

JAMAICA

No. 15 – 2020

I assent,

[L.S.]

Sgd. P. L. Allen
Governor-General.

22nd day of December 2020

AN ACT to Amend the Shipping Act.

[23rd day of December 2020]

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the authority of the same, as follows:—

1. This Act may be cited as the Shipping (Amendment) Act, 2020 and shall be read and construed as one with the Shipping Act (hereinafter referred to as the principal Act) and all amendments thereto.

Short title and construction.

2.—(1) Section 2 of the principal Act is amended by—

(a) deleting the definitions of “crew agreement” and “seaman”;

Amendment of section 2 of principal Act and certain references generally.

- (b) inserting in the appropriate alphabetical sequence the following definition—

““seafarer’s employment agreement” means a contract of employment entered into pursuant to section 16.”.

- (2) The principal Act is amended by deleting—

- (a) the words “crew agreement” and “Crew agreement” wherever they appear (including in any marginal note) and substituting therefor in each case the words “seafarer’s employment agreement” and “Seafarer’s employment agreement” respectively;
- (b) the words “seaman” and “Seaman” wherever they appear and substituting therefor in each case the words “seafarer” and “Seafarer” respectively;
- (c) the words “seamen” and “Seamen” wherever they appear and substituting therefor in each case the words “seafarers” and “Seafarers” respectively.

Insertion of new sections 114A and 114B in principal Act.

3. The principal Act is amended by deleting the heading and sub-heading appearing immediately before section 115, and inserting next after section 114 the following—

“
PART VII.—*Engagement and Welfare of Seafarers*

Interpretation for Part VII.

114A.—In this Part—

“collective bargaining agreement” means any agreement or arrangement, evidenced in writing, which—

- (a) is made between one or more organisations representing seafarers and either one or more persons having the ownership or control of a ship, one or more organisations representing such

persons, or a combination of one or more persons having the control or ownership of a ship and one or more organisations representing such persons; and

- (b) contains (wholly or in part) the terms and conditions of employment of seafarers;

“Competent Authority” means the Authority, unless otherwise specified;

“declaration of maritime labour compliance” means a declaration in accordance with the Maritime Labour Convention;

“gross tonnage” means the measure of the overall size of a ship, determined in accordance with regulations made under section 44;

“maritime labour certificate” means a maritime labour certificate issued in accordance with regulations made under this Act, and includes an interim maritime labour certificate so issued;

“Maritime Labour Convention” means the Maritime Labour Convention, 2006, adopted by the General Conference of the International Labour Organization on the 23rd day of February, 2006, and any amendments thereto as are in force in relation to Jamaica;

“seafarer” as defined in section 2 shall be deemed to—

- (a) include any person engaged by or on behalf of the owner of a ship to perform any work on board a ship (for example,

manning the operations of the ship, shop-keeping, providing entertainment or food services, bartending, cosmetology or any form of hospitality); and

- (b) exclude any person engaged solely to perform a task which is not part of the routine operations of the ship or part of the services or amenities offered on board the ship.

Labour
certification
and
compliance.

114B.—(1) The owner of a ship to which this section applies shall not cause the ship to go on any voyage to sea unless there is issued in respect of the ship, in such form and in accordance with such procedure as may be prescribed, a current declaration of maritime labour compliance and a current maritime labour certificate.

(2) This section applies to—

- (a) Jamaican ships, of 500 gross tonnage or over, engaged in voyages to ports outside of Jamaican waters; and
- (b) Jamaican ships, of 500 gross tonnage or over, engaged in voyages between ports in another country.

(3) The owner shall ensure that—

- (a) a copy of the declaration of maritime labour compliance and the maritime labour certificate in respect of the ship are posted in a conspicuous place on board the ship and a copy thereof made available upon request to seafarers, Inspectors, authorised officers in ports, and such other persons as may be

determined by the Authority by notice from time to time; and

- (b) the originals of those documents are carried on the ship.

Exemptions. 114C. The Minister may by order published in the *Gazette* exempt any ships of a category specified in the order from the requirements of this Part.

Engagement of Seafarers”;

4. Section 116 of the principal Act is amended by deleting subsection (2) and renumbering subsection (3) as subsection (2).

Amendment of section 116 of principal Act.

5. Section 117 of the principal Act is amended—

Amendment of section 117 of principal Act.

(a) in subsection (2) by—

- (i) inserting in paragraph (a), next after the word “serve”, the words “and the name and address of the owner of the ship”;
- (ii) deleting paragraph (c);
- (iii) deleting from paragraph (d) the words “if possible,”;
- (iv) inserting in paragraph (f), next after the word “receive”, the words “, and where a formula is applied for the calculation thereof, that formula”;
- (v) deleting the full stop at the end of paragraph (j) and substituting therefor a semi-colon, and inserting next thereafter the following paragraphs—
 - “(k) the amount of annual paid leave to which each seafarer is entitled, and where a formula is applied for the calculation thereof, that formula;

- (l) subject to subsections (4) and (5), the conditions entitling either party to terminate the agreement, including any applicable notice period (which shall not be less for the owner of the ship than for the seafarer);
 - (m) the health and social security protection benefits to be provided to the seafarer by the ship owner, including all relevant information as to any mandatory contributions thereto by the seafarer;
 - (n) a reference to all applicable collective bargaining agreements, including information as to where the seafarer may view a copy of those agreements; and
 - (o) a statement that the seafarer will be repatriated in accordance with section 194 at the end of the maximum period referred to in paragraph (b).”;
- (b) by inserting next after subsection (4) the following subsection—

“ (5) For the purposes of this section, subject to any provision in an applicable collective bargaining agreement for a shorter notice period to be given by a seafarer in specified circumstances, the minimum period of notice required to be given, under a seafarer’s employment agreement, by a seafarer or owner of a ship for the early termination of the agreement shall not be less than seven days.”.

Amendment
of section
120 of
principal Act.

6. Section 120 of the principal Act is amended—

- (a) by deleting the words “engaged on an international voyage” and substituting therefor the words “, and foreign ships operating in Jamaican waters”;
- (b) by deleting paragraph (a) and substituting therefor the following—

“(a) each seafarer shall sign a copy of the agreement;”;

- (c) in paragraph (b), by inserting next after the words “understands the agreement” the words “and has had the opportunity to seek legal advice in respect of the agreement”;
- (d) by deleting paragraph (c) and substituting therefor the following—
 - “(c) for the purposes of paragraphs (a) and (b), the copy of the agreement shall be signed in duplicate, and one part shall be forwarded to the owner, and the other part shall be given to the seafarer.”;
- (e) by deleting paragraph (d).

7. Section 121 of the principal Act is amended—

Amendment
of section
121 of
principal Act.

- (a) by deleting subsection (1) and substituting therefor the following—
 - “(1) The master shall make a copy of the seafarer’s employment agreement available for inspection upon request by—
 - (a) a seafarer;
 - (b) an Inspector; or
 - (c) any person duly authorised, by a competent authority of a member State that is a party to the Maritime Labour Convention, to conduct inspections of ships.”;

- (b) in subsection (2) by deleting the words “, except additions made for the purpose of specifying substitutes or persons engaged after the first departure of the ship,”.

8. Section 127 of the principal Act is amended—

Amendment
of section
127 of
principal Act.

- (a) by deleting the marginal note and substituting therefor the following—
 - “Restrictions applicable to age.”;

- (b) in subsections (1) and (2) by, in each case, inserting immediately after the words “shall be employed” the words “, or work,”;
- (c) by deleting subsection (4) and inserting next after subsection (3) the following subsections—
 - “ (4) In respect of a Jamaican ship, no person under the age of eighteen years shall be employed or work—
 - (a) in the engine-room of the ship, unless that person is an apprentice working under supervision;
 - (b) in any night work, unless permission is granted by the Authority for the purpose of enabling the person to complete a course of training in a recognised programme where the Authority is satisfied that—
 - (i) the specific nature of the duty for which the person is being trained requires night work; and
 - (ii) participation in the night work required would not jeopardise the health or safety of the person;
 - (c) as a cook; or
 - (d) in any type of work which is likely to jeopardise the health or safety of that person.
 - (5) For the purposes of subsection (4)—
 - (a) “night work” means work between the hours of ten o’clock in the evening and five o’clock in the morning; and
 - (b) the question of whether any work is likely to jeopardise the health or safety of a person under the age of eighteen years shall be

settled by the Minister responsible for labour—

- (i) in any particular case, upon the written request of any interested person; or
- (ii) generally as to any class or category of work, in written directions issued by the Minister from time to time.”.

9. Section 133 of the principal Act is amended—

Amendment
of section
133 of
principal Act.

- (a) in paragraph (b) by inserting next after the words “regular intervals” the words “, being intervals of not more than one month apart, and in accordance with any applicable collective bargaining agreements”;
- (b) by renumbering the section as section 133(1) and inserting next thereafter the following subsections—

“ (2) The owner or other person responsible for employing the crew of a Jamaican ship shall give to each seafarer employed on that ship a monthly account of the wages due to that seafarer, all deductions made therefrom, and all costs applicable to that seafarer pursuant to subsection (5).

(3) An account under this section or section 134 shall, in any case where section 140 applies, also state the rate of exchange applied pursuant to that section.

(4) The owner of the ship shall establish a system for enabling seafarers engaged to work on board the ship to, at the time of the engagement or at any time during the engagement, opt to allot a portion of their wages for remittance to their families, dependants or legal beneficiaries, by bank transfers (or by other similar means) to a specified nominee at specified intervals.

(5) The owner of the ship may recoup from the seafarer the reasonable costs of any remittance facility provided to the seafarer by the ship owner under subsection (4), expressed in the currency in which the wages to which they refer are paid (at the applicable rate of exchange determined in accordance with section 140).

Amendment
of section
139 of
principal Act.

10. Section 139 of the principal Act is amended by deleting the words “or master”.

Amendment
of section
140 of
principal Act.

11. Section 140 of the principal Act is amended by inserting next after the word “master” the words “or owner”.

“ Amend-
ment of
section 141
of principal
Act

11A. Section 141 of the principal Act is amended by deleting the words—

“(a) “master or”; and

(b) “one hundred thousand” and substituting therefor the words “five millions”.

Amendment
of section
154 of
principal Act.

12. Section 154 of the principal Act is amended—

(a) in subsection (1) by—

(i) deleting the words “shall be—” and substituting therefor the words “shall, subject to any applicable collective bargaining agreements, be calculated on the basis of a minimum of 2.5 calendar days per month of employment.”; and

(ii) deleting paragraphs (a) and (b);

(b) by inserting next after subsection (4) the following subsections—

“ (5) The place where the seafarer is entitled to take annual leave shall, unless the seafarer’s employment agreement provides otherwise, be the place where the seafarer is entitled to be returned under section 194(1).

(6) Where for any reason a seafarer is required to take annual leave from a place other than as provided for in subsection (5)—

- (a) the cost of transporting the seafarer from that place to the place provided for under subsection (5), and the cost of the seafarer’s subsistence during such transportation, shall be borne by the ship owner; and
- (b) the time involved in such transportation shall not be deducted from any entitlement of the seafarer to annual leave with pay.”.

13. Section 161 of the principal Act is amended—

Amendment of section 161 of principal Act.

- (a) in subsection (1) by inserting next after the words “to be provided” the words “, free of charge,”; and
- (b) in subsection (2) by inserting next after the words “provisions of” the words “subsection (1) or”.

14. Section 171 of the principal Act is repealed and the following substituted therefor—

Repeal and replacement of section 171 of principal Act.

“Liability for medical care and burial expenses.

171.—(1) Subject to the provisions of this section, the owner of a Jamaican ship shall be—

- (a) responsible for the health protection and medical care of all seafarers working on board the ship and shall ensure that health protection and medical care is given promptly and of a standard that is as closely comparable as possible to that which is generally available to workers ashore; and
- (b) liable for all the costs of medical care in respect of the sickness or injury of any such seafarer—
 - (i) occurring between the date of commencement of the seafarer’s duties on board the ship

and the date on which the seafarer is repatriated in accordance with section 194; or

- (ii) attributable to the seafarer's employment on board the ship.

(2) Where any sickness or injury referred to in subsection (1) results in the seafarer's incapacity to work, the owner shall—

- (a) pay the full wages of the seafarer as long as the seafarer remains on board the ship or until the seafarer is repatriated in accordance with section 194; and
- (b) subject to any applicable collective bargaining agreement, pay the wages of the seafarer from the time of repatriation until the seafarer recovers from the sickness or injury.

(3) Liability under this section, to meet the costs of medical care for sickness or injury and to pay wages (in whole or in part) in respect of a seafarer who is no longer on board, shall cease on whichever is the earlier of—

- (a) when the seafarer has recovered from the sickness or injury, or the sickness or injury has been declared by a medical practitioner to be of permanent character; or
- (b) the time at which the seafarer can claim medical benefits under a scheme of compulsory sickness insurance, or compulsory accident insurance.

(4) The owner of the ship shall make adequate financial provision to assure compensation to seafarers working on board the ship (or the seafarer's estate, as the case may require), in the event of the death or long-term incapacity of any such seafarers due to occupational injury, sickness or hazard.

(5) The owner of the ship shall pay the reasonable burial costs of any seafarer who dies on board the ship or ashore during the period of the seafarer's engagement on the ship.

(6) The owner of the ship shall take reasonable measures to safeguard property left on board the ship by an injured or deceased seafarer and for returning that property to the seafarer or the seafarer's next of kin.

(7) Nothing in this section shall be construed as affecting any other legal remedy which a seafarer may seek.

(8) The owner of the ship shall not be liable under this section to a seafarer in respect of—

- (a) injury to the seafarer attributable otherwise than to the seafarer's service with the ship;
- (b) sickness or injury due to the wilful misconduct of the seafarer; or
- (c) sickness or infirmity intentionally concealed by the seafarer at the time of entry into the engagement to work on the ship.”

Amendment
of section
174 of
principal Act.

15. Section 174 of the principal Act is amended by inserting next after subsection (2) the following subsections—

“ (3) The owner of a ship shall ensure that there are in place on board the ship adequate procedures to enable any seafarer on board the ship to make a complaint in respect of the seafarer’s living or working conditions on board and to have that complaint addressed and determined, which procedures shall include—

- (a) provisions for the seafarer to be accompanied or represented, during the complaint proceedings, by a person chosen by the seafarer;
- (b) adequate safeguards to protect the seafarer against victimisation in respect of the complaint; and
- (c) providing the seafarer with a copy of the complaint procedure, including—
 - (i) the contact information for the Competent Authority and (where different) the relevant authority in the seafarer’s State of residence who has jurisdiction to deal with the complaint; and
 - (ii) the name of a person or persons on the ship who can, on a confidential basis, provide impartial advice on, and assistance in, the making of the complaint.

(4) Any person who has reason to believe that the living or working conditions on board a ship pose a significant danger to the safety, health or security of seafarers may make a written complaint to the Registrar of Seafarers.

(5) Where the Registrar of Seafarers receives a complaint under subsection (4), the Registrar shall cause to be conducted such investigation into the matter as the Registrar thinks fit, after which the Registrar shall promptly make to the Authority a report

of the investigation, together with such recommendations as the Registrar thinks fit to determine or remedy the complaint, and the Authority shall act thereon.

(6) Where in any circumstances a court having jurisdiction to try an offence under this section is satisfied that a seafarer has been subjected to adverse treatment in any matter relating to the seafarer's living or working conditions aboard a ship or the terms of the seafarer's engagement aboard the ship, on account of a complaint made under this section, the owner of the ship commits an offence and shall be liable on conviction therefor before a Parish Court to a fine not exceeding five hundred thousand dollars."

16. The principal Act is amended by inserting next after section 174 the following section—

Insertion of new section 174A in principal Act.

“ Application of sections 293 to 302 to Part VII. 174A. The provisions of sections 293 to 302 shall have effect for the purposes of this Part as if a determination or complaint that any living or working conditions on board a ship pose a significant danger to the safety, health or security of seafarers were a determination or complaint that the ship is unseaworthy.”

17. Section 194 of the principal Act is amended by inserting next after subsection (4) the following subsections—

Amendment of section 194 of principal Act.

“ (5) Subject to subsection (6), a seafarer shall not be required to contribute, directly or indirectly, to the cost of repatriation, and any provision in a seafarer's employment agreement requiring—

- (a) such contributions; or
- (b) a minimum term of employment exceeding twelve months to be served before a seafarer is entitled to the rights conferred by this section,

shall be void and of no effect.

(6) Nothing in this section shall be construed as—

- (a) excluding the liability of the seafarer for the cost of repatriation in any case where the seafarer is in serious default of the seafarer's obligations under the seafarer's employment agreement;
- (b) precluding the entry by the owner of a ship into a contractual arrangement with a third party for the recovery of any costs incurred in the repatriation of a seafarer.

(7) For the purposes of subsection (6), "serious default" means any default that may result in the summary dismissal of the seafarer under the terms of the seafarer's employment agreement."

Insertion of
new section
194A in
principal Act.

18. The principal Act is amended by inserting next after section 194 the following section—

"Financial
security for
abandoned
seafarer.

194A.—(1) For the purposes of this section, a seafarer shall be deemed to have been abandoned by the owner of the ship in any case where, contrary to the provisions of this Act or the terms of the seafarer's employment agreement and any applicable collective bargaining agreement, for a period of not less than two months the owner of the ship—

- (a) fails to cover the cost of the seafarer's repatriation;
- (b) leaves the seafarer without the necessary maintenance and support; or
- (c) otherwise unilaterally severs ties with the seafarer and fails to pay wages payable by the ship owner to the seafarer.

(2) For the purposes of subsection (1), "necessary maintenance and support" includes adequate food, accommodation, drinking water, essential fuel for survival on board the ship, and necessary medical care.

(3) The owner of the ship shall make adequate financial provision in the form of insurance to assure compensation to seafarers working on board the ship in the event of their abandonment by the owner of the ship.

(4) The owner shall ensure that—

- (a) a copy of the certificate of insurance issued by a financial security provider, in respect of the financial provision referred to in subsection (3), is posted in a conspicuous place on board the ship and accessible for examination by the seafarers working on board the ship; and
- (b) the original certificate is carried on the ship.

(5) The certificate referred to in subsection (4) shall include the following information—

- (a) the name of the ship;
- (b) the port of registry of the ship;
- (c) the call sign of the ship;
- (d) the IMO number of the ship;
- (e) the name of the owner of the ship;
- (f) the contact details of the person or entity responsible for handling seafarer's requests for relief;
- (g) the period of validity of the financial security;
- (h) the name and address of the provider of the financial security; and
- (i) an attestation, from the provider of the financial security, that the financial security meets the requirements referred to in subsection (3).”

Amendment
of section
211 of
principal Act.

19. Section 211 of the principal Act is amended in subsection (1) by—

- (a) deleting the word “or” at the end of paragraph (a);
- (b) deleting the comma at the end of paragraph (b) and substituting therefor the word “; or”; and
- (c) inserting next after paragraph (b) the following paragraph—

“(c) is entitled to be repatriated in accordance with section 194 and, in contravention of that section, is left in any place;”.

Amendment
of section
315 of
principal Act.

20. Section 315 of the principal Act is amended in subsection (2) by deleting the full stop appearing at the end of paragraph (g) and substituting therefor a semi-colon, and inserting next after paragraph (g) the following paragraph—

“(h) the conditions of employment and living conditions of seafarers, including (but not limited to) the following aspects thereof—

- (i) health and medical care;
- (ii) qualifications of seafarers;
- (iii) seafarer’s employment agreements;
- (iv) accommodation and on-board recreational facilities;
- (v) food and catering;
- (vi) safety and accident prevention; and
- (vii) on-board complaints procedures.”.

Amendment
of section
316 of
principal Act.

21. Section 316 of the principal Act is amended—

- (a) in subsection (4) by deleting the word “or” appearing at the end of paragraph (b), deleting the comma at the end of paragraph (c) and substituting therefor the word “; or”, and inserting next after paragraph (c) the following paragraph—

“(d) conditions on board the ship constitute a serious breach of Part VII or any regulations made with

respect thereto, or pose a significant danger to the safety, health or security of seafarers,”;

- (b) by deleting subsection (5) and substituting therefor the following—

“ (5) An inspector who boards a ship for the purposes of carrying out an inspection under this section may—

- (a) ask the owner, or any agent of the owner, or the master or chief engineer of the ship, any questions concerning the ship as the inspector thinks fit, and that person shall fully and truthfully answer every such question;
- (b) call for and inspect, and take copies of, any record or log-book or other document required under this Act to be kept on board the ship;
- (c) call for and inspect a copy of the seafarer’s employment agreement; and
- (d) take such samples, or make any analysis, as may be required in respect of any food, drinking water, materials, or any other substance, handled by seafarers on board the ship.”.

22. Section 319 of the principal Act is amended in paragraph (b) by deleting the word “corresponds” and substituting therefor the words “, and the living and working conditions of seafarers engaged to work on the ship, correspond”. Amendment of section 319 of principal Act.

23. Section 320 of the principal Act is amended by— Amendment of section 320 of principal Act.

- (a) inserting next after the words “Part VI” and “Parts VI” in each case the figures “, VII”;

- (b) renumbering the section as section 320 (1) and inserting the following as subsection (2)—

“ (2) For the purposes of subsection (1), a declaration of maritime labour compliance, and a maritime labour certificate or interim maritime labour certificate issued in accordance with regulations made under this Act, shall be deemed to be a “certificate”.”.

Amendment
of section
321 of
principal Act.

24. Section 321 of the principal Act is amended—

- (a) in subsection (1) by inserting next after the words “ship and its equipment” the words “, or any living or working conditions on board the ship,”;
- (b) in subsection (2) by—
- (i) deleting the word “or” appearing after paragraph (a);
 - (ii) renumbering paragraph (b) as paragraph (c) and inserting next after paragraph (a) the following paragraph—

“(b) any living or working conditions on board the ship pose a significant danger to the safety, health or security of seafarers; or”;
 - (iii) inserting next after the words “marine environment” the words “and, in any case referred to in paragraph (b), that the living and working conditions on board no longer pose a significant danger to the safety, health or security of seafarers,”.

Passed in the House of Representatives this 17th day of November, 2020 with one (1) amendment.

M. DALRYMPLE PHILIBERT

Speaker.

Passed in the Senate this 11th day of December, 2020 with two (2) amendments.

THOMAS TAVARES-FINSON, OJ, CD, QC, JP
President.

On the 15th day of December, 2020 the House of Representatives agreed to the amendments made by the Senate.

M. DALRYMPLE PHILIBERT
Speaker.

This printed impression has been carefully compared by me with the authenticated impression of the foregoing Act, and has been found by me to be a true and correct printed copy of the said Act.

Sgd. Valerie A. Curtis
Clerk to the Houses of Parliament. (Acting)