

Chapter:	478N	MERCHANT SHIPPING (SEAFARERS) (DISCIPLINARY OFFENCES ON BOARD SHIPS) REGULATION	Gazette Number	Version Date
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		Empowering section		30/06/1997
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(Cap 478 sections 107, 119 and 134)

[2 September 1996]

(Originally L.N. 604 of 1995)

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

(Enacted 1995)

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

"day's pay" (日工資), in relation to a seafarer, means 1/30th of the monthly rate of wages specified in the crew agreement under which the seafarer is employed in the ship concerned;

"master" (船長) includes (except in section 6) any officer authorized under section 6(2) to exercise the powers of the master and to perform his duties in relation to a disciplinary offence;

"seafarer" (海員) does not include an officer;

"ship" (船、船舶) means a Hong Kong ship.

(Enacted 1995)

Section:	3	Application		30/06/1997
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This Regulation shall apply to every seafarer employed under a crew agreement.

(Enacted 1995)

Section:	4	Disciplinary offences on board all ships		30/06/1997
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It is a disciplinary offence on board a ship for a seafarer-

- (a) wilfully to strike any person;
- (b) wilfully to disobey a lawful command;
- (c) without reasonable cause-
 - (i) to fail to be available for duty at a time when he is required by the master or by a person authorized by the master to be so available;
 - (ii) to fail to report or to remain at his place of duty at a time when he is so required to be at that place; or
 - (iii) while on duty, to be asleep at his place of duty;
- (d) to be under the influence of drink or a drug (whether alone or in combination) to such an extent that he behaves in a disorderly manner or is unfit to be entrusted with his duty or with any duty which he might be called upon to perform, unless the drug was taken by him for medical purposes and either-
 - (i) he took it on medical advice and complied with any directions given as part of that advice; or
 - (ii) he had no reason to believe that the drug might have the influence it had;
- (e) without the consent of the master or of any other person authorized to give it, to bring on board the ship or to have in his possession on board any offensive weapon;
- (f) wilfully and without reasonable cause-
 - (i) to damage the ship;
 - (ii) to damage any property on board the ship; or

- (iii) to throw any such property overboard;
- (g) without reasonable cause, to take or to be in possession of any property belonging to or in the custody of any person on board the ship; or
- (h) to cause or knowingly to permit to be on board the ship any person who, not being authorized by law to be on board the ship, is on board without the consent of the master or of any other person authorized to give it.

(Enacted 1995)

Section:	5	Disciplinary offences on board certain ships		30/06/1997
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- (1) This section shall apply to any ship in which-
 - (a) by reason of the cargo or stores which are or have been carried in the ship, there is a special risk of fire or explosion; and
 - (b) the master or employer has given notice to seafarers in the ship, whether by means of notices displayed in the ship or otherwise, that the acts referred to in subsection (2)(a), (b) and (c) are prohibited, either in all or specified parts of the ship.
- (2) It is a disciplinary offence on board a ship to which this section applies for a seafarer-
 - (a) to smoke;
 - (b) to use a naked light or mechanical lighter; or
 - (c) to use an electric torch which is not of a type approved by the master,

in any part of the ship in which smoking or the use of such a light, mechanical lighter or torch is prohibited by the master or the employer.

(3) It is a disciplinary offence on board a ship to which this section applies for a seafarer, without the consent of the master or of any other person authorized to give it, to bring on board the ship or to have in his possession on board any matches or a mechanical lighter.

(4) In this section, "mechanical light" (機械打火器) includes any mechanical, chemical, electronic or electrical contrivance designed or adapted for or capable of causing fire or explosion.

(Enacted 1995)

Section:	6	Only master or authorized officer may deal with disciplinary offence		30/06/1997
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(1) Subject to subsection (2), a disciplinary offence may be dealt with only by the master of the ship on board which the offence is alleged to have occurred and the master may impose a fine (not exceeding such an amount as is specified in section 10) on the seafarer whom he finds has committed the offence.

(2) The powers of the master in relation to a disciplinary offence may be exercised and his duties may be performed by any officer authorized for the purpose by the master.

(3) The name of any officer authorized under subsection (2) shall be entered by the master in the official log book.

(Enacted 1995)

Section:	7	Time within which disciplinary offence must be dealt with		30/06/1997
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A disciplinary offence shall be dealt with within 24 hours of the time it comes to the notice of the master, unless it is not practicable to deal with it within that time, in which case it shall be dealt with as soon as practicable thereafter.

(Enacted 1995)

Section:	8	Procedure relating to disciplinary offences		30/06/1997
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In dealing with a disciplinary offence, the following procedure shall be followed-

- (a) a seafarer charged with a disciplinary offence shall, if he so requests, be permitted at the hearing before the master to be accompanied by a friend for the purpose of advising him and the friend may speak on behalf of the seafarer;
- (b) the charge shall be entered by the master in the official log book and shall be read to the seafarer by the

- master, who shall record therein that it has been so read;
- (c) the seafarer shall then be asked whether or not he admits the charge and-
 - (i) if he does admit it, the admission shall be recorded by the master in the official log book; and
 - (ii) if he does not admit it, an entry to that effect shall be recorded by the master in the official log book;
 - (d) the evidence of any witness called by the master shall be heard in the presence of the seafarer, who shall be afforded reasonable opportunity to question the witness on his evidence;
 - (e) the seafarer shall be given an opportunity to make a statement in answer to the charge, including any comments on the evidence produced against him, and the particulars of the statement (or a record that the seafarer declined to make one, if such should be the case) shall be entered by the master in the official log book or contained in a separate document annexed to, and referred to in an entry made by the master in, the official log book;
 - (f) the seafarer shall be permitted to call witnesses to give evidence on his behalf, and any such witness may be questioned by the master on his evidence;
 - (g) the master shall, after consideration of all the evidence given before him, give his decision in the presence of the seafarer as to whether he finds the seafarer has committed the offence charged and-
 - (i) if he does not find that the seafarer has committed the offence, he shall dismiss the charge; and
 - (ii) if he finds that the seafarer has committed the offence, he shall, after having regard to any mitigating circumstances brought to his notice, give his decision either as to the amount of the fine he is imposing or that he is imposing no fine,
 and the master shall record his decisions in the official log book; and
 - (h) where the master finds the seafarer has committed the offence charged, the master shall-
 - (i) first, inform the seafarer that, if he is dissatisfied with that finding, he may, pursuant to section 9, make a complaint in writing to the Superintendent stating his dissatisfaction, but that any such complaint must be accompanied by copies of all entries in the official log book (including any annexes thereto) referring to that offence; and
 - (ii) secondly, if the seafarer so requests, supply him with such copies,
 and the master shall record in the official log book that he has so informed the seafarer and, where applicable, that he has supplied the seafarer with such copies.

(Enacted 1995)

Section:	9	Action that may be taken by seafarer and Superintendent subsequent to finding that a disciplinary offence has been committed by the seafarer	30/06/1997
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(1) Where the master of a ship finds that a seafarer has committed a disciplinary offence and the seafarer is dissatisfied with that finding, the seafarer may make a complaint in writing to the Superintendent stating his dissatisfaction.

(2) A complaint referred to in subsection (1)-

- (a) shall be accompanied by copies of all entries in the official log book (including any annexes thereto) referring to the disciplinary offence to which the complaint relates; and
- (b) may be sent to the Superintendent by any expedient means.

(3) Where the Superintendent receives a complaint referred to in subsection (1) and, pursuant to section 9(4) of the Merchant Shipping (Seafarers) (Official Log Books) Regulation (Cap 478 sub. leg. P), he subsequently cancels the entries in the official log book (including any annexes thereto) referring to the disciplinary offence to which that complaint relates, the Superintendent shall-

- (a) cause to be refunded to the seafarer any amount paid in respect of any fine imposed on the seafarer in respect of that offence to the extent that the fine has not been remitted under section 11; and
- (b) by any expedient means, inform the seafarer and, if it is practicable to do so, the master concerned, that those entries have been cancelled and that any amount paid in respect of any such fine is to be refunded.

(Enacted 1995)

Section:	10	Level of fines		30/06/1997
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(1) The fine that may be imposed on a seafarer for a disciplinary offence under section 4 shall be an amount not exceeding 1 day's pay or, in the case of a second or subsequent commission of that offence before the seafarer is discharged from the ship, an amount not exceeding 2 days' pay.

(2) The fine that may be imposed on a seafarer for a disciplinary offence under section 5 shall be an amount not exceeding 5 days' pay.

(Enacted 1995)

Section:	11	Remission of fines		30/06/1997
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A fine imposed on a seafarer for a disciplinary offence may be remitted in whole or in part by the master-

- (a) if the master is of the opinion that the seafarer's conduct since the fine was imposed has been such as to justify the remission; or
- (b) if new evidence has been discovered which was not known to the master at the time he dealt with the offence and which, in his opinion, justifies the remission,

and a record of every such remission shall be entered in the official log book by the master.

(Enacted 1995)

Section:	12	Entries in official log book		30/06/1997
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(1) All entries in the official log book (including annexes thereto) required to be made by the master under this Regulation shall be signed by the master and by a member of the crew.

(2) The master, or the officer authorized by him under section 6(2) to exercise the powers of the master and to perform his duties in relation to a disciplinary offence, who fails to make an entry in an official log book required to be made by the master under this Regulation commits an offence and is liable on conviction to a fine at level 1.

(Enacted 1995)