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STATUTORY INSTRUMENTS

1972 No. 1635

MERCHANT SHIPPING

MASTERS AND SEAMEN

**The Merchant Shipping (Maintenance of
Seamen'S Dependants) Regulations 1972**

<i>Made</i>	- - - -	<i>31st October 1972</i>
<i>Laid before Parliament</i>		<i>8th November 1972</i>
<i>Coming into Operation</i>		<i>1st January 1973</i>

The Secretary of State, after consulting with the organisations referred to in section 99(2) of the Merchant Shipping Act 1970, in exercise of powers conferred by section 17 of that Act and now vested in him⁽¹⁾, and of all other powers enabling him in that behalf, hereby makes the following Regulations:—

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Merchant Shipping (Maintenance of Seamen's Dependants) Regulations 1972 and shall come into operation on 1st January 1973.

(2) In these Regulations “retention notice” means a notice by a responsible authority to a seaman's employer under section 17(1) of the Merchant Shipping Act 1970 (which relates to a claim against a seaman's wages for the maintenance etc. of his dependants).

(3) The Interpretation Act 1889 shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

Conditions for service of a retention notice

2. A responsible authority may serve a retention notice on a seaman's employer if the following conditions are satisfied, namely—

- (a) that the responsible authority has incurred expenses of any of the descriptions and in the circumstances specified in regulation 4; and
- (b) that the employer has a residence or a registered or principal office in the United Kingdom.

(1) See the Secretary of State for Trade and Industry Order 1970 (S.I. 1970/1537 (1970 III, p. 5293)).

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Form of and information to be contained in a retention notice

- 3.—(1) A retention notice shall state—
- (a) that it is served under section 17 of the Merchant Shipping Act 1970 and that, during the seaman's employment in a ship, the responsible authority serving the notice has incurred expenses of one or more of the descriptions specified in regulation 4; and
 - (b) that the seaman's employer is required—
 - (i) to retain, for the period beginning with the service of the retention notice and ending 28 days after the seaman's discharge from the ship, a proportion (which shall be specified in the notice) of the seaman's net wages, ascertained in accordance with the provisions of regulation 5, not exceeding, if the notice relates to one dependant only, one half, or, if the notice relates to two or more dependants, two thirds; and
 - (ii) to give to the responsible authority as soon as may be notice in writing of such discharge.
- (2) A retention notice shall contain the following particulars—
- (a) the name and address of the responsible authority;
 - (b) the name of the seaman's employer;
 - (c) the name of the seaman;
 - (d) (if known to the responsible authority) the name of the ship in which the seaman is employed;
 - (e) (if known to the responsible authority) the capacity in which the seaman is employed;
 - (f) the description of the expenses in respect of which the notice is served;
 - (g) the name of the person in respect of whom the expenses are incurred; and
 - (h) the name of the person to whom any payment forming part of those expenses has been or is intended to be made.

Expenses in respect of which a retention notice may be served

4. The expenses, in respect of which a responsible authority may serve a retention notice, are expenses incurred by it during the seaman's employment in a ship being—

- [^{F1}(a) benefit awarded under [^{F2}the Social Security Act 1986] or under the Supplementary Benefits etc. Act (Northern Ireland) 1966 to meet, in either case, requirements which are or include those of the seaman's spouse or any children whom, for the purposes of the Act under which the benefit is awarded, he is liable to maintain; or]
- (b) expenses of the provision by a local authority of accommodation ^{F3}... under Part II of the Social Work (Scotland) Act 1968 or by a welfare authority under Part II of the Welfare Services Act (Northern Ireland) 1971 for the seaman's spouse and any children whom, for the purposes of the Act under which the accommodation is provided, he is liable to maintain, in cases where—
 - (i) payment for that accommodation is not made at the standard rate fixed therefor; or
 - (ii) either such accommodation is temporary accommodation provided for less than a week or in special circumstances or, in Northern Ireland, is temporary accommodation and payment is not made at such rate as the local authority or welfare authority providing the accommodation may determine; or
- (c) expenses of provision made by a local authority or a welfare authority—
 - (i) in respect of a child under the age of sixteen received into their care under section 1 of the Children Act 1948 or under Part II of the Social Work (Scotland) Act 1968; or

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- (ii) in respect of a child or young person under the age of sixteen committed to their care under an order, which is not an interim order, under the Children and Young Persons Act 1969; or
- (iii) where a supervision requirement to which Part VI of the Social Work (Scotland) Act 1968 applies has been made in respect of a child; or
- (iv) in respect of a child received into their care under section 103 of the Children and Young Persons Act (Northern Ireland) 1968;

in such circumstances that the seaman becomes liable to make contribution in respect of that child or young person, under or in accordance with the Children and Young Persons Act 1933, Part III of the Supplementary Benefits etc. Act (Northern Ireland) 1966, Part II of the Social Work (Scotland) Act 1968 or Part X of the Children and Young Persons Act (Northern Ireland) 1968, as the case may be.

Textual Amendments

- F1** Reg. 4(a) substituted (1.1.1973) by [The Merchant Shipping \(Maintenance of Seamen's Dependants\) \(No. 2\) Regulations 1972 \(S.I. 1972/1875\)](#), **regs. 1(1), 2**
- F2** Words in reg. 4(a) substituted (11.4.1988) by [The Merchant Shipping \(Maintenance of Seamen's Dependants\) \(Amendment\) Regulations 1988 \(S.I. 1988/479\)](#), **regs. 1, 2**
- F3** Words in reg. 4(b) omitted (6.4.2009) by virtue of [The Health and Social Care Act 2008 \(Commencement No.9, Consequential Amendments and Transitory, Transitional and Saving Provisions\) Order 2009 \(S.I. 2009/462\)](#), art. 1(4), **Sch. 5 para. 1**

Rules for ascertaining net wages

5. For the purposes of a retention notice, the net wages of a seaman (whether he is employed under a crew agreement or not) are the full amount of the wages due to him at the time of his discharge subject only to the deduction of—

- (a) contributions under the National Insurance Act 1965, the National Insurance (Industrial Injuries) Act 1965, the National Insurance Act (Northern Ireland) 1966 and the National Insurance (Industrial Injuries) Act (Northern Ireland) 1966;
- (b) income tax required to be deducted from the seaman's wages;
- (c) any deduction which the employer is required to make from the wages paid to a seaman employed in a fishing vessel by an attachment of earnings order in accordance with the provisions of the Attachment of Earnings Act 1971 or any payment which the employer is required to make out of the wages of such a seaman by an attachment of earnings order in accordance with the provisions of the Magistrates' Courts Act (Northern Ireland) 1964 or the Judgments (Enforcement) Act (Northern Ireland) 1969;
- (d) contributions to a fund or in respect of membership of a body declared by regulations under section 11(3) of the Merchant Shipping Act 1970 to be a fund or body to which section 11 applies;
- (e) sums allotted by the seaman by allotment notes issued in accordance with regulations made under section 13 of the Merchant Shipping Act 1970 to—
 - (i) his spouse; or
 - (ii) any other person in respect of whom expenses are stated in a retention notice to be incurred by the responsible authority or to whom any payment forming part of those expenses is so stated to have been paid or to be payable; or

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- (iii) any other person known to the seaman's employer to have the custody of or the care of any child whom the seaman is liable to maintain; or
- (iv) any responsible authority in respect of any such expenses (when ever incurred) as are specified in paragraphs (a) to (c) of regulation 4;
whenever payable; and any other sums so allotted which are payable before the retention notice is served;
- (f) any sums (excluding loans) paid by the employer on account of a seaman's wages to or to the order of the seaman before the retention notice is served; and
- (g) the amount of any liability to the employer incurred by the seaman before the retention notice is served in respect of canteen bills, goods supplied, radio or telephone calls and postage expenses.

Michael Heseltine
Minister for Aerospace
Department of Trade and Industry

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EXPLANATORY NOTE

Under section 17 of the Merchant Shipping Act 1970 a responsible authority, usually a local authority or the Supplementary Benefits Commission, is empowered to seek an order of a magistrates' court to recover out of a seaman's wages, a sum which cannot be subject to an attachment of earnings order, in respect of expenses incurred by the authority in the maintenance of his dependants. These Regulations make provisions about the notice which the authority may serve under the section on the seaman's employer requiring him to retain a proportion of the seaman's wages which may be the subject of an order of the court, the calculation of those wages and the expenses in respect of which a notice may be served.

The section and these Regulations supersede existing provisions.

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