

# Maritime Labour Act<sup>♦</sup>

## (Seearbeitsgesetz – SeeArbG<sup>\*</sup>)

### Table of contents

#### Part 1

#### General provisions

- Section 1 Scope
- Section 2 Definitions
- Section 3 Crew members
- Section 4 Shipowners
- Section 5 Masters and deputies
- Section 6 Ships' officers
- Section 7 Young crew members
- Section 8 Data protection
- Section 9 Derogating agreements

#### Part 2

#### Minimum requirements for work by crew members on ships

##### Chapter 1

##### Minimum age

- Section 10 Minimum age of the crew member

##### Chapter 2

##### Fitness for service at sea

- Section 11 Requirement of fitness for service at sea
- Section 12 Certificate of fitness for service at sea
- Section 13 Rejection of fitness for service at sea, findings by the Occupational Accident Insurance Fund
- Section 14 Powers of the Occupational Accident Insurance Fund to issue orders
- Section 15 Review procedure
- Section 16 Licensing of doctors

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- Section 17 Monitoring doctors
- Section 18 Payment of the examination costs
- Section 19 Fitness for service at sea register
- Section 20 Legal ordinances

Chapter 3  
Manning levels, crew list, qualifications

- Section 21 Ships' manning levels
- Section 22 Crew list
- Section 23 Certificates and proof of qualification, safety training

Chapter 4  
Placement

- Section 24 Obligations of the shipowner
- Section 25 Requirements with regard to placement agents
- Section 26 Procedure
- Section 27 Legal ordinances

P a r t 3  
C o n d i t i o n s o f e m p l o y m e n t

Chapter 1  
Seafarers' employment agreement, duty of service

- Section 28 Seafarers' employment agreement
- Section 29 Information regarding conditions of employment
- Section 30 Taking up service
- Section 31 Travel expenses
- Section 32 Duty of service
- Section 33 Record of employment

Chapter 2  
Presence on board, shore leave, dangers to the ship

- Section 34 Compulsory presence on board
- Section 35 Shore leave
- Section 36 Prevention of dangers to the ship

## Chapter 3

### Wages

- Section 37 The right to wages
- Section 38 Calculation and due date of the wages
- Section 39 Payment of the wages
- Section 40 Payslip
- Section 41 Sale of goods and provision of services

## Chapter 4

### Hours of work and hours of rest

- Section 42 Principles for the hours of work arrangement
- Section 43 Maritime hours of work
- Section 44 Hours of work in port
- Section 45 Rest periods and hours of rest
- Section 46 Derogating hours of work arrangements for two-watch ships, salvage vessels and tugboats
- Section 47 Extension of hours of work in special exceptional cases
- Section 48 Maximum hours of work and minimum hours of rest
- Section 49 Derogating hours of work arrangements arranged through collective bargaining agreement
- Section 50 Overview of the organisation of work, records of working time
- Section 51 Remuneration for overtime and night work, as well as work on Sundays and public holidays
- Section 52 Compensation for Sundays and public holidays
- Section 53 Hours of work arrangements for young crew members
- Section 54 Derogating hours of work arrangements for young crew members based on a collective bargaining agreement
- Section 55 Legal ordinances

## Chapter 5

### Leave

- Section 56 Entitlement to leave
- Section 57 Duration of leave
- Section 58 Determination of leave
- Section 59 Place of leave
- Section 60 Travel expenses
- Section 61 Pay when on leave
- Section 62 Illness during leave
- Section 63 Leave on termination of the engagement

Section 64 Extension of the engagement, compensatory pay for leave

## Chapter 6

### Notice and termination of the engagement

Section 65 Right of notice

Section 66 Notice periods

Section 67 Extraordinary notice by the shipowner

Section 68 Extraordinary notice by the crew member

Section 69 Extraordinary notice by the crew member for an urgent family matter

Section 70 Compensation for unemployment because of the ship's loss or foundering

Section 71 Termination of the engagement where the ship and crew are presumed lost

Section 72 Abandonment

## Chapter 7

### Repatriation

Section 73 Entitlement to repatriation

Section 74 Repatriation of a young seafarer

Section 75 Destination of repatriation

Section 76 Implementation and costs of repatriation

Section 77 Official implementation measures in case of repatriation

Section 78 Availability of legal provisions on repatriation

## Chapter 8

### Procedure in the event of the death of crew members

Section 79 Death of the seafarer

Section 80 Care of the effects and the wage balance of a crew member who has died or is missing

## Part 4

### V o c a t i o n a l t r a i n i n g o n b o a r d

Section 81 Contract on vocational training for an occupation on board

Section 82 Form and content of the contract on vocational training on board

Section 83 Contract on vocational training on vessels engaged in small-scale deep-sea- fishing or coastal fishing

Section 84 Right to remuneration

Section 85 Calculation and due date of the remuneration

Section 86 Probationary period

Section 87 Termination

Section 88 Notice

- Section 89 Compensation in case of premature termination
- Section 90 Vocational training on ships of the Federation and the *Länder*
- Section 91 Competent agency
- Section 92 Legal ordinances

## Part 5

### Accommodation and recreational facilities, food and catering

#### Chapter 1

##### Accommodation and recreational facilities

- Section 93 The right to accommodation
- Section 94 Access to communication facilities
- Section 95 Visitors, accompanying partners
- Section 96 Legal ordinances

#### Chapter 2

##### Food and catering

- Section 97 Right to food, instruction
- Section 98 Inspections

## Part 6

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

#### Chapter 1

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

- Section 99 Entitlement to medical care
- Section 100 Particularities of medical care in Germany
- Section 101 Particularities of medical care abroad
- Section 102 Suspension of the right to medical care at the expense of the shipowner
- Section 103 Termination of medical care at the expense of the shipowner

#### Chapter 2

##### Continuation of wages and other entitlements in case of illness

- Section 104 Continuation of wage payments in case of illness
- Section 105 Repatriation in case of illness
- Section 106 Care of the effects and wage balance of a crew member who is sick or injured

Chapter 3  
Guarantee of medical care by the shipowner

- Section 107 Medical areas and medical equipment
- Section 108 Committee for medical equipment in the marine sector
- Section 109 Implementation of medical care and controls on board
- Section 110 Monitoring
- Section 111 Exceptions
- Section 112 Radio and satellite medical care
- Section 113 Legal ordinances

Chapter 4  
Safety and health protection at work

- Section 114 General protection against operational hazards
- Section 115 Ship safety committee
- Section 116 Safety officer
- Section 117 Special protection for young crew members
- Section 118 Legal ordinances

Chapter 5  
Access to shore-based welfare facilities

- Section 119 Shore-based welfare facilities for seafarers

P a r t 7  
O r d e r o n b o a r d a n d r i g h t o f c o m p l a i n t

Chapter 1  
Maintaining order on board

- Section 120 Conduct on board
- Section 121 Responsibility of the master for maintaining safety and order
- Section 122 Empowerment of the ships' officers and the other superior officers to give orders
- Section 123 Obligations of the superior officers
- Section 124 Obligations incumbent on the crew members and the other persons on board
- Section 125 Bringing persons and articles on board
- Section 126 Persons deemed equivalent to crew members

Chapter 2  
Right of complaint, complaint procedure

Section 127 Right of complaint

Section 128 Complaint procedure

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 controls by the flag State

Chapter 2  
Maritime labour certificate and declaration of maritime labour compliance

Section 130 Obligation to take along a maritime labour certificate, prerequisites for issuance

Section 131 Interim maritime labour certificate, short-term certificate, officially-recognised maritime labour certificate

Section 132 Declaration of maritime labour compliance

Chapter 3  
Fishing labour certificate

Section 133 Obligation to take along a fishing labour certificate, prerequisites for issuance

Chapter 4  
Ships not obliged to carry a certificate

Section 134 Ships not obliged to carry a certificate

Chapter 5  
Recognised organisations

Section 135 Authorisation of recognised organisations

Chapter 6  
Legal ordinances

Section 136 Legal ordinances

Part 9  
Requirements of ships flying a foreign flag and the  
responsibility of the port State

Chapter 1  
Requirements of ships flying a foreign flag

Section 137 Requirements of shipowners of a ship flying a foreign flag

Chapter 2  
Port State control

Section 138 Inspection of ships flying a foreign flag

Chapter 3  
Crew members on ships flying a foreign flag

Section 139 Complaints on ships flying a foreign flag

Section 140 Repatriation of crew members on ships flying a foreign flag

Section 141 Medical care of crew members on ships flying a foreign flag

Part 10  
Enforcement of working and living conditions

Section 142 Responsibilities

Section 143 Powers of the Occupational Accident Insurance Fund to intervene

Section 144 Supervisory control of the Occupational Accident Insurance Fund

Part 11  
Provisions on penalties and fines

Section 145 Provisions on fines

Section 146 Criminal provisions

Section 147 Appeals

Part 12  
Final provisions

Chapter 1  
Application to self-employed persons

Section 148 Self-employed persons

Chapter 2  
Fees, making available and promulgation of legal provisions

Section 149 Fees

Section 150 Providing access to statutes and legal ordinances

Section 151 Promulgation of legal ordinances

### Chapter 3 Transitional provisions

Section 152 Transitional arrangement for ships measured in gross register tons

Section 153 Transitional arrangement for licensed doctors

Section 154 Application of the provisions on port State control

# Part 1

## General provisions

### Section 1

#### Scope

(1) The present Act regulates the working and living conditions of seafarers on board merchant vessels that fly 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 in the version of the notification of 12 December 2012 (Federal Gazette [BAnz] AT 4 January 2013 B1),
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 Occupational Accident Insurance Fund for Transport and Traffic
5. the Maritime Medical Service of the Occupational Accident Insurance Fund shall be an independent 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 periods) 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 shall be 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 in sales on the ship,
10. recognised organisation shall be an organisation that is recognised 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 other respects on proviso that the "seafarers' employment agreement" shall be replaced by the "vocational training contract", "engagement" shall be replaced by "vocational training relationship" and "wages" shall be replaced by "remuneration". Sentences 1 and 2 shall apply mutatis mutandis 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 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 behalf of the Federation, of a *Land* or of another public-law corporation on board,
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 which cannot or may not be carried out by the crew members themselves,
4. shipowners 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. artistes 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. pupils at technical schools or students at universities or universities of applied sciences undergoing training at training facilities established in accordance with *Land* 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 provisions of *Land* 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 without such persons working on board on a contractual basis,
11. helmsmen on the Kiel Canal, and
12. security staff of private security companies licensed in accordance with the Trade Regulation Code (*Gewerbeordnung*).

Derogating from sentence 1 Number 2 or 3, the Occupational Accident Insurance Fund shall permit, on request by the other employer or by 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 seafarer, insofar as

1. the activity takes place or is to take place on a specific voyage,
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 envisioned 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 individuals designated in subs. 3 sentence 1, as shall the legal ordinances handed down 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 individuals designated in subs. 3 sentence 1 Numbers 8, 9 and 10, as shall the legal ordinances handed down 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 individuals designated in subs. 3 sentence 1 Number 11, as shall the legal ordinances handed down 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 individuals designated in subs. 3 sentence 1 Number 12, as shall the legal ordinances handed down 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 prescribed 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.

(2) 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 taken over from the owner of the ship the responsibility for the operation 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 to 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 performance of its responsibility in accordance with subs. 2 by way of a contract concluded with the other employer stating that the other employer performs the tasks and obligations incumbent on it vis-à-vis 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 contract signed by the shipowner.

(5) The labour courts shall have exclusive jurisdiction for civil disputes between employees or trainees 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 qualification certificate 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 helmsman 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 qualification certificate, as well as the ships' doctors, marine radio operators and marine electrical engineers and the pursers.

## Section 7

### **Young crew members**

Young crew members shall be deemed to be crew members under the age of 18.

## Section 8

### **Data protection**

(1) The shipowner and the master shall ensure that seafarers' employment agreements, payslips, certificates of fitness for service at sea, medical files, as well as all other documents containing personal data, are stored on board such 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 determined by law. The minimum prerequisites of the working and living conditions of the Maritime Labour Convention within the meaning of the Articles III, IV and VI Number 1 sentence 1 shall also be deemed to have been complied with if a derogating choice of the applicable legislation has been taken.

## **Part 2**

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

#### Chapter 1

#### Minimum age

#### Section 10

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

(1) The shipowner may not employ or permit to work as crew members on ships persons below the age of 16 or persons subject to the obligation to attend school full-time.

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

(3) Derogating from subs. 1, persons aged above 15 who are no longer subject to a full-time obligation to attend school may be employed on fishing vessels within a vocational training relationship.

#### Chapter 2

#### Fitness for service at sea

#### Section 11

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

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 (fit for service at sea). Persons shall be deemed fit for service at sea 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 fit for service at sea.

#### Section 12

##### **Certificate of fitness for service at sea**

(1) The crew member shall document his/her fitness for service at sea prior to taking up his/her activity through a certificate issued by a licensed doctor (certificate of fitness for service at sea). The shipowner may not employ a crew member on ships without a valid certificate of fitness for service at sea.

(2) Prior to each examination of fitness for service at sea, the licensed doctor shall ascertain the identity of the person to be examined and shall inspect data from the fitness for service at sea register collected for the person in accordance with section 19 subs. 6.

He/she may only carry out an examination of fitness for service at sea, and may only issue a certificate of fitness for service at sea, if no blocking notice has been entered in the fitness for service at sea register.

(3) The licensed doctor may only certify fitness for service at sea if he/she has ascertained fitness for service at sea 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 certificate of fitness for service at sea 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 fitness for service at sea, as well as each issuance of a certificate of fitness for service at sea, shall be reported electronically to the Occupational Accident Insurance Fund by the licensed doctor without delay on conclusion of the examination for the purpose of entry in the fitness for service at sea register 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 certificate of fitness for service at sea shall be two years, and shall be one year for young crew members. The licensed doctor or the doctor of the Maritime Medical Service can, derogating from subs. 1, order a shorter period of validity of the certificate of fitness for service at sea if

1. in accordance with the examination result, fitness for service at sea 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 certificate of fitness for service at sea expires in the course of a voyage, it shall remain in force until the next port of call 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 fitness for service at sea issued by the competent agency of another state shall be equivalent to a certificate of fitness for service at sea in accordance with subs. 1 if the certificate meets the requirements of the STCW Convention.

## Section 13

### **Rejection of fitness for service at sea, findings by the Occupational Accident Insurance Fund**

(1) If a person has been refused a certificate of fitness for service at sea by a licensed doctor on examination because of a lack of fitness for service at sea, or if the licensed doctor has imposed a restriction on their fitness for service at sea in particular with respect to time, field of work or trading area, this person shall be given the opportunity to have this finding reviewed on request by the Occupational Accident Insurance Fund. The Occupational Accident Insurance Fund shall have the finding of the licensed doctor 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 of a specialist doctor.

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

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

(3) If it is found on the basis of the examination that the person examined is not fit for service at sea, 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 licensed medical practitioners,

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

(2) If the Occupational Accident Insurance Fund has reason to presume that a crew member no longer satisfies the requirements as to fitness for service at sea, 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. It shall be empowered to request examination results on this crew member in individual cases from the doctor who has carried out the previous examination. A reason within the meaning of sentence 1 shall always be stated in cases falling under section 17 subs. 2.

(3) If the examination that has been ordered in accordance with subs. 2 sentence 1 reveals that the crew member is no longer fit for service at sea, or if the deadline designated in subs. 2 sentence 1 is not adhered to, the Occupational Accident Insurance Fund shall declare the certificate of fitness for service at sea to be invalid. If there is considerable doubt as to fitness for service at sea in cases falling under subs. 2 sentence 1, the Occupational Accident Insurance Fund may already declare the certificate of fitness for service at sea 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 fitness for service at sea 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 fitness for service at sea to the Occupational Accident Insurance Fund on request, otherwise the crew member shall do so. The certificate shall be destroyed when the incontestability of the decision on the invalidity of the certificate of fitness for service at sea becomes final.

(4) In the event of a certificate of fitness for service at sea that is equivalent in accordance with section 12 subs. 7, subs. 2 and 3 shall apply *mutatis mutandis* on proviso that the declaration of the invalidity of the certificate of fitness for service at sea 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 fitness for service at sea.

(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

### **Review procedure**

(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 on proviso 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

### **Licensing of doctors**

(1) A doctor shall be licensed by the Occupational Accident Insurance Fund for the ascertainment of fitness for service at sea if she or he

1. has the specialist knowledge necessary for the examination and the ascertainment of fitness for service at sea, 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 licence application. Subsequent changes to the data shall be reported without delay. The Occupational Accident Insurance Fund shall publish the issuance of the licence in the Transport Gazette (*Verkehrsblatt*) and on its website, stating the name, address and telephone number.

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

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

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 licence 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. 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 in place of withdrawal or of revocation the suspension of the licence 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 doctors**

(1) A licensed doctor shall be subject to monitoring by the Occupational Accident Insurance Fund. Over and above the powers of 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 fitness for service at sea 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 that have been carried out and the certificates of fitness for service at sea that have been 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 subs. 1 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 licensed doctor, or destroy, all documents which contain personal data, in particular medical data, and of which it has become aware

contrary to subs. 1 sentence 2 Number 2. 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 fitness for service at sea and it is necessary in order to avert considerable disadvantages for the common good or another danger directly threatening public safety, the licensed doctor shall enable the Occupational Accident Insurance Fund on request in an individual case to attribute the data to the applicant personally in order to be able to take the necessary measures to avert the risk vis-à-vis the holder of this certificate of fitness for service at sea.

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

(4) Where necessary in the context of issuing licences to doctors, the doctors of the Maritime Medical Service of the Occupational Accident Insurance Fund may carry out examinations for fitness for service at sea and issue certificates of fitness for service at sea. Within these examinations, the doctors 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 mutatis mutandis to the doctors 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 submitted to the Occupational Accident Insurance Fund, or notified 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

### **Fitness for service at sea register**

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

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

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

(2) The fitness for service at sea register shall store the following insofar as this is necessary for the performance of 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 doctor applying for certification or of the licensed doctor,
8. address, telecommunication data, age, qualification, bank account details, access data to the register, date of certification of a doctor applying for certification or of the licensed doctor, as well as names and addresses of the office staff of the deputy doctors and the medical consultants of the examining licensed doctor,
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 fitness for service at sea examination,
13. fitness for service at sea for various departments,
14. period of validity of the certificate of fitness for service at sea,

15. number of the certificate of fitness for service at sea,
16. diagnosis groups in anonymised form,
17. blocking notices of the Occupational Accident Insurance Fund.

(4) Anyone applying for a fitness for service at sea examination shall submit proof of identity to the licensed doctor, 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 licensed doctors and used by them insofar as this is necessary to carry out the tasks that are incumbent on them. In the first fitness for service at sea examination of a seafarer, a licensed doctor may collect data in accordance with subs. 3 Numbers 1 to 6 and 10 to 16. In a follow-up examination, a licensed doctor may store data in accordance with subs. 3 Numbers 6, 10 and 12 to 16, as well as modifying 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 to enterprises, competent agencies of other states or international or European organisations on request 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 agency 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 the satisfaction of 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 is not guaranteed by the recipient.

(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 agencies.

(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. In the event of the disqualification of a doctor as a licensed doctor, the data in accordance with subs. 3 Number 8 shall be deleted without delay when the decision on the application becomes final.

(11) The crew member or the licensed doctor shall, on request, be provided in writing with information free of charge on the content of the fitness for service at sea registers concerning him/her. The applicant shall enclose proof of identity with the application.

## Section 20

### **Legal ordinances**

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

1. the detailed requirements as to fitness for service at sea, including the necessary follow-up examinations by the Occupational Accident Insurance Fund,
2. the implementation of the prescribed examinations,
3. the design of the certificate of fitness for service at sea,
4. prerequisites for the certification of the doctors, 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 licensed doctors,
6. details of the collection, processing and use of the data from the fitness for service at sea register,

as well as the respective proceedings. Provisions can be handed down in legal ordinances in accordance with subs. 1 sentence 1 Number 4 or 5 on verifying the expertise, including the provisions on the nature and content of the examination, the evaluation of performance and the composition of the examination committee. Legal ordinances in accordance with subs. 1 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 submitted by them directly insofar as

1. measures are taken which correspond in each case to the state of the art, to ensure data protection and data security, in particular to safeguard the confidentiality and integrity of the data,
2. encryption 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, Agriculture and Consumer Protection where they relate to sea fisheries.

## 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 the 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 travelling in international waters, the master shall be obliged to draw up and carry along 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 sample published by the Occupational Accident Insurance Fund in the Transport Gazette or Federal Gazette.

(2) On ships in national waters, the master shall be obliged either to draw up and carry along 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 in order to ascertain that it is assured that the posts are reliably filled in accordance with the provisions applicable thereto. The master and the shipowner shall be obliged to comply with the request in accordance with sentence 1 without delay.

## Section 23

### **Certificates and proof of qualification, safety training**

Only persons holding certificates of qualification, proof of qualification or other evidence of qualification in accordance with the provisions of maritime transport law 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 it a written certification 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 seafarers' employment agreement to be concluded meets the requirements of sections 28 and 29,
2. it is meeting its obligations in accordance with sections 73 to 76, and
3. it has obtained insurance coverage in order to compensate persons who are 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 with regard to 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 taking up a position matching their qualification,
2. does not demand from them, either directly or 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 complaints management system and always keeps this up to date, as well as informing the Occupational Accident Insurance Fund without delay of complaints which have not been remedied,
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 which operates ships flying a foreign flag, prior to conclusion of a placement, written confirmation that the employment agreement that is to be concluded corresponds to 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, the Occupational Accident Insurance Fund shall issue a placement agent with 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. The placement agent shall provide all information necessary for the assessment of qualification in accordance with sentence 1 to the Occupational Accident Insurance Fund in its application. 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 so doing, 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 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, in agreement with the Federal Ministry of Transport, Building and Urban Development, by means of a legal ordinance without the consent of the Federal Council, to regulate details of the procedure for the application and for the issuance of the certificate in accordance with section 26 subs. 1.

## **Part 2**

### **Conditions of employment**

#### Chapter 1

#### Seafarers' employment agreement, duty of service

## Section 28

### **Seafarers' employment agreement**

(1) The shipowner may only employ a crew member if he/she has a seafarers' employment agreement when commencing service. The seafarers' employment agreement serves to establish an engagement between the shipowner and the crew member. The shipowner shall hand over or transmit to the seafarer, in good time prior to the intended conclusion of agreement, a draft of the agreement, including the collective bargaining agreements, works agreements or ship's agreements to be referred to in accordance with subs. 2 Number 11. The seafarers' employment agreement shall require to be in writing; electronic form shall be ruled out. The shipowner and the crew member shall receive one copy each of the seafarers' employment agreement which they have signed.

(2) The seafarers' 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 seafarer,
3. the designation or description of the services to be provided by the seafarer, 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 seafarers' employment agreement has been concluded for a definite period, the envisioned term of the engagement,

6. the composition and the amount of the wages, including the supplementary allowances, extra payments, bonuses 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 amount of paid annual leave,
9. if the seafarers' 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 constituting an entitlement to terminate it, as well as the required notice periods and dates,
10. the seafarer's entitlement to repatriation,
11. reference to the collective bargaining agreements, works 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 the seafarers' employment agreement has been entered into.

(3) The following shall be included in the seafarers' employment agreement for seafarers 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 entering into the agreement,
3. derogating from 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 wage.

(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 seafarers' 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 seafarer's return.

(5) 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, works 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.

(6) Subs. 1 to 5 shall apply mutatis mutandis when amending essential contractual conditions. Sentence 1 shall not apply to an amendment of the statutory provisions, collective bargaining agreements, works agreements or shipboard agreements applicable to the engagement.

## Section 29

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

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

(2) Where the seafarers' employment agreement makes reference to a collective bargaining agreement, a works 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 the present Act, of the Maritime Labour Convention, of a sample agreement of the seafarers' employment agreement, as well as of the collective bargaining agreements, works agreements or shipboard agreements, to which reference is made in the seafarers' 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 time when he/she should come on board. In doing so, the berth of the ship or a place to report shall be notified to him/her.

(2) Should the crew member be unable to take up service because of an inevitable event, he/she shall notify the shipowner or the master thereof without delay, 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 per diem 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 registration place or place of taking up service become 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 engagement. He/she shall obey the orders of the responsible superior officer in so doing.

## Section 33

### **Record of employment**

(1) The crew member shall be entitled to receive from the shipowner a certificate providing information about the duties performed on board the ship. The certificate shall be issued or transmitted on board, in German and English, to the crew member at the latest on the day of termination of service. In case of ships on which the crews change at short intervals or regularly call at the same ports, in particular in ferry and tug service, the record of employment only needs to be issued or transmitted on application by 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, birthplace 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 Code (*Gewerbeordnung*) shall remain unaffected thereby.

(5) The shipowner shall be obliged to retain an (electronic) copy 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**

The crew member shall also be obliged to be on board during his/her off-duty time unless the master, or in his/her place the competent superior officer, has issued him/her permission to leave the ship. Permission shall be given insofar as the seafarer has an entitlement to shore leave in accordance with section 35.

#### Section 35

##### **Shore leave**

(1) The crew member shall be entitled to shore leave in his/her off-duty time outside the hours of work in port while in the port or while the ship is in the roads.

(2) The crew member shall also be entitled to shore leave in his/her off-duty time within the hours of work in port while in the port or while the ship is in the roads insofar as this is permitted by the ship's operations.

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

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

(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 prevent imminent danger to people, the ship or the cargo, to prevent major damage, to prevent serious breakdowns of the ship's operation or to satisfy public-law provisions on ship safety. The same shall apply in urgent cases to orders of a superior officer who is on hand. 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 to people.

(3) In case of maritime perils, in particular in the case of a 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, the crew member shall be obliged to assist in accordance with the orders of the master as he/she is best able to ensure the rescue of people and their belongings, as well as for securing the ship parts, equipment and cargo, and to help 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 in accordance with 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 equitably 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 Euro unless another statutory currency is agreed in the seafarers' employment agreement. If the shipowner and the crew member agree that the wages are to be paid in another statutory currency than Euro, the rate of currency exchange must 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 the 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 refund the costs which it incurs by the cashless payment.

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

## Section 40

### **Payslip**

(1) The shipowner shall issue a payslip to the crew member on 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 payslip must contain the respective accounting period and full information on the composition of the wages. As to the composition, in particular information is necessary on the nature and amount of the supplementary allowances, extra payments, bonuses and special payments, as well as the deductions and advances that have been made, including the amounts paid to third parties. If payments are made not in Euro, but in another legal tender, the shipowner shall also state in the payslip the rate of currency exchange used as a basis.

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

## Section 41

### **Sale of goods and provision of services**

If the shipowner sells goods to a crew member or provides services to him/her, 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 hours of work arrangement**

(1) Provisions on maritime hours of work shall be applied from the time when the ship starts to leave its berth in the 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 the port or anchored in the roads. If maritime hours of work 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 must, where possible, be transferred to a suitable post in the day watch.

(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 short of. This shall not apply insofar as a derogating provision in accordance with section 49 subs. 1 Number 3 and Number 4 exists, 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 and 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. Sections 51 and 52 shall not apply. If the master is on 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

### **Maritime hours of work**

(1) The maritime hours of work of crew members designated for watchkeeping may not exceed eight hours per day as a rule. They shall be assigned in accordance with the three-watch system. Crew members may not carry out any other work in addition to watchkeeping while keeping watch on the bridge. 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 maritime hours of work 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 maritime hours of work 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. This period may furthermore be exceeded for the service staff on passenger ships at the order of the master and for the nursing staff at the order of the ships' doctor. The service staff may only be engaged in work on Sundays and public holidays which is imperative for food and catering and service for 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, as well as with 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 of the service staff in port must be between the time of 6 and 18 hours. Section 43 subs. 3 shall apply mutatis mutandis in other respects.

## Section 45

### **Rest periods and hours of rest**

(1) The crew members shall be permitted rest periods 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 period after six hours at the latest. The rest period 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 periods 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 periods 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 must 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 must correspond at least to the duration of the interruptions in the hours of rest. Six hours' uninterrupted rest must be guaranteed.

## Section 46

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

(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 latitude, 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, derogating from section 43 subs. 1 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. 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 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, derogating from section 43, may be determined by the master, 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 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 in the 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
- 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 stops. 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 of competence that is to be left and of the area of competence that is to be called at. After the ship has left the trading area with 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 hours of work arrangements 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 works agreement or shipboard agreement,

- 1. the entitlement of the master, derogating from section 47 subs. 4, to also order an extension of the daily hours of work determined in sections 43 and 44 by up to two hours 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 each seven-day period,
- 3. provisions derogating from sections 43 and 44 for maritime 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, on proviso that the hours of rest are not less than 70 hours in each 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 of section 42 subs. 5 as well as, over and above Numbers 2 and 3, also derogating provisions of section 45 subs. 3 and of 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 of section 51 as to remuneration and of section 52 as to compensation for work on Sundays and public holidays.

(2) Within a collective bargaining agreement containing a provision in accordance with subs. 1 Numbers 1 to 5, this collective provision can be adopted through a works agreement or shipboard agreement in the operations of a shipowner not bound by collective 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 on.

(3) For crew members of fishing vessels, as well as of passenger ships and ferries for which collective bargaining agreements are not customarily concluded, exceptions may be authorised by the Occupational Accident Insurance Fund generally or in individual cases with the provisions provided for 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 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.

## Section 50

### **Overview of the organisation of work, records of working time**

(1) An overview of the organisation of work on board shall be kept on each ship, and must 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 overview of the organisation of work is displayed in an easily-accessible place on board.

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

(3) The master shall be obliged to retain the overview of the organisation of work and the records of working time. He/she may assign this job to a ships' officer or another superior officer.

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

## 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 at least one two-hundredth of the basic wage for each hour, 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 each for the first 60 hours of overtime work of the month, as well as for overtime worked on watch duty in port, and one-half each for the following 30 hours, of a two-hundredth of the basic wage and for each further hour of overtime work one two-hundredth 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 two-hundredth 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 payment on proviso that the minimum supplementary allowance for work in accordance with Number 1 is increased by one-quarter of a two-hundredth 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 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 connected with leave, or if leave cannot be extended because of imperative operational reasons, shall be paid off by way of compensation.

(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 mutatis mutandis to days off.

## Section 53

### **Hours of work arrangements 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 on proviso of subs. 2 to 4.

(2) Hours of work of young crew members in port should not exceed a maximum of 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) Young crew members may work at sea 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 per day and on weekdays from the time of 5 hours. This shall however 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, to ensure the cargo or for boat duty. The commencement of work can be set at a 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 periods of an appropriate length, specified in advance. Only an interruption of work of at least 15 minutes shall be deemed to constitute a rest period. The rest periods 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 periods must be granted at appropriate time. Young crew members may not work for more than four-and-a-half consecutive hours without a rest period. Sufficient time should be allowed for all meals.

(6) The young crew members may not work in the time between the time of 20 and 6 hours except as provided in subs. 4. Furthermore, young crew members on passenger ships may make creative contributions to performances for the entertainment of the passengers until the time of 23 hours if an uninterrupted period of rest of at least nine hours is guaranteed following this. 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' organisations, 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 periods 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, derogating from section 51 subs. 1, being at least one-quarter of a two-hundredth of the basic wage for each hour of overtime work.

(8) If young crew members work on more than five days, they shall be granted another day off per week for the work on the sixth and seventh days. 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 mutatis mutandis. The financial settlement of days off shall not be permissible.

#### Section 54

##### **Derogating hours of work arrangements for young crew members based on a collective bargaining agreement**

(1) It shall be possible to agree for young crew members, in a collective bargaining agreement or – on the basis of a collective bargaining agreement – in a works 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, but only on proviso of 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, also to employ young crew members in watchkeeping in the 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 periods 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 to 24 hours if uninterrupted hours of rest of at least nine hours are guaranteed following on from this; the hours of rest can 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 of section 53 subs. 2 to 8 as to the hours of work, as well as for young crew members of passenger ships and ferries, derogating provisions, including as to remuneration and compensation for work on Sundays and public holidays, as well as other overtime work; this shall also apply mutatis mutandis to young crew

members on fishing vessels; as to the hours of work, however, only during the catch and while it is being processed on board.

The following additional requirements shall be adhered to in the event 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 the time of 0 and 5 hours, shall be time off from work. Derogations must be in compliance with the general principles for the safety and the health protection of the young crew members, and be necessary for objective, technical or work-organisation 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 collective provision can be adopted in the operations of a shipowner not bound by collective agreements, through a works agreement or shipboard agreement, 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 passenger ships, ferries or fishing vessels for which collective bargaining agreements are not customarily concluded, exceptions may be permitted by the Occupational Accident Insurance Fund generally or in individual cases with an arrangement as provided for 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, in agreement with the Federal Ministry of Transport, Building and Urban Development, by means of a legal ordinance without the consent of the Federal Council

1. to determine the detailed requirements to maintain the overview of the organisation of work and the records of working time in accordance with section 50 subs. 1 and 2,
2. to issue further provisions regarding the overview of the organisation of work and the records of working time in accordance with section 50,
3. derogating from sections 43, 44, 45 and 48, to permit provisions for the hours of work, as well as for the rest periods and for the hours of rest for crew members on ships, from which special activities are performed to construct, alter or operate buildings, artificial islands or other systems at sea (offshore activities), and to 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, Agriculture and Consumer Protection 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. The entitlement to leave may only be paid off by way of compensation subject to the provisos contained in section 64 subs. 3.

(2) The Federal Leave Act (*Bundesurlaubsgesetz*) shall apply unless otherwise provided 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 towards leave

1. statutory public holidays which apply at the port of registry,
2. times of incapacity for work for such reasons as illness or accident, as well as absence from work for 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 requests 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 requests for leave of other crew members employed by the shipowner who take priority for welfare-related reasons. Leave shall be granted where possible after six months' uninterrupted service on board, at the latest by the end of the year of employment. If it is not the shipowner but another person who is the seafarer's

employer or trainer, and if the other person fails to comply with their 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 to young crew members leave at the latest after six months' uninterrupted service on board.

(3) Leave shall be granted in one piece unless pressing operational reasons or personal reasons of the crew member necessitate division of 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**

At the option of the seafarer, the place of leave shall be

1. the seafarer's home,
2. the place at which the seafarers' employment agreement was concluded,
3. the place determined by a collective bargaining agreement, or
4. any other place agreed in the seafarers' 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 mutatis mutandis as to the amount of the travel expenses.

## Section 61

### **Pay when on leave**

(1) The crew member shall continue to receive the wages within the meaning of section 37 as pay when on leave. 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 leave 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 medical certificate. If it is to be presumed that the illness will continue beyond the end of 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 for longer, after the recovery of fitness for work. The shipowner shall determine the time from which the remaining leave is 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 year of employment, the crew member shall be entitled to one-twelfth of the annual leave for each commenced month of employment.

(2) If the crew member has received more than the leave to which he/she is entitled on termination of the engagement, the leave pay paid therefor may not be demanded back.

## Section 64

### **Extension of the engagement, compensatory pay for 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 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 to the crew member any leave to which he/she remains entitled from the engagement within this employment relationship.

(3) The shipowner shall pay off the leave by way of compensation insofar as this cannot be granted because of termination of the engagement. Sentence 1 shall not apply insofar as the prerequisites subs. 1 or 2 are met.

## Chapter 6

### Notice and termination of the engagement

#### Section 65

##### **Right of notice**

(1) The shipowner and the crew member may give notice in respect of the engagement.

(2) The termination of the engagement by giving notice shall require written form in order to be effective. Electronic form shall be ruled out.

(3) Ordinary notice of termination towards a master or a ships' 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 the 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 existed for eight years, three months to the end of a calendar month,
2. has existed for ten years, four months to the end of a calendar month,
3. has existed for twelve years, five months to the end of a calendar month,
4. has existed for 15 years, six months to the end of a calendar month,
5. has existed 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 *mutatis mutandis*.

(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 seafarer

1. is unsuited to perform the service assigned for reasons which existed prior to the establishment of the engagement unless the shipowner was aware of these reasons at that time or should have been aware of them under the circumstances,
2. fails to mention an infectious disease by which he/she places others at risk, or to state that he/she is a carrier of the typhus or paratyphus pathogen,
3. persistently or particularly grossly breaches his/her duties under the engagement,
4. commits a criminal offence making it unacceptable for him/her to remain on board,
5. becomes unfit for work on grounds of a criminal offence committed by him/her.

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

(3) If the extraordinary notice is given at sea or if the crew member remains on board after being given 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 seafarer**

(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 be deemed to exist in particular if

1. the shipowner or the master commits a serious breach of duty towards him/her,
2. the master violates his/her honour in a serious manner, mistreats him/her or tolerates his/her mistreatment by other persons,
3. the ship changes the flag which it flies,
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 if an epidemic breaks out and this may cause serious health risks to the seafarer,
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 staff rooms are harmful to the health of the crew,
9. the food supplies or drinking water taken along for the ship's crew are inadequate or spoiled, or
10. the ship is insufficiently manned.

In the event of sentence 1 Numbers 7 to 10, the crew member shall however only be entitled to give extraordinary notice if the breach is not remedied within a reasonable period of the complaint having been made. The right of notice in accordance with sentence 1 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 a month from the time notice is given. Compensation rights on the basis of other provisions shall remain unaffected thereby.

#### Section 69

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

The crew member may terminate the engagement without adherence to a 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, at most up to the end of two months after receipt of the notice, to payment of the wages for each day of unemployment. The crew member must count against the wage claim what he/she

1. must claim in unemployment insurance benefits, or
2. earns through other work or wilfully fails to earn.

## Section 71

### **Termination of the engagement where the ship and crew are presumed lost**

(1) If it is not possible to ascertain the whereabouts of a ship and its crew, and if the circumstances suggest 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 is subsequently ascertained, sections 73, 75 and 76 on repatriation and continued payment of wages shall apply to these crew members.

## Section 72

### **Abandonment**

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

(2) If a crew member is abandoned and it is to be feared that he/she is in need of assistance, the Occupational Accident Insurance Fund may make its consent contingent on the payment of an amount guaranteeing the maintenance of the crew member in the three months after he/she was abandoned.

(3) The abandonment of a young crew member shall also require the consent of his/her statutory representative.

## Chapter 7

### Repatriation

## Section 73

### **Entitlement to repatriation**

The Crew member shall have a right to be repatriated to the place of 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 emerging from section 66,
3. in the event of the shipowner no longer fulfilling its legal or contractual obligations as an employer by reason of insolvency, sale of ship, change of ship's registration or any other similar reason,

4. in the event of a ship being bound for a zone in which particular dangers are imminent because of armed conflict, and to which the crew member does not consent to go, or if the ship fails to leave such a zone without delay.

#### Section 74

##### **Repatriation of a young seafarer**

If, after a young crew member has served for at least four months during their first voyage abroad on a ship, it becomes apparent during this time that he/she is unsuited to life at sea, he/she shall be entitled to be repatriated from a port from which the repatriation of the crew member can be carried out safely using generally-accessible means of transport.

#### Section 75

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

The destination of the repatriation, at the option of the seafarer, shall be

1. the place of residence of the seafarer,
2. the place at which the seafarers' employment agreement was entered into,
3. the place stipulated by collective agreement, or
4. any other place agreed in the seafarers' employment agreement.

#### Section 76

##### **Implementation and costs of repatriation**

(1) The shipowner shall make the arrangements for the implementation of repatriation. It shall ensure that the crew member receives the passport and other identity papers necessary for repatriation. The normal mode of transport of the crew member should be by air. The crew member shall be entitled to continued payment of wages from the moment he/she leaves the ship until he/she reaches 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 shall pay the necessary costs of repatriation. The recovery of the cost of repatriation from the seafarers' wages or other entitlements shall be ineffective. Shipowners may not require an advance payment towards the cost of repatriation; such an agreement shall not be effective.

(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 is not claimed within three months, calculated from the date on which the crew member was first able to make the claim.

(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 cost of repatriation refunded on the basis of contractual agreements with third parties shall remain unaffected thereby.

(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 which is covered by a bond or guarantee through an association of shipowners or another financial security.

## Section 77

### **Official implementation measures in case of repatriation**

If the shipowner fails to carry out its obligation in accordance with section 76, the Occupational Accident Insurance Fund shall have repatriation carried out and shall advance the costs. They shall be refunded by the shipowner.

## 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 the death of crew members**

## Section 79

### **Death of the crew member**

(1) The master shall make arrangements for the burial if a crew member has died on board or during the voyage abroad. If the body cannot be taken 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 there are no health concerns against taking along the body, 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 shall meet the costs of the burial if a crew member died in connection with his/her duties or its consequences.

#### Section 80

##### **Care of the effects and the wage balance of a crew member who has died or is missing**

(1) The master shall hand the effects of a crew member who has died or is missing 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 has died or has been declared dead to his/her heirs, in the case of a crew member who is missing to his/her relatives.

#### **Part 4**

##### **Vocational training on board**

#### Section 81

##### **Contract on vocational training for an occupation on board**

The shipowner may only implement the vocational training of 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 contract 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 mutatis mutandis.

#### Section 82

##### **Form and content of the contract on vocational training on board**

(1) The contract on vocational training for an occupation on board shall require to be in writing; electronic form shall be ruled out. The shipowner shall hand to the trainees and their statutory representatives a draft contract in good time prior to the envisioned conclusion of the contract, including the collective bargaining agreements, works agreements or shipboard agreements to be stated in accordance with subs. 3 Number 12. The contract on vocational training shall be concluded prior to the commencement of vocational training and shall be signed by the shipowner, the trainees and their statutory representatives. All signatories must receive a copy of the contract on 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 implemented on board, the contract 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 thereby.

(3) The following, at least, shall be included in the contract on vocational training on board:

1. the name and the address of the shipowner; in the event 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 trainee,
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 vocational training, in particular the occupation for which the training is to be carried out,
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 length of the probationary period,
9. the due date and amount of the remuneration,
10. the amount of paid annual holiday leave,
11. the prerequisites under which the vocational training agreement can be terminated,
12. an indication of the collective bargaining agreements, works agreements or shipboard agreements which are applicable to the vocational training agreement on board,
13. the medical care and social security benefits which the shipowner as trainer or the other trainer must grant to the trainee,
14. the trainee's entitlement to repatriation,
15. the place and date where the contract on vocational training on board was concluded.

The trainee 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) which is/are to be undertaken if they can be stated at the time of the conclusion of the contract,

3. derogating from subs. 3 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 for more than one month on board a ship flying a foreign flag, the following shall additionally be included in the contract:

1. the duration of the training on board the ship flying a foreign flag,
2. the currency in which the payment is to be made,
3. the additional payments granted in connection with the training on a ship flying a foreign flag,
4. the conditions for the return of the trainee.

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 stating the collective bargaining agreements, works 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 mutatis mutandis to making amendments to major contractual terms and conditions. Sentence 1 shall not apply to an amendment of the statutory provisions, the collective bargaining agreements, works agreements or shipboard agreements applicable to the vocational training agreement.

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

## Section 83

### **Contract on vocational training on vessels engaged in small-scale deep-sea fishing or coastal fishing**

If the vocational training takes place on a vessel of the small-scale deep-sea fishing or coastal fishing, sections 81 and 82 shall apply in place of sections 10 and 11 of the Vocational Training 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 emerges from the essence and purpose of the contract and from the Vocational Training Act.

## Section 84

### **Right to remuneration**

Shipowners shall pay trainees 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 shall be deemed to have 30 days.

(2) The remuneration shall be due on expiry of each calendar month or on termination of the vocational training agreement. The provision of section 19 of the Vocational Training Act shall apply mutatis mutandis to the continuation of the remuneration.

## Section 86

### **Probationary period**

The vocational training relationship shall commence with the probationary period. It must be at least one month and may be a maximum of five months. Derogating from sentence 2, a shorter probationary period may be agreed 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 trainees 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 trainees do not pass the final examination, the vocational training agreement shall be extended at their request until the repeat examination scheduled by the examination committee, at most by one year.

## Section 88

### **Notice**

(1) During the probationary period, the vocational training agreement 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 on 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 trainee is possible with generally-accessible means of transport.

If the trainee does not agree with the continuation as an engagement, he/she shall pay whilst on board the rate for food emerging from section 67 subs. 3.

(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 trainees with a notice period of four weeks if they wish to give up the vocational training or to be trained for another occupation.

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

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

(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 dissolved prematurely after the probationary period, the shipowner or trainee may demand compensation for the damage if the other person is responsible for the reason for the dissolution. This shall not apply in the event of section 88 subs. 2 Number 2.

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

(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 Federation and the *Länder***

Sections 81 to 89, as well as the legal ordinances handed down on the basis of section 92, shall apply *mutatis mutandis* if the vocational training is carried out on ships which fly a *Land* service flag or the Federal service flag and are deployed in maritime transport.

## Section 91

### **Competent agency**

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

## Section 92

### **Legal ordinances**

The Federal Ministry of Transport, Building and Urban Development is herewith empowered to approve training occupations in the marine sector by legal ordinance, in agreement with the Federal Ministry of Education and Research, without the consent of the Federal Council after consulting the *Land* authorities of the coastal *Länder* with supreme competence for vocational training-related issues, and to enact provisions on

1. the designation of the training occupation that is to be recognised,
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 minimum vocational knowledge, skills and abilities which are to be the subject-matter of the vocational training (profile of the training occupation),
5. instructions for the curriculum and schedule of the imparting of vocational knowledge and skills and abilities (conceptual framework of training),
6. allowance for previous vocational training against the training period,
7. the aptitude of the trainers, 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**

##### **The right to accommodation**

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

(2) Each crew member shall be obliged to treat rooms and facilities made available to him/her with care.

(3) The master or a ships' officer commissioned by him/her shall inspect the accommodation areas and 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 areas used as living space, 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 retained for inspection.

(4) If it is not possible to grant to the crew member accommodation on the ship for special reasons beyond his/her control, he/she shall be entitled to other suitable accommodation or to the payment of the amount of money necessary therefor.

#### **Section 94**

##### **Access to communication facilities**

The master shall grant to the crew members at their request reasonable and affordably priced access to ship-to-shore telephone communications, email and Internet facilities 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. the crew member shall not be required to pay additional postage when his/her mail has to be readdressed owing to circumstances beyond his/her control.

## Section 95

### **Visitors, accompanying partners**

Unless barred by operational reasons, as well as by domestic or international legal provisions for risk aversion, 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 occasionally accompanied by their partners on voyages.

Accompanying partners shall be obliged to take out adequate insurance 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, in agreement with the Federal Ministry of Transport, Building and Urban Development, by a legal ordinance without the consent of the Federal Council

1. to determine the detailed requirements as to the living areas and staff rooms, sanitary facilities, washing facilities and kitchen areas, as well as recreational facilities on board the ships, including the appropriate facilities and supply facilities, and their readiness for use,
2. to determine the detailed requirements as to the medical facilities on board the ships and their availability.

Legal ordinances in accordance with sentence 1 shall require the agreement

1. of the Federal Ministry of Food, Agriculture and Consumer Protection 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) The crew member shall be entitled to free, adequate and sufficient meals and beverages (food), as well as drinking water, for the duration of the engagement. 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. This shall adequately have regard to the number of

crew members on board, their cultural practices and religious requirements, as well as the duration and nature of the voyage.

(2) The shipowner shall ensure that

1. the drinking water, water supply facility and its operation comply with the valid legal provisions on drinking water,
2. the food corresponds to the valid provisions on food.

It shall ensure that the catering and service staff are properly trained or instructed for their positions. In particular, it 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 activities that are banned and obligations to notify. The instructions shall be documented in the logbook. If they are employed 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 areas and equipment used for the storage of food and drinking water, and
3. of the galley 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 outcome of the inspection.

## **Part 6**

### **Safety and health protection at work, medical care and social care**

## Chapter 1

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

## Section 99

### **Entitlement to medical care**

- (1) The crew member 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 his/her health is restored or until the illness or occupational invalidity is considered permanent unless provided otherwise in sections 100, 102 and 103. Where the ship is berthed in a domestic port, the crew member shall be entitled in accordance with sentence 1 to preventive measures which are necessary for the prevention and early diagnosis of disorders and their progression and which include the 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 abortion shall be deemed equivalent to a sick or injured crew member. The same shall apply to an abortion if the pregnancy was terminated by a doctor within twelve weeks after conception, the pregnant woman requests the abortion and the doctor has proven 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 medical care, including essential dental care, 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) The crew member shall have the right to visit a qualified medical doctor or dentist in ports of call immediately.

(5) The right in accordance with subs. 1 shall not apply if

1. the engagement was established abroad and the crew member did 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 seafarers' employment agreement, or
3. the crew member incurred the illness or injury as a result of a criminal offence intentionally committed by him/her.

## Section 100

### **Particularities of medical care in Germany**

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

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

1. a ships' 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 this becomes 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 medical treatment and food in an acceptable hospital.

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

## Section 102

### **Suspension of the right to medical care at the expense of the shipowner**

If a crew member refuses to accept the medical 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. Medical care shall however be continued until the competent health insurance or the competent accident insurance starts to provide benefits if an interruption might entail a risk.

(2) If a crew member has been abandoned abroad, medical care at the expense of the shipowner shall terminate if 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 wages 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 payment 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 continuation of wages 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 abandoned 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 substitute his/her consent 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 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 to a suitable per diem to meet necessary personal needs for the duration of the repatriation journey.

## Section 106

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

(1) If it is necessary to abandon a crew member 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 each of the list shall be given to the place of safekeeping and to the crew member who has been abandoned.

## Chapter 3

### Guarantee of medical care by the shipowner

#### Section 107

##### **Medical areas and medical equipment**

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

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

The shipowner shall ensure that the medical areas are kept in a constant state of readiness.

(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 fitted with suitable medical equipment meeting 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 equipment,
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 equipment, in particular journals and medical report forms, and
3. the necessary medical instructions.

The medical equipment must 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 the medical equipment satisfies the state of medical requirements in the marine sector (medical state-of-the-art) most recently notified in the Transport Gazette or in the Federal Gazette in each case, the medical equipment shall be deemed to satisfy the requirements of sentence 3.

#### Section 108

##### **Committee for medical equipment in the marine sector**

(1) The Federal Ministry of Transport, Building and Urban Development shall establish a Committee for Medical Equipment in the Marine Sector. (Committee). It shall be incumbent on the Committee to

1. constantly be up to date on 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 areas.

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 nationally- and internationally-recommended medical standards, shall be taken into account.

(2) The Federal Ministry of Transport, Building and Urban Development 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 medical radio or satellite radio service with specialist medical consultation,
3. of the authority of the Free and Hanseatic City of Hamburg that is responsible for health-related matters, the person having to be experienced in maritime medicine,
4. of the Working Group of Coastal States for Ship Hygiene established on the basis of the Agreement between the *Länder* on Cooperation in the Field of Maritime Medicine (*Abkommen der Länder über die Zusammenarbeit auf dem Gebiet der Schifffahrtsmedizin*), the person having to be 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.

The following shall further 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 Society for Maritime Medicine 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, Building and Urban Development, who shall not have a voting right. The persons designated in subs. 3 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 subs. 3 sentence 1 Numbers 8 to 10 must hold a qualification certificate for nautical service on

merchant vessels or have equivalent maritime transport 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 camera. Confidentiality shall be observed regarding the deliberations, with the exception of the resolutions that are taken. The Committee shall be quorate if more than one-half of the voting members are present; it shall adopt its resolutions with a majority of two-thirds of the voting members present. Outside meetings, resolutions can be adopted in the written proceedings if no voting member objects; in this case, a resolution shall require a majority of two-thirds of all voting members.

(5) The Federal Ministry of Transport, Building and Urban Development shall convene the members of the Committee at the proposal of the authorities and other facilities which are entitled to second 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, Building and Urban Development may only reject a proposal if the person proposed does not have the necessary expertise. The Federal Ministry of Transport, Building and Urban Development shall furthermore appoint one representative each as advisory members of the Commission at the proposal of the designated institutions, where there is particular need for expertise in individual cases,

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 concerns of vaccine protection and the application of serums 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 concerns of sea fisheries;

sentences 2 and 3 shall apply mutatis mutandis. Over and above this, the Federal Ministry of Transport, Building and Urban Development may nominate further individuals who can attend meetings of the Committee in an advisory capacity where there are 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 controls on board**

(1) The following 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 ships' doctor, or
2. on a ship without a ships' doctor, the master.

In the case of sentence 1 Number 2, the master may commission a ships' officer with the performance of the tasks in accordance with sentence 1. The master, and in case of sentence 2 also the ships' officer, must have training which guarantees suitable medical treatment and care on board. The persons referred to in sentence 3 must undergo accredited 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 suitable 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 subs. 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 its ship is inspected by the Occupational Accident Insurance Fund with regard to the medical areas 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 controls carried out at least every twelve months that the medical areas and the medical equipment are always in a proper state. When controlling and where necessary replenishing the medical equipment with medicines and medical devices, the shipowner shall avail itself of the services of a public pharmacy. The persons designated in subs. 1 sentences 1 and 2 shall keep up-to-date records of the implementation of the internal controls and of the services 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 competent in accordance with subs. 1 sentence 1 or 2 shall make a written record of the medical care of a sick or injured crew member in the medical report forms without delay, and shall keep these on board until they are to be handed to a competent agency. The report forms and the information which they contain shall be treated confidentially and may only be used in order to facilitate the treatment of the crew member. The Federal Ministry of Transport, Building and Urban Development shall notify the template of the medical report forms in the Transport Gazette or in the Federal Gazette.

## Section 110

### **Monitoring**

Over and above the entitlements of section 143, the Occupational Accident Insurance Fund and persons employed by it may order in particular that

1. the medical areas are equipped and maintained such that they meet the requirements of section 107 subs. 1 sentence 1,
2. the medical equipment which does not correspond to the state-of-the-art of medical knowledge within the meaning of section 107 subs. 2 sentence 4 is changed or replenished such 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 in accordance with this Chapter and with the legal ordinances handed down on the basis of the provisions contained in this Chapter insofar as this is compatible with the state-of-the-art of medical knowledge and as the medical treatment and care of the persons on board is not placed at risk.

(2) The Occupational Accident Insurance Fund may order the shipowners with the consent of the Federal Ministry of Transport, Building and Urban Development that, derogating from the state-of-the-art 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 is not yet accounted for in the state-of-the-art of medical knowledge. An order in accordance with sentence 1 shall apply until the publication of a more recent state-of-the-art of medical knowledge, at most for two years. The order shall be notified 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 medical care**

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

## Section 113

### **Legal ordinances**

(1) In order to ensure adequate medical treatment and care on board a ship, the Federal Ministry of Transport, Building and Urban Development is herewith empowered, through a legal ordinance without the consent of the Federal Council,

1. to regulate the rules of procedure for the Committee for Medical Equipment in the Marine Sector; in doing so, the formation of preparatory subcommittees may be determined, and their tasks and composition may be determined,
2. to issue detailed regulations on the provision of ships with ships' doctors,
3. to determine the detailed requirements as to the training and further training of the persons within the meaning of section 109 subs. 1 sentence 1 Number 2 and sentence 2, also regarding examinations and issuance of certificates,
4. to determine the detailed requirements as to the certification and quality assurance of medical refresher courses,
5. to 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 store commercial documents, duties to provide information, to tolerate inspections of the business premises and operational facilities, and duties to provide support,

6. to regulate details of the nature, scope and frequency of the internal controls in accordance with section 109 subs. 3, as well as the necessary proof, records and storage periods.

The administrative procedure may be regulated in detail in legal ordinances in accordance with subs. 1 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, Agriculture and Consumer Protection insofar as sea fisheries are concerned,
2. of the Federal Ministry of Health insofar as the content of infectiological or hygienic provisions is concerned.

(2) In order to ensure adequate medical treatment and care on board a ship, the Federal Ministry of Labour and Social Affairs is herewith empowered to hand down detailed provisions on the medical areas by legal ordinance without the consent of the Federal Council.

## Chapter 4

### Safety and health protection at work

#### Section 114

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

(1) The shipowner shall be obliged to equip and maintain the entire operation of the ship and all tools, devices and systems on board, as well as to regulate the employment and the workflow such that the crew members are protected against maritime and fire risks, work-related health risks, as well as 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 duties for the maintenance and safe operation of the ship and of the work areas, systems and devices on board, as well as for regulating the operations and workflows, 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 form a ship safety committee on ships with five or more crew members. This Committee shall be comprised of:

1. the master,

2. a member of the ship's committee appointed by the ship's committee, and
3. the safety officer in accordance with section 116.

If there is no ship's committee, the member in accordance with subs. 1 sentence 2 Number 2 shall be appointed by the master after consulting the crew.

(2) The ship safety committee shall be tasked with deliberating on matters of occupational safety and health, as well as accident prevention. The ship safety committee shall meet at least once per quarter.

## Section 116

### **Safety officer**

(1) The shipowner shall appoint a safety officer on ships with five or more crew members. Appointment and dismissal shall be effected with the consent of the ship's committee, if there is one.

(2) The safety officer shall support the shipowner in implementing measures for the prevention of industrial accidents and occupational diseases, and in particular shall ensure the presence and the proper use of the prescribed safety equipment and personal protective equipment, as well as drawing the attention of the crew members to accident risks and health hazards.

(3) The safety officer may not be placed at a disadvantage because of carrying out the tasks assigned to him/her.

## Section 117

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

(1) The employment of or work carried out by young crew members with activities which may place their health or safety at risk shall be prohibited.

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

1. which is beyond their physical or mental ability,
2. in which they are exposed to moral dangers,
3. which entail accident risks where it is to be presumed that young crew members are unable to recognise or avert them because of a lack of safety consciousness or experience,
4. in which their health is endangered by exceptional heat or cold or excessively wet conditions,
5. in which they are exposed to harm from noise, vibrations or radiation,
6. in which they are exposed to harm from hazardous substances within the meaning of the Hazardous Substances Ordinance (*Gefahrstoffverordnung*),

7. in which they are exposed to harm from biological agents within the meaning of the Biological Agents Ordinance (*Biostoffverordnung*),
8. in the engine department if they have not yet passed the final examination in a training occupation recognised for the engine department.

Subs. 2 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. it is guaranteed that they are protected by the supervision of an expert,
3. the air pollution limit regarding hazardous substances in accordance with Number 6 is not reached.

Sentence 2 shall not apply to specific activities with biological agents of risk groups 3 and 4 within the meaning of the Biological Agents Ordinance, 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 requisite orders for the protection of young crew members against dangers to life, limb and health, as well as to avoid harm to their physical or mental and emotional development. Account shall be taken here of the lack of safety consciousness and experience, as well as of the state of development of young crew members and the generally-recognised regulations on safety and occupational health regulations, as well as of the other established knowledge in the field of work science. The master shall in particular examine in the case of the following activities whether work by young crew members is ruled out in accordance with subs. 1 and 2:

1. lifting, moving or carrying heavy loads or objects,
2. entering boilers, tanks and cofferdams,
3. operating winches 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 cables or anchor gear,
5. rigging work,
6. working at heights or on deck in poor weather,
7. watchkeeping during the night,
8. maintaining of electrical systems and devices,
9. cleaning kitchen devices,
10. operating ships' boats or taking responsibility for these.

(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 other respects.

(5) Before young crew members take up work, and in case of a major change to the working conditions, the master shall provide instruction 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 first take up work at machines and dangerous workplaces or engage in work in which they come into contact with substances that are harmful to health, the master shall instruct the young crew members on the particular risks posed by this work, as well as of the conduct to be practiced when carrying it out. The instructions shall be repeated at suitable intervals, but at least on a six-monthly basis.

(6) The shipowner shall involve the industrial medical officers 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 the latter on board may give orders to these crew members for 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 banned or restricted tasks in accordance with subs. 1 and 2 or under a legal ordinance handed down in accordance with section 118. In individual cases, it may prohibit or restrict work by young crew members with 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 in agreement with the Federal Ministry of Transport, Building and Urban Development, by means of a legal ordinance without the consent of the Federal Council, to determine the banned or restricted activities of section 117 subs. 1 to 3 for young people 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, Agriculture and Consumer Protection 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 areas,
2. sports facilities and other facilities in the open air, including for competitions,
3. educational facilities, and
4. facilities for the exercise of religion and for personal advice.

(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 bodies of social care 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) Welfare facilities in domestic ports shall be subsidised by the Federation within the available budget funds.

## **Part 7**

### **Order on board and right of complaint**

#### Chapter 1

#### Maintaining 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 one another 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 officer of all crew members. He/she shall have the highest entitlement to give orders vis-à-vis 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 provisions below and the other legal provisions to take the measures necessary therefor. He/she may not be prevented by the shipowner from taking all decisions which, at the expert discretion 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 the necessary coercive means; temporary apprehension 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 the application of several means can be considered, the means shall be selected which are least restrictive on 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 the performance of the tasks of the master in accordance with subs. 2 and 3 so requires.

(5) The master may assign the performance of the entitlements from subs. 1 to 4 to the First Officer of the deck department and the head of the chief engineering officer within their departments if he/she is unable to perform them him/herself. Any exercise of the entitlements shall be notified to the master at the latest within 24 hours. The assignment shall be notified to the crew members by suitable means.

(6) The master shall enter measures in accordance with subs. 3 and 4 and the assignment of the authorisations in accordance with subs. 5 in the logbook without delay, stating the circumstances.

## Section 122

### **Empowerment of the ships' officers and the other superior officers to give orders**

(1) The ships' officers and the other superior officers 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 ships' officers shall be deemed to be the superior officers of the crew members working within their department unless the latter are heads of departments, as well as persons acting within their department in accordance with section 3 subs. 3. Heads of department shall be the superior officers 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 superior officers within the individual departments. The appointment shall be announced by posting.

(4) The ships' officer of the engine department who is on watch and the other crew members who are heads of department shall implement the orders of the duty navigating officer of the watch which are given within watchkeeping, in their area of duty.

## Section 123

### **Obligations of the superior officers**

(1) The master and the other superior officers shall treat the persons subordinated to them fairly and with understanding, and shall counter violations of the laws and of the applicable morals. The master and the superior officers may not punish crew members physically, treat them in an undignified manner, or coerce or mistreat them, and shall protect them against physical punishment, undignified treatment, coercion, mistreatment and moral danger from other crew members. They shall ensure that young crew members are also protected during their free 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

##### **Obligations incumbent on the crew members and the other persons on board**

(1) Each crew member shall be obliged to promptly comply with feasible orders from the superior officers. In particular, the crew member shall be obliged to promptly comply with a feasible order of a competent superior officer 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) The crew member shall not be obliged to carry out an order which would injure human dignity or if a criminal or regulatory offence would be committed by carrying out the order.

(3) The other persons on board shall comply with the feasible orders which are given to them by the master or in his/her representation or on his/her behalf by a member of the crew in the interest of maintaining public safety and order on board and in connection with the operation of the ship. Subs. 2 shall apply *mutatis mutandis*.

#### Section 125

##### **Bringing persons and articles on board**

(1) Crew members may not bring persons on board who do not belong to 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, impairs order on board or endangers people, the ship or cargo. The carrying of other articles, in particular of arms and ammunition, shall only be permissible with the consent of the master.

(3) If articles are brought on board in contradiction of the provisions contained in subs. 2, the master may take charge of them 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 articles. If the crew member does not comply with the demand, the master may have the articles destroyed. In this case, the fact of and the reason for the destruction shall be entered in the 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 Code (*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) The crew member shall be entitled to complain to the agencies 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 the present Act or of discrimination or unfair treatment (complaint).

(2) The shipowner, or the master on its 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 them in following the complaint procedures.

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

(4) The crew member and the trusted persons in accordance with subs. 2 and 3 may not be victimised because of the lodging of a complaint.

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

(6) In addition to a copy of their seafarers' employment agreement, the shipowner shall provide the crew member with a written copy of the complaint procedures applicable on board. This shall include the name of the trusted person in accordance with subs. 2 and the addresses and telephone numbers of the shipowner, the Occupational Accident Insurance Fund and the competent complaint authority in the state of domicile. The shipowner shall always keep the documents on the complaint regulations up to date. It may meet the obligation in accordance with sentence 3 by referring the crew member to a generally-accessible display on board.

#### Section 128

##### **Complaint procedure**

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

(2) If the crew member complains to the direct superior officer on board, and if the latter does not remedy the complaint within a suitable period, which as a rule should not exceed two weeks, the latter shall on request submit the complainant's 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 seek to bring about 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 duplicate of the entry.

(4) The crew member shall nonetheless be entitled to complain 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 agencies

at any time.

(5) The agencies designated in subs. 4 sentence 1 Numbers 3 to 5, as well as the persons commissioned by them, shall treat confidentially the source of a complaint in accordance with section 127 subs. 1.

(6) If a German representation abroad receives a complaint, it shall forward it to the Occupational Accident Insurance Fund without delay. The Occupational Accident Insurance Fund shall ensure that the shipowner and the master are informed of the subject of the complaint 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 organisations and of other expert persons when examining and remedying complaints. The shipowner shall meet the costs of such investigations.

## **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 controls by the flag State**

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

1. minimum age,
2. fitness for service at sea,
3. manning levels, crew list, qualifications,
4. placement,
5. conditions of employment including hours of work and hours of rest,
6. accommodation and recreational facilities,
7. food and catering,
8. safety and health protection at work, medical care and welfare,
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 examine

1. ships obliged to take along a certificate in accordance with section 130 regularly every five years with an intermediate inspection between the second and third anniversary dates of the certificate,
2. ships not obliged to take along a certificate 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 take along a maritime labour certificate, prerequisites for issuance**

(1) The shipowner may only commission or maintain in operation a ship of more than 500 gross tonnage which

1. is engaged in international voyages, or

2. operates from a port, or between ports, in another country

and is not a fishing vessel if he/she has 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 kept on board.

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

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

Derogating from sentence 1, the Occupational Accident Insurance Fund may, on application from the shipowner, also issue a maritime labour certificate if it has been proven to it by an expert report of a recognised organisation commissioned by the shipowner (inspection report) that the requirements of sentence 1 have been satisfied. 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 which it has carried out 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 entitlement of the recognised organisation that the cessation of a violation may be demanded and that the Occupational Accident Insurance Fund may be informed of a violation that has been found.

(4) Where the shipowner commissions a recognised organisation with the inspection and the drawing up of the inspection report, it shall notify this to the Occupational Accident Insurance Fund. The recognised organisation shall inform the Occupational Accident Insurance Fund of a violation that has been established.

(5) The maritime labour certificate shall be valid for five years, on proviso of subs. 6. The maritime labour certificate may only be renewed on proviso of subs. 2 sentence 1.

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

1. if prescribed intermediate inspections have not been carried out or certified in good 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 major constructional alterations to the accommodation and recreational facilities,
5. in the event of its withdrawal or revocation.

In 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 confiscation.

(7) The shipowner shall ensure that a copy of the maritime labour certificate is in each case displayed on board at a place which is accessible to 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 provide on request information on maritime labour certificates that have been issued or renewed.

## Section 131

### **Interim maritime labour certificate, short-term certificate, officially-recognised 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)

1. when a new ship is commissioned
2. when a ship changes flag, or
3. when a shipowner assumes responsibility for the operation of a ship which is new to that shipowner.

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

1. an inspection of the ship has been carried out in accordance with section 130 subs. 2, and
2. it is no longer possible to renew a maritime labour certificate in good time in accordance with section 130 subs. 5 sentence 2 and bring 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 that is 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

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

and shall in each case replace an interim maritime labour certificate or a short-term certificate. The recognised organisation may only issue an officially-recognised maritime labour certificate if it considers the prerequisites for the issuance of an interim maritime labour certificate or short-term certificate to have been satisfied. The recognised organisation 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 to it a copy thereof.

(4) The interim maritime labour certificate, the short-term certificate and the officially-recognised maritime labour certificate in accordance with subs. 3 may be issued for a period not exceeding six months on proviso of subs. 5.

(5) Section 130 subs. 6 shall apply mutatis mutandis to the loss of the validity and the confiscation of an officially-recognised maritime labour certificate in accordance with subs. 3.

## Section 132

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

(1) The shipowner shall ensure that a declaration of maritime labour compliance within the meaning of section 130 subs. 1 shall be taken along on board his/her ship, and the shipowner shall ensure that the ship satisfies 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 handed down for protection against dangers to safety and health or for the protection of the crew members in other respects. In Part II of the declaration of maritime labour compliance, the shipowner shall list the measures that it has taken in order to ensure compliance with the requirements described in Part I of the declaration of maritime labour compliance 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 revealed that the requirements have been complied with.

(4) A declaration of maritime labour compliance shall lose its validity

1. in cases in which a maritime labour certificate loses its validity 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 mutatis mutandis.

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

## Chapter 3

### Fishing labour certificate

#### Section 133

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

(1) The shipowner may only commission or maintain in operation a fishing vessel which remains at sea for more than three days, and

1. which is 24 metres or more long, 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

if it has a valid fishing labour certificate for the vessel. Section 130 subs. 1 sentence 2 and 3, subs. 2 sentence 1 Number 1, subs. 5 and 7 shall apply mutatis mutandis. 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 on proviso of section 130 subs. 2 sentence 1 Number 1.

(2) A fishing labour certificate shall lose its validity if the prerequisites of section 130 subs. 6 sentence 1 apply mutatis mutandis; section 130 subs. 6 sentence 2 shall apply mutatis mutandis.

## Chapter 4

### Ships not obliged to carry a certificate

#### Section 134

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

The shipowner may only commission or maintain in operation a ship which does not fall under section 130 subs. 1 sentence 1 and is not a fishing vessel if it 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 shall be issued on the inspection. The shipowner shall ensure that this 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), in the respectively valid version, 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 Authorisation of Organizations acting on Behalf of the Administration) of 4 November 1993 (Transport Gazette [Verkehrsblatt – VkB] 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 certified organisation,
3. additional provisions on the powers of the Occupational Accident Insurance Fund in accordance with the present Act on the regular control 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. An agreement on authorisation may furthermore only be concluded if the recognised organisation proves that it complies with 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 applicable provisions,
3. has a system to maintain and update the expertise of its personnel,
4. is of the appropriate size, structure, experience and capability to effectively perform the tasks in accordance with subs. 1 Number 4.

(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 revocation by the European Commission becomes effective. The possibility of termination in accordance with general provisions shall remain unaffected thereby.

(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 been terminated by giving notice 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, Building and Urban Development is herewith empowered, in agreement with the Federal Ministry of Labour and Social Affairs, by means of a legal ordinance without the consent of the Federal Council, to hand down 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 rescission and revocation 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 officially-recognised maritime labour certificates and of the fishing labour certificate, as well as their inspection,
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 taken along or handed out on board,
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 the respective proceedings.

(2) The Federal Ministry of Transport, Building and Urban Development is herewith furthermore entitled, through a legal ordinance, to hand down provisions without the consent of the Federal Council, on

1. the details of the prerequisites for the authorisation of a recognised organisation in accordance with section 135,
2. rights and obligations of the recognised organisations, including the details of the agreement, as well as the requirements applicable to the persons entrusted with carrying out inspections,
3. the detailed structure of monitoring and inspections, the prerequisites, subject-matter and implementation of the inspections,
4. records and documents to be taken along, also insofar as they are to be taken on board, and the storage of records,

as well as the respective proceedings.

## **Part 9**

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

#### Chapter 1

##### Requirements of ships flying a foreign flag

#### Section 137

##### **Requirements of shipowners of a ship flying a foreign flag**

(1) The shipowner and master of a ship flying a foreign flag shall in each case 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 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 the 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 inspection of adherence to the requirements of ships flying a foreign flag designated in section 137 subs. 1 (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 (recast) (OJ L131 of 28 May 2009, p. 57)) shall be the duty of the Occupational Accident Insurance Fund.

(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 thereby shall initially examine adherence to 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 thereby ascertains 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 certificates are invalid or counterfeit,
2. there are reasons to presume that the working and living conditions on the ship do not conform to the requirements of section 137 subs. 1,
3. there are reasons to presume that the ship has changed flag in order to circumvent adherence to 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 conform to the requirements of the Maritime Labour Convention,

it may carry out a more thorough inspection beyond inspecting 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 thereof without delay. It may demand the breach to be remedied and set a suitable deadline therefor.

(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 thereof. It may inform a representative of the flag State and notify the competent agencies of the next port of call accordingly.

(6) Insofar as an order is handed down 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 responsible for the port.

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

## Chapter 3

### Crew members on ships flying a foreign flag

#### Section 139

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

(1) The crew member on a ship flying a foreign flag which calls at a German port or sails the Kiel Canal shall be entitled to complain of a breach of the Maritime Labour Convention to the Occupational Accident Insurance Fund.

(2) The complaint shall be treated confidentially. Masters, shipowners and any person who is named in the complaint shall be afforded without delay the opportunity to make a statement within a suitable 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 insofar as the subject of the complaint or legitimate concerns of the complainant, in particular fear of revenge, do not constitute an objection thereto.

(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 remedied, the Occupational Accident Insurance Fund shall immediately inform the flag State and call on the latter to present a plan with remedies without delay. It may refrain from further processing of 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 processing 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 shipowner and the seafarers that are competent for the port and shall transmit a copy of their 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**

In the event of the repatriation of a crew member on a ship flying a foreign flag who has been stranded in Germany being delayed, the Occupational Accident Insurance Fund shall inform the consular representative of the flag State and of the state of nationality or of the state of residence of the crew member without delay. If the Occupational Accident Insurance Fund arranges for repatriation, it shall request the flag State to refund the expenses disbursed. In place of asserting the entitlement in accordance with sentence 2, 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), it may arrest ships of the shipowner until the expenses disbursed have been refunded by the shipowner.

## Section 141

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

Should a sick or injured crew member on a ship flying a foreign flag which calls at a German port or sails the Kiel Canal require medical care without delay, the Occupational Accident Insurance Fund shall ensure that the crew member has unhindered access to medical facilities ashore regardless of provisions of international law.

## **Part 10**

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

## Section 142

### **Responsibilities**

(1) 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.

(2) The responsibilities of other agencies as to vocational training on board, as well as the issuance of certificates and proof of qualification, shall remain unaffected.

## Section 143

### **Powers of the Occupational Accident Insurance Fund to intervene**

(1) For the purpose of monitoring adherence to the working and living conditions in the context of flag State control and port State control, the Occupational Accident Insurance Fund and the persons employed thereby 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 connected to the working and living conditions on board, and
3. recognised organisations

and to issue the necessary orders and take the necessary measures vis-à-vis the persons who are obligated in accordance with the present Act, in particular vis-à-vis shipowners, crew members, seafarers, placement agents, licensed doctors and recognised organisations, which are necessary to confirm the existence of sufficient suspicion of a breach or for the remedy of a breach that has been identified or for the prevention of 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 the persons employed thereby may in particular

1. go on board a ship or a ship flying a foreign flag unannounced during normal hours of business and operation, as well as enter business premises, offices and treatment rooms of shipowners, placement agents, licensed doctors and recognised organisations,
2. for the prevention of imminent risks for public safety and order, enter
  - a) the areas on board a ship or a ship flying a foreign flag also outside the times stated there,
  - b) living areas 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 areas situated there,
4. carry out all inspections and make all observations appearing to it to be necessary in cooperation with the shipowner or his/her commissioner on board, as well as with placement agents, licensed doctors and recognised organisations,
5. inspect all books, in particular logbooks, registers, certificates, records of working time, certificates of qualification, and other documents, excepting 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, licensed doctors 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, as well as 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 the 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) Should it be 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 risk to the safety, health or protection of the crew members, or
2. 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 in question from leaving the port or continuing its voyage until the necessary measures have been taken or the breach has been remedied.

(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 to be invalid 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, whereby sentence 2 shall apply *mutatis mutandis*.

(5) The Occupational Accident Insurance Fund shall confiscate 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 certificate that has been confiscated. When the decision on rescission or invalidity becomes unchallengeable, the certificate 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 the Occupational Accident Insurance Fund becomes aware in the performance of its tasks in accordance with the present Act 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

### **Supervisory control 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, as well as 5 and Parts 7, 11

and 12, the Occupational Accident Insurance Fund shall be subject to supervisory control 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 supervisory control by the Federal Ministry of Transport, Building and Urban Development.

## **Part 11**

### **Provisions on penalties and fines**

#### Section 145

##### **Provisions on fines**

(1) Anyone who, intentionally or negligently,

1. counter to section 10 subs. 1, employs or engages a person designated therein,
2. counter to section 12 subs. 1 sentence 2, employs a crew member without a valid certificate of fitness for service at sea,
3. counter to section 22 subs. 3 sentence 1 or section 33 subs. 5 sentence 1, fails to store 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. counter to section 34 sentence 2, does not issue a permission to the seafarer,
6. counter 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 rest designated therein are adhered to,
7. counter 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 overview or a record of working time designated therein, or fails to do so correctly or completely,
8. counter to section 58 subs. 2, does not grant leave to a young seafarer,
9. counter to section 72 subs. 1 sentence 1, abandons a crew member abroad,
10. counter to section 94 sentence 1, does not grant the crew member access to a communication facility named therein,
11. counter to section 95 sentence 1 Number 1, does not permit a visit on board,
12. counter to section 106 subs. 1 sentence 1, does not hand over an article designated therein or a wage balance, or fails to do so in good time,

13. counter to section 106 subs. 2 sentence 1, does not ensure that a list designated therein is drawn up,
14. counter 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. counter to section 117 subs. 5, does not give an instruction designated therein or not in good time, or fails to repeat it or fails to repeat it in good time,
16. acts in breach of a feasible 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. counter to section 121 subs. 6 does not make an entry in the logbook designated therein, does not do so correctly, completely or in good time, or
18. acts in breach of 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 subs. 1 sentence 1 Numbers 2, 3, 4, 5 or 6 or subs. 2 or of a feasible order on the basis of such a legal ordinance insofar as the legal ordinance refers to this provision on administrative 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 representative of the master 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 regulatory fine of up to fifty thousand Euro, in cases coming under subs. 1 Numbers 4, 7, 8, 12, 15 and 17 with a regulatory fine of up to ten thousand Euro, and in the other cases with a regulatory fine of up to five thousand Euro.

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

## Section 146

### **Criminal provisions**

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

1. jointly with other crew members, or
2. commits it and hence endangers the life or health of another person or jeopardises third-party articles of a considerable value.

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

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

1. persistently repeats an intentional act designated in section 145 subs. 1 Number 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 Number 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 person concerned in terms of their 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 person concerned in terms of their health or ability to work.

## Section 147

### **Appeals**

(1) The deadline for an objection against the fine notice shall be deemed to have been met if the crew member in question submits the objection to the master in writing or for the record 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 certificate 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 fine notice.

(2) Subs. 1 shall apply mutatis mutandis to the submission of the appeal.

## **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 on proviso that the contract with the shipowner shall take the place of the seafarers' 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 mutatis mutandis 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 seafarers' 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, of 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 wages in case of repatriation and the refund of the costs of repatriation,
2. in Part 6 on medical and social security care, the provisions contained in sections 104 and 105 subs. 2 sentence 2 on the continuation of wages or of a suitable per diem in case of illness, as well as of 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 provisions on the hours of work and hours of rest are agreed in collective agreements, these may be applied to self-employed persons *mutatis mutandis*.

(3) Insofar as entitlements applicable to self-employed persons in accordance with the present Act aim to define 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, the provisions shall apply on proviso that they are replaced by the duration of the contractual relationship existing 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 promulgation of legal provisions

#### Section 149

##### **Fees**

(1) The Occupational Accident Insurance Fund shall levy fees and charges for official acts, including approvals, verifications, inspections, examinations, appraisals 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, Building and Urban Development is herewith empowered, in agreement with the Federal Ministry of Labour and Social Affairs, to determine by means of a legal ordinance without the consent of the Federal Council 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 caused by the official acts are covered; in case of official acts resulting in an advantage, additionally, the significance, economic value or other benefit for the fee-payer may be suitably taken into consideration. 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 planned on the basis of fixed hourly rates (time fees).

(3) No fees and charges shall be levied for official acts within the meaning of subs. 1 vis-à-vis the German Maritime Search and Rescue Service.

## Section 150

### **Providing access to statutes and legal ordinances**

The shipowner must make available on board to the crew members 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. 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.

## Section 151

### **Promulgation of legal ordinances**

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

## Chapter 3

### Transitional provisions

## Section 152

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

For ships which were measured prior to 18 July 1994 in accordance with the Convention for a Uniform System of Tonnage Measurement of Ships of 10 June 1947, the gross tonnage in gross register tons entered in the "Remarks" column of the International Tonnage Certificate (1969) shall be deemed to be the gross tonnage.

## Section 153

### **Transitional arrangement for licensed doctors**

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

1. if the issuance of the certification is not applied for by 1 October 2013, or
2. if the application is made on time, on application of the unchallengeability of the decision on the application.

The legal ordinance in accordance with section 20 subs. 1 sentence 1 Number 4 for doctors within the meaning of sentence 1 may relax the conditions as to the provision of proof of meeting the requirements of certification.

## Section 154

### **Application of the provisions on port State control**

(1) Section 1 subs. 3, sections 137 to 141, and section 143 insofar as it relates to sections 137 to 138, shall only apply from the day on which the Maritime Labour Convention comes into force for the Federal Republic of Germany.

(2) The Federal Ministry of Labour and Social Affairs shall announce the date referred to in subs. 1 in the Federal Law Gazette.