with provisions on ship safety. In cases coming under section 121 subs. 2 and 3, also read in conjunction with subs. 5, the crew members shall be obliged to give assistance.

(2) Crew members shall not be obliged to carry out an order which would violate human dignity or if a criminal or regulatory offence would be committed by carrying out the order.

(3) The other persons on board shall follow executable orders which are given to them by the master or by a member of the crew, acting as representative for or on behalf of the master, in the interest of maintaining public safety and order on board and in connection with the operation of the ship. Subs. 2 shall apply accordingly.

## Section 125

**Bringing persons and objects on board**

(1) Crew members may not bring persons on board who are not members of the ship's crew without the permission of the master.

(2) Crew members shall be entitled to bring a suitable amount of personal articles of daily use and consumables on board unless this violates statutory provisions, affects order on board or endangers people, the ship or the cargo. Other objects, in particular arms and ammunition, may only be carried on board with the consent of the master.

(3) If objects are brought on board contrary to the provisions of subs. 2, the master may take them into custody or seize them by other means. If their presence endangers the health of the persons on board, the ship or the cargo, or if it could cause an authority to intervene, the master may demand the removal of the objects. If the crew member does not comply with the demand, the master may have the objects destroyed. In this case, the fact of and the reason for the destruction shall be entered in the ship's logbook.

## Section 126

**Persons deemed equivalent to crew members**

Helmsmen on the Kiel Canal and security staff of private security companies licensed in accordance with the Trade Regulation Act (*Gewerbeordnung*) shall be equivalent to crew members with regard to this Chapter.

## Chapter 2

## Right of complaint, complaint procedure

## Section 127

**Right of complaint**

(1) Crew members shall be entitled to complain to the persons and bodies designated in section 128 subs. 1, 2 and 4 of a violation of the present Act and of the legal ordinances handed down on the basis of the present Act or of discrimination or unfair treatment (complaint).

(2) The shipowner, or the master on his/her behalf, shall appoint at least one person on board the ship who can, on a confidential basis, provide impartial advice to the crew member in respect of a complaint and assist him/her in exercising the right of complaint.

(3) The crew member may be accompanied or represented by a person enjoying his/her confidence on board the ship during the complaint procedure. The right to be represented by a lawyer shall remain unaffected.

(4) The crew member and the confidants in accordance with subs. 2 and 3 may not suffer any disadvantages because of lodging a complaint.

(5) Rights of complaint, as well as rights to redress and to compensation in accordance with other statutory provisions, shall remain unaffected.

(6) In addition to the seafarer's employment agreement, the shipowner shall inform the crew member in writing of the complaint procedures applicable on board. This information shall include the name of the person of trust in accordance with subs. 2 and the addresses and telephone numbers of the shipowner, the Occupational Accident Insurance Fund and the competent complaint agency in the state of residence. The shipowner shall keep the documents on the complaint regulations always up-to-date. He/she may meet the obligation in accordance with sentence 3 by referring the crew member to a generally accessible posting on board.

## Section 128

### **Complaint procedure**

(1) The crew member should first address his/her complaint to his/her direct superior on board.

(2) If the crew member complains to the direct superior on board, and if the latter does not remedy the complaint within an appropriate period, which as a rule should not exceed two weeks, the superior shall on request of the complainant submit the complaint to the master. The master shall decide on the complaint. If the complaint relates to the conduct of crew members, the master shall at first try to reach an amicable settlement. If the master does not remedy the complaint, he/she shall refer it to the shipowner on request of the complainant.

(3) The master shall record the complaint and his/her decision thereon in the logbook, stating the facts of the case. The complainant should be provided with a copy of the entry.

(4) The crew member shall nonetheless be entitled to complain at any time directly

1. to the master,
2. to the shipowner,
3. to the Occupational Accident Insurance Fund,
4. to the German representations abroad,
5. to other suitable external bodies.

(5) The bodies designated in subs. 4 sentence 1 Numbers 3 to 5, as well as the persons authorized by them, shall treat the source of a complaint in accordance with section 127 subs. 1 confidentially. Without the complainant's consent they shall not be allowed to inform the shipowner or persons authorized by him/her that an investigation is being made as a result of the complaint. The preceding sentence shall not apply if such information is necessary in individual cases to ward off dangers to the life and health of people or to the ship or its cargo.

(6) If a German representation abroad receives a complaint, it shall forward it to the Occupational Accident Insurance Fund without delay.

(7) The Occupational Accident Insurance Fund shall ensure that crew members' complaints are received and investigated at all times, and remedied wherever possible.

(8) The Occupational Accident Insurance Fund may avail itself of the cooperation of recognised organizations and of other expert persons when examining and remedying complaints. The costs of the examination shall be borne by the shipowner.

## **Part 8**

### **Certificates and responsibility of the flag State**

#### Chapter 1

#### Inspection of the working and living conditions on ships and ashore

#### Section 129

#### **Scope of the flag State inspections**

(1) Within the framework of the present Act, the Occupational Accident Insurance Fund shall be the competent authority for inspecting compliance with the working and living conditions on board ships in accordance with the legal provisions which have been handed down for the protection against dangers to the safety and health of the crew members or for their protection in other respects. In particular, the inspection shall encompass adherence on compliance with the provisions on the following requirements:

1. minimum age,
2. medical fitness for sea service,
3. manning levels, crew list, qualifications,
4. placement,
5. conditions of employment including hours of work and hours of rest, and financial security to cover cases of abandonment,
6. accommodation and recreational facilities,
7. food including catering,
8. safety and health protection at work, medical care and social welfare including compensation in the event of occupational injuries or illnesses,
9. order on board and complaint procedure.

The competence of the Occupational Accident Insurance Fund shall also include circumstances ashore insofar as these are directly related to the working and living conditions on board.

(2) The Occupational Accident Insurance Fund shall inspect

1. ships subject to certification in accordance with section 130 regularly every five years with an intermediate inspection between the second and third year of validity of the certificate,
2. ships not subject to certification in accordance with section 134, regularly every three years,
3. fishing vessels within the meaning of section 133 subs. 1 sentence 1, regularly every four years with an intermediate inspection after two years, and
4. fishing vessels which do not fall under Number 3, on an ad hoc basis, in particular on receipt of complaints.

(3) The Occupational Accident Insurance Fund shall issue, in accordance with the provisions below, the maritime labour certificate, the declaration of maritime labour compliance and the fishing labour certificate.

## Chapter 2

### Maritime labour certificate and declaration of maritime labour compliance

#### Section 130

##### **Obligation to carry a maritime labour certificate, prerequisites for issuance**

(1) The shipowner may only commission or keep at sea a ship of 500 gross tonnage or more which

1. is engaged in international voyages, or
2. operates from a port, or between ports, in another country

and which is not a fishing vessel if he/she holds a valid maritime labour certificate for the ship and ensures that the ship satisfies the requirements of the certificate at all times. Without a maritime labour certificate, the master may not leave a port with the ship or keep it at sea. The maritime labour certificate shall be carried on board.

(2) The maritime labour certificate shall be issued by the Occupational Accident Insurance Fund if it has established by an inspection of the ship that

1. the working and living conditions of the crew members on the ship meet the requirements of the legal provisions which have been handed down for the protection against dangers to the safety and health of the crew members or for their protection in other respects, and
2. the measures taken to keep fulfilling the requirements of Number 1 are adequate.

Derogating from sentence 1, the Occupational Accident Insurance Fund may, on application by the shipowner, also issue a maritime labour certificate if an expert report of a recognised organisation commissioned by the shipowner (inspection report) has proven that the requirements of sentence 1 have been met. Without prejudice to sentence 2, the Occupational Accident Insurance Fund may reserve the right at any time not to issue the maritime labour certificate until after an inspection within the meaning of sentence 1 carried out by itself.

(3) The shipowner may only commission a recognised organisation with the inspection and the drawing up of the inspection report if he/she has concluded a written agreement with the recognised organisation regulating at least the power of the recognised organisation to demand that a violation be remedied and to inform the Occupational Accident Insurance Fund of a violation that has been established.

(4) Where the shipowner has commissioned a recognised organisation with the inspection and the drawing up of the inspection report, he/she shall notify the Occupational Accident Insurance Fund accordingly. The recognised organisation shall inform the Occupational Accident Insurance Fund of a violation that has been established.

(5) Subject to subs. 6 the maritime labour certificate shall be valid for five years. The maritime labour certificate may only be renewed if the conditions of subs. 2 sentence 1 are met.

(6) A maritime labour certificate shall cease to be valid

1. if mandatory intermediate inspections have not been carried out or certified in due time,
2. on change of flag,

3. if the responsibility of the shipowner for the operation of the ship ends,
4. in the event of substantial structural alterations to the accommodation and recreational facilities,
5. in the event of its withdrawal or revocation.

In the cases coming under sentence 1, the shipowner shall, without being requested, return the maritime labour certificate to the Occupational Accident Insurance Fund for the purpose of its retraction.

(7) The shipowner shall ensure that a copy of the maritime labour certificate is displayed on board in a place accessible for the crew members.

(8) The maritime labour certificate shall also be issued on application of the shipowner for ships which do not fall under subs. 1 sentence 1 and are not fishing vessels.

(9) If there is a legitimate interest, the Occupational Accident Insurance Fund shall on request provide information on maritime labour certificates that have been issued or renewed.

### Section 131

#### **Interim maritime labour certificate, short-term certificate, officially-recognized maritime labour certificate**

(1) The Occupational Accident Insurance Fund may on application by the shipowner, on one occasion only, issue a maritime labour certificate on an interim basis (interim maritime labour certificate) when

1. a new building is commissioned
2. a ship changes flag, or
3. the shipowner assumes responsibility for the operation of a ship which is new to him/her.

(2) The Occupational Accident Insurance Fund may issue a maritime labour certificate as a short-term certificate on application by the shipowner where

1. an inspection of the ship has been carried out in accordance with section 130 subs. 2, and
2. it is not possible to renew a maritime labour certificate in good time in accordance with section 130 subs. 5 sentence 2 and dispatch it on board the ship immediately before the expiry of its validity.

(3) The Occupational Accident Insurance Fund may permit a shipowner to have a recognised organisation commissioned in accordance with section 130 subs. 3 issue an officially recognised maritime labour certificate. The officially recognised maritime labour certificate shall be issued as an

1. officially recognised interim maritime labour certificate, or
2. officially recognised short-term certificate,

and shall replace an interim maritime labour certificate or a short-term certificate respectively. The recognized organization may only issue an officially recognized maritime labour certificate if it considers the prerequisites for the issuance of an interim maritime labour certificate or a short-term certificate to be satisfied. The recognized organization shall inform the Occupational Accident Insurance Fund of the issuance of an officially recognised maritime labour certificate in accordance with sentence 1 without delay and forward a copy to it.

(4) The interim maritime labour certificate, the short-term certificate and the officially recognized maritime labour certificate in accordance with subs. 3 are valid for a maximum period of six months subject to subs. 5.

(5) Section 130 subs. 6 shall apply accordingly if an officially recognized maritime labour certificate in accordance with subs. 3 ceases to be valid and is retracted.

## Section 132

### **Declaration of maritime labour compliance**

(1) The shipowner shall ensure that a declaration of maritime labour compliance shall be carried on board his/her ship within the meaning of section 130 subs. 1, and the shipowner shall ensure that the ship complies with the requirements of the declaration at all times.

(2) Part I of the declaration of maritime labour compliance shall list the domestic legal provisions which have been enacted for the protection against dangers to the safety and health of the crew members or for their protection in other respects. In Part II of the declaration of maritime labour compliance, the shipowner shall list the measures that he/she has taken to ensure that the requirements described in Part I of the declaration of maritime labour compliance are met on the ship, and to facilitate continuous improvement.

(3) The Occupational Accident Insurance Fund shall issue the declaration of maritime labour compliance to the shipowner if

1. the shipowner has provided it with Part II of the declaration of maritime labour compliance, and
2. the Occupational Accident Insurance Fund has verified that the measures within the meaning of subs. 2 sentence 2 referred to by the shipowner in Part II of the declaration of maritime labour compliance are suitable to satisfy the requirements in accordance with subs. 2 sentence 1, and
3. an inspection on board the ship in accordance with section 130 subs. 2 has shown that the requirements are met.

(4) A declaration of maritime labour compliance shall cease to be valid

1. in cases in which a maritime labour certificate ceases to be valid in accordance with section 130 subs. 6 sentence 1 Numbers 2 to 5,
2. if the measures referred to by the shipowner in Part II of the declaration of maritime labour compliance have changed to such a degree that the measures are no longer suited to satisfy the requirements in accordance with subs. 2 sentence 1, or
3. if the actual circumstances on board no longer correspond to the measures referred to by the shipowner in Part II of the declaration of maritime labour compliance.

Section 130 subs. 6 sentence 2 shall apply accordingly.

(5) Section 130 subs. 7 and 8 shall apply accordingly.

## Chapter 3

### Fishing labour certificate

## Section 133

### **Obligation to carry a fishing labour certificate, prerequisites for issuance**

(1) A fishing vessel which remains at sea for more than three days, and

1. which is of a length of 24 metres or more, or
2. which is regularly deployed at a distance of more than 200 nautical miles from the coastline or beyond the outer rim of the continental shelf if this distance from the coastline is greater

may only be commissioned or kept at sea by the shipowner if he/she holds a valid fishing labour certificate for the vessel. Section 130 subs. 1 sentence 2 and 3, subs. 2 sentence 1 Number 1, subs. 5 sentence 2 and subs. 7 shall apply accordingly. The Occupational Accident Insurance Fund shall issue the fishing labour certificate for a period of up to four years. Renewal of the fishing labour certificate shall only be possible subject to the conditions of section 130 subs. 2 sentence 1 Number 1.

(2) A fishing labour certificate shall cease to be valid if the prerequisites of section 130 subs. 6 sentence 1 are applied accordingly; section 130 subs. 6 sentence 2 shall apply accordingly.

## Chapter 4

### Ships not obliged to carry a certificate

#### Section 134

#### **Ships not obliged to carry a certificate**

The shipowner may only commission or keep at sea a ship which does not fall under section 130 subs. 1 sentence 1 and is not a fishing vessel if he/she has it inspected by the Occupational Accident Insurance Fund at three-year intervals with regard to the requirements stipulated in section 130 subs. 2 sentence 1. An inspection report on the inspection shall be issued. The shipowner shall ensure that this report is carried on board.

## Chapter 5

### Recognised organisations

#### Section 135

#### **Authorisation of recognised organisations**

(1) The Occupational Accident Insurance Fund may, in accordance with Regulation (EC) No 391/2009 of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organisations (OJ L 131 of 28 May 2009, p. 11; L 74 of 22 March 2010, p. 1), as amended, authorise recognised organisations for the purpose of cooperating in inspections and surveys of ships in connection with the certificates provided for in the present Act (recognised organisations).

(2) The authorisation shall be effected by a written agreement reached between the Occupational Accident Insurance Fund and the recognised organisation in which the tasks and functions to be performed by the organisation are listed in detail. The agreement must contain the following:

1. the provisions of Annex 2 of the Guidelines for the commissioning of organisations acting on behalf of the administration of 4 November 1993 (Transport Gazette 2008 p. 508), which have been amended in accordance with the notification of the Federal Ministry of Transport, Building and Urban Development of 20 May 2009 (Transport Gazette 2009 p. 354),
2. provisions on the financial liability of the recognised organisation,



3. additional provisions on the powers of the Occupational Accident Insurance Fund in accordance with the present Act on the regular supervision of the tasks carried out by the recognised organisations for the administration,
4. provisions for the transmission of essential information on the fleet classified by a recognised organisation, as well as on change of class, suspension or withdrawal of the class, only where no personal data are concerned.

(3) The recognised organisation must operate a local branch on the territory of the Federal Republic of Germany. A recognised organisation which does not have its seat in a Member State of the European Union may only be authorised if the seat state deals with recognised organisations which have their seat in a Member State of the European Union on the basis of reciprocity. In addition, an agreement on authorisation may be concluded only if the recognised organisation proves that it meets the following prerequisites:

1. employs an adequate number of qualified inspectors,
2. has the necessary expertise and knowledge of the requirements and individual aspects of the Maritime Labour Convention as well as of the relevant provisions,
3. maintains a system for training, further education and further training of its personnel,
4. has the size, structure, experience and capability to effectively perform the tasks in accordance with subs. 1.

(4) The Occupational Accident Insurance Fund shall terminate an agreement in accordance with subs. 2 if the European Commission has withdrawn recognition from a recognised organisation in accordance with Article 7 of Regulation (EC) No 391/2009. The notice shall become effective on the day on which the withdrawal by the European Commission becomes effective. The possibility of termination in accordance with the general provisions shall remain unaffected.

(5) The Occupational Accident Insurance Fund shall make public the recognised organisations which it has authorised in accordance with subs. 1 or whose authorisation has ended by termination of the agreement in the Federal Gazette and for information purposes on its website.

## Chapter 6

### Legal ordinances

#### Section 136

#### **Legal ordinances**

(1) The Federal Ministry of Transport and Digital Infrastructure is herewith empowered to enact, in agreement with the Federal Ministry of Labour and Social Affairs, through a legal ordinance without the consent of the Bundesrat, provisions on

1. the detailed structure of the inspections and monitoring in accordance with this Part, the prerequisites, subject-matter and implementation of the inspections, as well as the requirements applicable to the persons entrusted with carrying out the inspections, also insofar as persons of recognised organisations are affected,
2. the details on issuance and its prerequisites, the validity and period of validity, the form and the revocation and withdrawal of the maritime labour certificate, of the interim maritime labour certificate, of the short-term certificate, of the declaration of maritime labour compliance and of the inspection reports to be issued by the recognised organisation and of officially-recognised maritime labour certificates and of the fishing labour certificate, as well as their inspections,

3. rights and obligations of the recognised organisations, including the details of the agreement with the shipowner,
4. records and documents, also insofar as they are to be carried on board or handed out, and retention of records,
5. prerequisites subject to which a maritime labour certificate or a declaration of maritime labour compliance or a fishing labour certificate is not necessary at all or in part,

as well as on the respective proceedings.

(2) Furthermore, the Federal Ministry of Transport and Digital Infrastructure is herewith authorised to enact through a legal ordinance without the consent of the Bundesrat, provisions on the detailed prerequisites for the authorisation of a recognised organisation in accordance with section 135 and the respective proceedings.

## **Part 9**

### **Requirements for ships flying a foreign flag and responsibility of the port State**

#### **Chapter 1**

##### **Requirements for ships flying a foreign flag**

###### **Section 137**

###### **Requirements for shipowners of ships flying a foreign flag**

(1) The shipowner and the master of a ship flying a foreign flag shall each ensure that the working and living conditions of the crew members on board meet the requirements of the articles and regulations in conjunction with Part A of the Code of the Maritime Labour Convention.

(2) If a valid maritime labour certificate and a valid declaration of maritime labour compliance according to section 132 can be submitted for a ship flying a foreign flag, the requirements designated in subs. 1 shall be deemed to have been met insofar as there is no reason to presume in an individual case that the ship does not meet the requirements.

#### **Chapter 2**

##### **Port State control**

###### **Section 138**

###### **Inspection of ships flying a foreign flag**

(1) The Occupational Accident Insurance Fund shall be responsible for checking compliance with the requirements designated in section 137 subs. 1 on ships flying a foreign flag (port State control within the meaning of Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control (OJ L 131 of 28 May 2009, p. 57) as amended by Directive 2013/38/EU (OJ L 218 of 14 August 2013, p. 1)).

(2) The frequency and the selection of a ship to be inspected shall be in accordance with its risk profile, which shall be ascertained in accordance with Articles 10 to 14, read in conjunction with Annexes I and II, of Directive 2009/16/EC.

(3) The Occupational Accident Insurance Fund and the persons employed by it shall initially check compliance with the requirements designated in section 137 subs. 1 by

examining the maritime labour certificate and the declaration of maritime labour compliance to be presented by the master. If the Occupational Accident Insurance Fund or the person commissioned by it discovers that

1. a ship flying a foreign flag does not have a maritime labour certificate or a declaration of maritime labour compliance, or that one or both documents are invalid or falsified,
2. there are reasons to presume that the working and living conditions on the ship do not meet the requirements of section 137 subs. 1,
3. there are reasons to presume that the ship has changed flag in order to circumvent compliance with the requirements of section 137 subs. 1, or
4. a complaint in accordance with section 139 has been received stating that specific working and living conditions on the ship do not meet the requirements of the Maritime Labour Convention,

it may carry out a more detailed inspection beyond examining the maritime labour certificate in order to obtain information on the working and living conditions on board the ship. Such an inspection shall be carried out in particular if the reasonable presumption or allegation of deficiencies in the working and living conditions could constitute a danger to the safety of the ship or the crew or to the health or the protection of the crew members, or if there are reasons to presume that the breach constitutes a serious violation of the requirements designated in section 137 subs. 1.

(4) If the Occupational Accident Insurance Fund finds in an inspection that there has been a breach as to conformity with the requirements designated in section 137 subs. 1, it shall inform the master without delay. It may demand the rectification of the breach and set a suitable deadline.

(5) If the Occupational Accident Insurance Fund considers a breach to be serious, or if it is based on a complaint, it shall, over and above subs. 4, inform the associations of shipowners and seafarers of the port state. It may inform a representative of the flag State and notify the competent authorities of the next port of call accordingly.

(6) Insofar as an order is issued in accordance with section 143 subs. 3, the Occupational Accident Insurance Fund shall promptly inform a representative of the flag State and the associations of shipowners and seafarers that are competent for the port.

(7) Section 143 shall apply to the implementation of the inspection in all other respects.

## Chapter 3

### Crew members on ships flying a foreign flag

#### Section 139

#### **Complaints on ships flying a foreign flag**

(1) Crew members on a ship flying a foreign flag which calls at a German port or transits the Kiel Canal shall have the right to complain of a breach of the Maritime Labour Convention to the Occupational Accident Insurance Fund.

(2) The complaint shall be treated confidentially. Master, shipowner and any person named in the complaint shall without delay be given the opportunity to make a statement within an appropriate period.

(3) If there is a complaint procedure effective on board the ship flying a foreign flag, the Occupational Accident Insurance Fund should primarily refer the complainant to this procedure provided that the subject of the complaint or legitimate concerns of the complainant, in particular fear of reprisals, do not constitute an objection.

(4) The Occupational Accident Insurance Fund may, in the event of complaints in accordance with subs. 1, in particular if these concern all crew members on the ship, carry out an inspection within the meaning of section 138 subs. 3 sentence 2.

(5) If the measures in accordance with subs. 3 and 4 do not lead to the complaint being resolved, the Occupational Accident Insurance Fund shall immediately inform the flag State and call on the latter to present a plan of action for rectification without delay. It may refrain from further handling the complaint if the flag State has a complaint procedure in conformity with the requirements of Regulation 5.1.5 of the Maritime Labour Convention, submits a suitable plan of action and takes over the handling of the complaint.

(6) If the measures in accordance with subs. 5 do not lead to the complaint being resolved, the Occupational Accident Insurance Fund shall inform the associations of the shipowners and the seafarers that are competent for the port and shall transmit a copy of its report to the Director General of the International Labour Office. A response of the flag State submitted within the prescribed period shall be enclosed with the report.

#### Section 140

##### **Repatriation of crew members on ships flying a foreign flag**

When the repatriation of a crew member on a ship flying a foreign flag who has been left behind in Germany is delayed, the Occupational Accident Insurance Fund shall immediately inform the consular representative of the flag State and of the state of nationality or the state of residence of the crew member. If the Occupational Accident Insurance Fund arranges for the repatriation, it shall request the flag State to refund the expenses incurred. In place of asserting the claim in accordance with sentence 2, it may arrest ships of the shipowner until the expenses incurred have been refunded by the shipowner in accordance with the International Convention of 10 May 1952 for the Unification of Certain Rules relating to the Arrest of Sea-Going Ships (Federal Law Gazette 1972 Part II p. 655).

#### Section 141

##### **Medical care of crew members on ships flying a foreign flag**

When a sick or injured crew member on a ship flying a foreign flag which calls at a domestic port or transits the Kiel Canal is in need of immediate medical care, the Occupational Accident Insurance Fund shall ensure that the crew member has unhindered access to medical facilities ashore regardless of the provisions of the law on foreigners.

### **Part 10**

#### **Enforcement of working and living conditions**

#### Section 142

##### **Responsibilities**

(4) In addition to the responsibilities in accordance with sections 129 and 138, it shall be incumbent on the Occupational Accident Insurance Fund to monitor the welfare facilities.

(5) The responsibilities of other agencies as to vocational training on board, as well as to the issuance of certificates and documents of competency, shall remain unaffected.

## Section 143

**Intervention powers of the Occupational Accident Insurance Fund**

(1) For the purpose of monitoring adherence to the working and living conditions within the scope of flag State control and port State control, the Occupational Accident Insurance Fund and the persons employed by it shall be entitled to inspect

1. ships within the meaning of section 1 subs. 1 sentence 1 and ships flying a foreign flag,
2. circumstances ashore insofar as they are directly related to the working and living conditions on board, and
3. recognised organisations

and to issue the necessary orders and take the necessary measures with regard to the persons who are obligated in accordance with the present Act, in particular with regard to shipowners, crew members, seafarers, placement agents, authorized physicians and recognised organisations, that are necessary to identify a breach in cases where there are reasonable grounds for suspicion, to rectify a breach that has been identified or to prevent a future breach, in particular in cases coming under section 129 subs. 1 or section 137 subs. 1. For these purposes, the Occupational Accident Insurance Fund and its employees may in particular

1. go on board a ship or a ship flying a foreign flag without prior notice during normal hours of business and operation, as well as enter business premises, offices and treatment rooms of shipowners, placement agents, authorized physicians and recognised organisations,
2. for the prevention of imminent risks for public safety and order, enter
  - a) the spaces on board a ship or a ship flying a foreign flag also outside the times stated there,
  - b) accommodation on board a ship or a ship flying a foreign flag;
 the fundamental right of the inviolability of the home (Article 13 of the Basic Law) shall be restricted in this respect,
3. enter the port facilities at any time with the exception of the premises located there,
4. carry out all inspections and make all observations that appear to them to be necessary in cooperation with the shipowner or his/her representative on board, as well as with placement agents, authorized physicians and recognised organisations,
5. inspect all books, in particular logbooks, registers, certificates, records of working time, certificates of competency, and other documents, except medical files,
6. request all information which is necessary to achieve the purposes in accordance with sentence 1.

The persons who are under an obligation in accordance with the present Act, in particular shipowners, crew members, seafarers, placement agents, authorized physicians and recognised organisations, shall be obliged to enable the persons entrusted with monitoring to carry out the measures in accordance with sentence 2 and to tolerate the measures, to provide the staff and tools needed for the inspections, and on request to provide the necessary information, to submit documents or to print out and submit excerpts from electronic files.

(2) Anyone who, in accordance with subs. 1 sentence 2 Number 6, read in conjunction with subs. 1 sentence 3, is obliged to provide information may refuse to provide information with regard to questions the answering of which would expose him/herself or a relative designated in section 383 subs. 1 Numbers 1 to 3 of the Code of Civil Procedure (*Zivilprozessordnung*) to the risk of criminal prosecution or proceedings in accordance with the Act on Regulatory Offences (*Gesetz über Ordnungswidrigkeiten*).

(3) If it has been ascertained in an inspection that a ship in accordance with section 1 subs. 1 sentence 1, or a ship flying a foreign flag, does not comply with the requirements of section 129 subs. 1 or of section 137 subs. 1, and

1. the working and living conditions on board pose a hazard to the safety, health or protection of the crew members, or
2. the non-compliance constitutes a serious or repeated breach of the requirements in accordance with section 129 subs. 1 or section 137 subs. 1,

the Occupational Accident Insurance Fund may prohibit the ship concerned from leaving the port or continuing its voyage until the necessary measures have been taken or the breach has been rectified. If a shipowner persistently or repeatedly refuses

1. to apply for the prescribed maritime labour certificate and the declaration of maritime labour compliance for a ship specified in section 130 subs. 1 or
2. to apply for the prescribed fishing labour certificate for a fishing vessel specified in section 133 subs. 1 or
3. to have a ship specified in sentence 1 inspected by the Occupational Accident Insurance Fund,

the Occupational Accident Insurance Fund may prohibit the ship concerned from leaving the port or continuing its voyage until the prescribed certificate has been issued or the ship has been inspected.

(4) The Occupational Accident Insurance Fund shall, in respect of a certificate of a placement agent in accordance with section 26 subs. 1 sentence 1 or a maritime labour certificate in accordance with section 130 subs. 1 or section 131 subs. 1 and 2,

1. withdraw the certificate if it becomes known that the certificate should have been refused,
2. revoke the certificate if the prerequisites for its issuance have subsequently ceased to apply;

the provisions on the withdrawal and revocation of administrative acts shall remain unaffected in other respects. The Occupational Accident Insurance Fund may declare an officially recognised maritime labour certificate in accordance with section 131 subs. 3 and a declaration of maritime labour compliance that has already been issued to be invalid; sentence 1 shall apply accordingly.

(5) The Occupational Accident Insurance Fund shall retract a certificate that has been rescinded or declared invalid in accordance with subs. 4. The shipowner or the placement agent shall hand to the Occupational Accident Insurance Fund a document that is to be retracted. When the decision on rescission or invalidity becomes unchallengeable, the document shall be destroyed.

(6) Objections against and actions for annulment of orders of the Occupational Accident Insurance Fund in accordance with subs. 1, 3 to 5 shall have no suspensory effect.

(7) If, in the performance of its tasks in accordance with the present Act, the Occupational Accident Insurance Fund becomes aware of facts giving rise to the presumption that circumstances of other statutory provisions apply which fall within the remit of another authority, the Occupational Accident Insurance Fund, in accordance with sentence 2, shall inform the authority competent for investigations in accordance with such other statutory provisions without delay. The facts shall be stated, as well as the name, address and telecommunication details of the person concerned, insofar as the information is available to the Occupational Accident Insurance Fund and is necessary in its assessment for the investigations of the other authority.

## Section 144

**Supervision of the Occupational Accident Insurance Fund**

(1) In the implementation of the tasks in accordance with Part 1, Part 2 Chapters 1 and 4, Part 3 and Part 5 Chapter 1, Part 6 Chapters 1, 2, 4 and 5 and Parts 7, 11 and 12, the Occupational Accident Insurance Fund shall be subject to supervision by the Federal Ministry of Labour and Social Affairs.

(2) In the implementation of the tasks in accordance with Part 2 Chapters 2 and 3, Part 4 and Part 5 Chapter 2, Part 6 Chapter 3, as well as Parts 8, 9 and 10, the Occupational Accident Insurance Fund shall be subject to supervision by the Federal Ministry of Transport and Digital Infrastructure.

**Part 11****Provisions on penalties and fines**

## Section 145

**Provisions on fines**

- (1) Anyone who, intentionally or negligently,
1. contrary to section 10 subs. 1, employs a person designated therein or permits that person to work,
  2. contrary to section 12 subs. 1 sentence 2, employs a crew member without a valid certificate of medical fitness for sea service,
  3. contrary to section 22 subs. 3 sentence 1 or section 33 subs. 5 sentence 1, fails to keep a crew list, a logbook or a copy of the record of employment or fails to do so for at least five years,
  4. places a person without a certificate in accordance with section 26 subs. 3,
  5. contrary to section 34 sentence 2, does not give permission to the crew member,
  6. contrary to section 48 subs. 1, also read in conjunction with a legal ordinance in accordance with section 55 sentence 1 Number 3, fails to ensure that the hours of work and the hours of rest designated therein are adhered to,
  7. contrary to section 50 subs. 1 sentence 1 or subs. 2, in each case also read in conjunction with a legal ordinance in accordance with section 55 sentence 1 Number 1, fails to keep the table of shipboard working arrangements or the working time records designated therein, or fails to do so correctly or completely,
  8. contrary to section 58 subs. 2, does not grant leave to a young crew member,
  9. contrary to section 72 subs. 1 sentence 1, leaves a crew member behind abroad,
  - 9a. contrary to section 76a subs. 1 sentence 2 or section 106a subs. 1 sentence 2, fails to present a proof or does not present it in time,
  10. contrary to section 94 sentence 1, does not grant the crew member access to a communication facility named therein,
  11. contrary to section 95 sentence 1 Number 1, does not permit a visit on board,
  12. contrary to section 106 subs. 1 sentence 1, does not hand over the effects designated therein or a wage balance, or fails to do so in good time,
  13. contrary to section 106 subs. 2 sentence 1, does not ensure that a list as specified therein is drawn up,

14. contrary to section 109 subs. 3 sentence 3, does not keep the records designated therein, does not do so correctly or completely, or fails to retain them or fails to do so for at least five years,
15. contrary to section 117 subs. 5, does not provide instructions as specified therein or not in good time, or fails to repeat them or to repeat them in good time,
16. acts contrary to an executable order in accordance with
  - a) section 117 subs. 8 sentence 2 or section 143 subs. 1 sentence 1, read in conjunction with section 117 subs. 2 sentence 1, or
  - b) section 124 subs. 1 sentence 2,
17. contrary to section 121 subs. 6 does not make an entry in the logbook as specified therein, does not do so correctly, completely or in good time, or
18. acts contrary to a legal ordinance in accordance with section 20 subs. 1 sentence 1 Numbers 1, 2, 4, 5 or 6, section 55 sentence 1 Number 2, section 96 sentence 1 or section 113 sentence 1 Numbers 2, 3, 4, 5 or 6 or to an executable order on the basis of such a legal ordinance insofar as the legal ordinance refers to this provision on fines for a specific offence

shall be deemed to have committed a regulatory offence.

(2) The provisions of subs. 1 Numbers 1 to 3, 6, 8, 15, 16 (a) and 18 shall also apply to another employer, the provisions of subs. 1 Numbers 5 to 15, 16 (a) and 18 shall also apply to the master's deputy within the meaning of section 5 subs. 3.

(3) The regulatory offence may, in cases coming under subs. 1 Numbers 1, 2, 6, 9 and 16, be sanctioned with a fine of up to fifty thousand euros, in cases coming under subs. 1 Numbers 4, 7, 8, 9a, 12, 15 and 17 with a fine of up to ten thousand euros, and in the other cases with a fine of up to five thousand euros.

(4) The Occupational Accident Insurance Fund shall be the administrative authority within the meaning of section 36 subs. 1 Number 1 of the Act on Regulatory Offences.

## Section 146

### **Criminal law provisions**

(1) Up to five years' imprisonment or a fine shall be imposed on anyone who commits an intentional act as specified in section 145 subs. 1 Number 16 (b)

1. jointly with other crew members, or
2. and endangers the life or health of another person or jeopardises effects that belong to third parties and are of considerable value.

(2) Up to three years' imprisonment or a fine shall be imposed on anyone who negligently causes a risk in cases coming under subs. 1 Number 2.

(3) Up to one year's imprisonment or a fine shall be imposed on anyone who

1. persistently repeats an intentional act designated in section 145 subs. 1 Numbers 1, 2, 6, 9 or 16, in each case also read in conjunction with section 145 subs. 2,
2. commits an intentional act designated in section 145 subs. 1 Numbers 1, 2, 6, 9 or 16 (a), in each case also read in conjunction with section 145 subs. 2, and in doing so endangers the affected person's health or ability to work, or
3. commits an intentional act designated in section 145 subs. 1 Number 16 (b), and in doing so endangers the affected person's health or ability to work.



## Section 147

**Appeals**

(1) The deadline for an objection against the administrative decision imposing a fine shall be deemed to have been met if the crew member in question submits the objection to the master in writing or for recording purposes within the period granted. The master shall enter the time of the submission in the logbook without delay, and shall issue to the crew member in question a statement thereof. If the master submits the objection him/herself, the tasks in accordance with sentences 1 and 2 shall be incumbent on his/her deputy (section 5 subs. 3). The record or the written objection shall be forwarded without delay to the authority which has handed down the administrative decision imposing a fine .

(2) Subs. 1 shall apply accordingly to the submission of an appeal on points of law.

**Part 12****Final provisions**

## Chapter 1

## Application to self-employed persons

## Section 148

**Self-employed persons**

(1) Section 28 subs. 1 sentence 1 in Part 3 on the conditions of employment shall apply to self-employed persons subject to the proviso that the contract with the shipowner takes the place of the seafarer's employment agreement. Section 28 subs. 1 sentences 2 to 5, subs. 2 Numbers 1 to 5, 7, 9, 10, 12 and 13, subs. 3 Numbers 1 and 2, as well as section 29 subs. 1 sentences 3 and 4, shall apply accordingly subject to the same proviso.

(2) The following provisions shall not apply to self-employed persons:

1. In Part 3 on the conditions of employment
  - a) in Chapter 1, the provisions contained in section 28 subs. 2 Numbers 6, 8 and 11, subs. 3 Number 3, subs. 4, 5 and 6 sentence 2, section 29 subs. 2 and 3, as well as sections 31 to 33 on the seafarer's employment agreement, travel expenses, duty of service and the record of employment,
  - b) the provisions contained in Chapter 3 on wages,
  - c) in Chapter 4, the provisions contained in section 42 subs. 1, 2, 4 and 5, sections 43, 44 and 45 subs. 1 and 2, sections 46, 47 subs. 3 sentence 3, subs. 4, section 48 subs. 1 Number 1 and subs. 2, sections 49, 51, 52, 54 on hours of work and hours of rest, as well as the regulations on remuneration in section 53 subs. 1 and 7, read in conjunction with section 52,
  - d) the provisions contained in Chapter 5 on leave, unless the persons are to be regarded as persons similar to employees because of their lack of economic independence,
  - e) the provisions contained in Chapter 6 on the termination of the engagement,
  - f) in Chapter 7, the provision of section 76 subs. 1 sentence 4 and subs. 5 on the continuation of payment wages in case of repatriation and the refund of the costs of repatriation,
2. in Part 6 on medical care and welfare, the provisions contained in sections 104 and 105 subs. 2 sentence 2 on the continuation of wage payments or of an appropriate daily

allowance in case of illness, as well as section 117 subs. 4 sentence 2 on the application of the Safety and Health at Work Act (*Arbeitsschutzgesetz*).

Insofar as, in accordance with sections 49 and 54, derogating regulations on the hours of work and hours of rest are agreed in collective bargaining agreements, these may be applied to self-employed persons accordingly.

(3) Insofar as entitlements applicable to self-employed persons are related to the duration (section 93 subs. 1 sentence 1, section 97 subs. 1 sentence 1, section 99 subs. 1 sentence 1) or the termination (section 73 Number 2) of the engagement in accordance with the present Act, the provisions shall apply with the proviso that they shall be replaced by the duration of the contractual relationship with the shipowner or its termination.

(4) The shipowner shall be entitled to have the cost of repatriation, accommodation and food for the duration of the stay on board which he/she has advanced refunded on the basis of a contractual agreement with the self-employed person.

## Chapter 2

### Fees, making available and promulgating legal provisions

#### Section 149

##### **Fees**

(1) The Occupational Accident Insurance Fund shall levy fees and charge expenses for official acts, including approvals, checks, inspections, examinations, expert reports and audits (official acts) in accordance with the present Act or in accordance with legal ordinances on the basis of the present Act.

(2) The Federal Ministry of Transport and Digital Infrastructure is herewith empowered to determine, in agreement with the Federal Ministry of Labour and Social Affairs, by means of a legal ordinance without the consent of the Bundesrat the fees for the individual official acts within the meaning of subs. 1, and in doing so to provide for fixed rates or framework rates. The fee rates shall be such that the staffing and material costs related to the official acts are covered; in case of official acts establishing a right or an advantage, suitable account may also be taken of the significance, economic value or other benefit for the person obliged to pay the fee. Legal ordinances in accordance with sentence 1 may set fees in accordance with fixed rates within the meaning of section 4 of the Administrative Costs Act (*Verwaltungskostengesetz*), as well as fees that are determined on the basis of fixed hourly rates (time-based fees).

(3) The German Maritime Search and Rescue Service shall be exempted from the payment of fees and expenses within the meaning of subs. 1.

#### Section 150

##### **Making available laws and legal ordinances; posting copies and documents in an electronic information system**

(1) The legal ordinances handed down in accordance with the provisions contained in sections 20, 55, 92, 96, 113 and 136 of the present Act and the Act on Regulatory Offences shall be made available by the shipowner to the crew members on board. They shall be made available by posting or displaying in a suitable place or by posting in an electronic information system, which is accessible to the crew members.

(2) The shipowner's obligations under section 29 subs. 1 sentence 2, subs. 2 and 3, section 76a subs. 4 sentence 3, section 78 and section 106a subs. 3 sentence 3 and section

130 subs. 7 shall also be met if the shipowner posts the relevant copies and documents in an electronic information system within the meaning of subs. 1.

#### Section 151

##### **Promulgation of legal ordinances**

Derogating from section 2 subs. 1 of the Promulgation and Notices Act (*Verkündungs- und Bekanntmachungsgesetz*), legal ordinances in accordance with the present Act may be promulgated in the Federal Gazette.

#### Chapter 3

##### Transitional regulations

#### Section 152

##### **Transitional regulation for ships measured in gross register tons**

For ships which were measured prior to 18 July 1994 in accordance with the Convention on a Uniform System of Tonnage Measurement of Ships of 10 June 1947 (BGBl. 1957 II p. 1469, 1471; 1958 II p. 67), the gross tonnage in gross register tons entered in the "Remarks" column of the Convention for a Uniform System of Tonnage Measurement of Ships shall be deemed to be the registered gross tonnage.

#### Section 153

##### **Transitional regulation for authorized physicians**

Physicians who are entrusted by the Occupational Accident Insurance Fund with the implementation of the examination of medical fitness for sea service on 1 August 2013 shall be deemed to be authorized provisionally in accordance with section 16 subs. 1. The interim authorization shall cease to apply

1. if the issuance of the authorization is not applied for by 1 October 2013, or
2. if the application is made in time, when the decision on the application becomes unchallengeable.

The legal ordinance in accordance with section 20 subs. 1 sentence 1 Number 4 may ease the conditions for physicians within the meaning of sentence 1 as to the provision of documents to prove that the requirements for authorization are met.

#### Section 154

##### **Transitional regulation for maritime labour certificates and declarations of maritime labour compliance**

Maritime labour certificates and declarations of maritime labour compliance issued before 18 January 2017 shall remain valid until the next inspection that is due in accordance with section 129 subs. 2 Number 1 provided that the shipowner carries on board certificates to prove that he has an insurance or other financial security system in accordance with section 76a subs. 4 sentence 2 and section 106a section 3 sentence 2.