

Maritime Rules

Part 52: Maritime Labour Convention

MNZ Consolation

9 March 2017

ISBN 978-0-947527-25-9

Published by

Maritime New Zealand, PO Box 25620, Wellington 6146, New Zealand

Maritime New Zealand Copyright 2017

Part objective

The objective of Part 52 is to give effect to the provisions of the Maritime Labour Convention (MLC) not covered elsewhere in New Zealand law, including other Maritime Rules.

Although this Part was created to implement the MLC requirements, other Parts also implement MLC requirements where that is more appropriate than including it in this Part. These are Parts 31, 34, and 51. The amendments to Parts 31 and 34 are contained in this Part as consequential amendments. The amendments to Part 51 are contained in a separate set of Part 51-specific amendment rules, which will be made at the same time as this Part 52 is made.

The authority for Part 52 is found in section 36 of the Maritime Transport Act 1994 (the Act). Section 36(1)(b), (e), (j), (k), (n), (o), (p), (q), (s), (u), (w), (y), and (za), of the Act provide the Minister may make maritime rules for the purposes relevant to the scope of this Part 52.

Maritime Rules are disallowable instruments under the Legislation Act 2012. Under that Act, the rules are required to be tabled in the House of Representatives. The House of Representatives may, by resolution, disallow any rules. The Regulations Review Committee is the select committee responsible for considering rules under that Act.

Disclaimer:

This document is the current consolidated version of Maritime/Marine Protection Rules Part 52 produced by Maritime New Zealand, and serves as a reference only. It has been compiled from the official rules that have been signed into law by the Minister of Transport. Copies of the official rule and amendments as signed by the Minister of Transport may be downloaded from the Maritime New Zealand website. www.maritimenz.govt.nz

History of Part 52

Part 52 first came into force on the 9th March 2017 and incorporates the following amendments:

Amendment	Effective date
Amendment 1	1 November 2016

Summary of amendments

Amendment 1	
Maritime Rules Various Amendments 2016	52.21

All signed rules can be found on our website:

<http://www.maritimenz.govt.nz/rules/part-52/>

Contents

General

52.1	Application	1
52.2	Definitions	1

Subpart A: Foreign Ships

52.20	Applicability	2
52.21	Foreign ships 500 gross tonnage or over registered in member State	2
52.22	All other foreign ships	3
52.23	Copy of Convention	3

Subpart B: Minimum Requirements for Seafarers to Work on a Ship

52.40	Applicability of Subpart B	3
52.41	Minimum age for work at night	4

Subpart C: Conditions of employment

52.60	Applicability of Subpart C	4
52.61	Agreement, accounts, and records	4
52.62	Maximum pay cycle	5
52.63	Transmitting seafarer wages	5
52.64	Hours of work and rest	6
52.65	Repatriation and financial security	6

Subpart D: Accommodation, Recreational Facilities, Food and Catering

52.80	Application of Subpart D	6
52.81	Minimum age for ship's cook	6

Subpart E: Health Protection, Medical Care, Welfare, and Social Security Protection

52.100	Applicability of Subpart E	7
52.101	Burial costs	7

Subpart F: Maritime Labour Certificates

52.120	Applicability of Subpart F	7
52.121	Requirement to hold certificate – New Zealand ships	7
52.122	Certification	8
52.123	Issue of Maritime Labour Certificate	8
52.124	Conditions of Maritime Labour Certificate	8
52.125	Duration of Maritime Labour Certificate	9
52.126	Interim Maritime Labour Certificate	9

Subpart G: Miscellaneous

52.140	Consequential amendments to other Parts related to the Convention Title 1	10
52.141	Consequential amendments to other Parts related to the Convention Title 2	11
52.142	Consequential amendments to other Parts related to the Convention Title 3	11

General

52.1 Application

- (1) This Part applies to those ships specified in each Subpart, but in no case does this Part apply to—
- (a) the following New Zealand ships:
 - (i) a ship that is not a commercial ship:
 - (ii) a fishing ship:
 - (iii) a ship under 200 gross tonnage on domestic voyages:
 - (iv) a ship that does not proceed beyond the inshore limits; and
 - (b) the following foreign ships:
 - (i) a ship that is a not commercial ship:
 - (ii) a fishing ship.

52.2 Definitions

In this Part unless the context otherwise requires—

Act means the Maritime Transport Act 1994:

anniversary date, in relation to a certificate issued under this Part, means the day and month of each year corresponding to the date of expiry of the certificate:

commercial ship has the same meaning as in section 2 of the Act:

Convention means the Maritime Labour Convention, 2006, (MLC) adopted by the International Labour Organization:

date of construction, in relation to a ship, means the date that the ship's keel is laid or when the ship is at a similar stage of construction; and **constructed** has a corresponding meaning:

Director means the person who is for the time being the Director of Maritime New Zealand under section 439 of the Act:

domestic voyage means a voyage by ship that is not an international voyage:

foreign ship means any ship that is not a New Zealand ship:

gross tonnage means the gross tonnage calculated in accordance with the tonnage measurement rules contained in Annex I of the International Convention on Tonnage Measurement of Ships 1969:

harbour has the same meaning as in section 2 of the Act:

inshore limits has the same meaning as in Part 20:

international voyage means—

- (a) for a New Zealand ship, a journey by water from—
 - (i) a port in New Zealand to a port outside of New Zealand or vice versa; or
 - (ii) a port outside New Zealand to another port outside New Zealand; and

- (b) for a foreign ship, means a journey by water—
 - (i) from the flag State to a port outside the flag State or vice versa; or
 - (ii) between two ports outside the flag State:

member State means a State that is registered by the Director-General of the International Labour Office as having ratified the Convention:

New Zealand ship has the same meaning as in section 2 of the Act:

nominated person, in relation to a person to whom a seafarer transmits wages, means any of the following persons:

- (a) the seafarer's spouse, civil union partner, or de facto partner:
- (b) the seafarer's former spouse, former civil union partner, or former de facto partner:
- (c) a member of the seafarer's family:
- (d) a dependant of the seafarer:
- (e) a legal beneficiary of the seafarer:

non-member State means a State that is not registered by the Director-General of the International Labour Office as having ratified the Convention:

night means the 9-hour period from 2100 hours on any day to 0600 hours on the next day, and includes any part of that period:

operate has the same meaning as in section 2 of the Act:

owner has the same meaning as in section 2 of the Act:

- (a) **Part** means a group of rules made under the Act:

pleasure craft has the same meaning as in section 2 of the Act:

port has the same meaning as in section 2 of the Act:

seafarer has the same meaning as in section 2 of the Act:

ship has the meaning in section 2 of the Act.

Subpart A Foreign Ships

52.20 Applicability of Subpart A

This Subpart applies to—

- (a) a foreign ship that is a commercial ship in a New Zealand port, excluding fishing ships; and
- (b) the owner and the master of that ship and each seafarer on that ship.

52.21 Foreign ships 500 gross tonnage or over registered in member State

- (1) The owner and the master of a foreign ship 500 gross tonnage or over that is registered in a member State must ensure—
 - (a) compliance with the requirements of the Convention as given effect by that State; and
 - (b) that the ship and all persons on board that ship comply with the requirements of the Convention.
- (2) Where a requirement referred to in subrule (1) relates to the design or structure of a ship, then that requirement will apply in respect of that ship from the date

upon which the design and structure requirements in the Convention apply to that ship in the State in which it is registered.

- (3) The owner and the master of a foreign ship 500 gross tonnage or over that is registered in a member State must ensure that there is carried on board the ship, accompanied by an English-language translation where it is not in English, in respect of that ship—
 - (a) a copy of a current Declaration of Maritime Labour Compliance; and
 - (b) either—
 - (i) a copy of a current Maritime Labour Certificate; or
 - (ii) a copy of a current Interim Maritime Labour Certificate—issued by or on behalf of the flag state of the ship in accordance with the Convention.
- (4) The master of a foreign ship to which subrule (3) applies must ensure that a copy of each document required under subrule (3) is produced when requested by the Director.

52.22 All other foreign ships

- (1) The owner and the master of a foreign ship to which Rule 52.21 does not apply, or which is otherwise unable to provide the Director with a copy of the documents referred to in subrules 52.21(3)(a) and (b), must demonstrate to the satisfaction of the Director compliance with the areas listed in Appendix A5-III of the Convention.
- (2) Where a requirement referred to in subrule (1) relates to the design or structure of a ship, then that requirement will apply in respect of a foreign ship as follows:
 - (a) if the ship is registered in a member State, the date upon which the design and structure requirements in the Convention apply to ships in that State; or
 - (b) if the ship is registered in a non-member State, the date upon which this Part 52 comes into force.

52.23 Copy of Convention

The owner and the master of a ship must ensure a copy of the Convention is readily available at all times to all seafarers on board the ship.

Subpart B Minimum Requirements for Seafarers to Work on a Ship¹

52.40 Applicability of Subpart B

This Subpart applies to—

- (a) a New Zealand ship that is a commercial ship, except—
 - (i) fishing ships;
 - (ii) ships under 200 gross tonnage on domestic voyages;
 - (iii) a ship that does not proceed beyond the inshore limits; and
- (b) the owner and the master of that ship and each seafarer on that ship.

¹ Refer to the Convention Title 1

52.41 Minimum age for work at night

- (1) The owner and the master of a ship must ensure that, except as provided in subrule (2), each seafarer under the age of 18 years does not perform any duty at night.
- (2) A seafarer under the age of 18 years may perform duties at night for the purposes of training provided that training at night—
 - (a) is reasonably required to train that seafarer; and
 - (b) is in accordance with an approved training programme; and
 - (c) will be significantly less effective if conducted other than at night.

Subpart C Conditions of Employment²

52.60 Applicability of Subpart C

This Subpart applies to—

- (a) a New Zealand ship that is a commercial ship, except—
 - (i) fishing ships;
 - (ii) ships under 200 gross tonnage on domestic voyages;
 - (iii) a ship that does not proceed beyond the inshore limits; and
- (b) the owner and the master of that ship and each seafarer on that ship.

52.61 Agreements, accounts, and records

- (1) The owner and master of a ship must ensure that each seafarer working on the ship is provided with a signed original of the seafarer's employment agreement.
- (2) The owner and master of a ship must ensure that the seafarer's employment agreement contains the following information:
 - (a) the seafarer's full name, date of birth or age, and birthplace;
 - (b) the owner's name and address;
 - (c) the place where and date when the seafarer's employment agreement is entered into;
 - (d) the capacity in which the seafarer is to be employed;
 - (e) the amount of the seafarer's wages or, where applicable, the formula used for calculating them;
 - (f) the amount of paid annual leave or, where applicable, the formula used for calculating it;
 - (g) the termination of the agreement and the conditions thereof, including:
 - (i) if the agreement has been made for an indefinite period, the conditions entitling either party to terminate it, as well as the required notice period, which shall not be less for the owner than for the seafarer;
 - (ii) if the agreement has been made for a definite period, the date fixed for its expiry;
 - (iii) if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the seafarer should be discharged;

² Refer to the Convention Title 2

- (iv) the health and social security protection benefits to be provided to the seafarer by the owner:
 - (v) the seafarer's entitlement to repatriation:
 - (vi) reference to the collective bargaining agreement, if applicable:
 - (vii) any other particulars which national law may require.
- (3) The owner and master of a ship must ensure that each seafarer working on the ship is provided with a monthly account of the payments made and payments due that includes details of—
- (a) the amounts paid to the seafarer, including wages and any additional payments; and
 - (b) the amounts deducted from the seafarer's wages; and
 - (c) the rate of exchange used where payment has been made in a currency or at a rate different from the one agreed to.
- (4) The owner and master of a ship must ensure that clear information as to the conditions of employment can be easily obtained on board by seafarers, including the ship's master, and that such information, including a copy of the seafarers' employment agreement, is kept on board the ship.
- (5) The owner and master of a ship must ensure that records of seafarers' daily hours of work or of their daily hours of rest is—
- (a) maintained; and
 - (b) provided to the seafarer in respect of the record that pertains to them; and
 - (c) endorsed by the master, or a person authorised by the master, and by the seafarer in respect of the record that pertains to them; and
 - (d) kept on board the ship and is available in English—
- in accordance with Standard A2.3 of the Convention.

52.62 Maximum pay cycle

The owner and the master of a ship must ensure that it pays the full wages due to each seafarer working on the ship at no greater than monthly intervals.

52.63 Transmitting seafarer wages

- (1) The owner and master of a ship must provide each seafarer working on the ship with the option and the means to transmit all or part of their wages to a nominated person.
- (2) Where the seafarer opts to transmit all or part of their wages under subrule (1), the owner and the master must ensure that—
- (a) the proportion of the seafarer's wages the seafarer has opted to transmit to a nominated person under subrule (1) is remitted to the nominated person—
 - (i) at the intervals requested by the seafarer; and
 - (ii) by bank transfer or similar means directly to the nominated person; and
 - (b) any charge for the service to transmit all or part of wages under subrule (a) is reasonable in amount; and
 - (c) where the currency to be transmitted is required to be exchanged, the rate of currency exchange, unless otherwise agreed, is at the prevailing

market rate or the official published rate and not unfavourable to the seafarer.

52.64 Hours of work and rest

Except in respect of ships to which and seafarers to whom rule 31.30 applies, the owner and the master of a ship must—

- (a) establish and enforce rest periods for seafarers working on the ship; and
- (b) post a table with the shipboard working arrangements and the maximum hours of work or the minimum hours of rest required—

in accordance with Standard A2.3 of the Convention.

52.65 Repatriation and financial security

- (1) The owner and the master of a ship must make provision on termination of the voyage, or where the seafarer has been left behind by the ship by reason of—

- (a) the seafarer's employment agreement expiring; or
- (b) the termination of the seafarer's employment agreement—
 - (i) by the owner; or
 - (ii) by the seafarer for justified reasons; or

- (c) the seafarer no longer being able to carry out their duties under their employment agreement or cannot be expected to carry them out in the specific circumstances—

to return the seafarer to their own country, or to the port where that seafarer was employed, or to the port where the voyage commenced, or to such other place (if any) as may be agreed between the owner or the master and the seafarer.

- (2) The owner of a ship must pay the seafarer's reasonable expenses to return to their own country, or to the port where the seafarer was employed, or to the port where the voyage commenced, or to such other place as may be agreed between the owner or the master and the seafarer.
- (3) The owner and the master of a ship must carry and make available to the seafarers on board the ship a copy of the rights and obligations of the owner, the master, and the seafarers regarding repatriation of seafarers.

Subpart D Accommodation, Recreational Facilities, Food and Catering³

52.80 Applicability of Subpart D

This Subpart applies to—

- (a) a New Zealand ship that is a commercial ship, except—
 - (i) fishing ships;
 - (ii) ships under 200 gross tonnage on domestic voyages;
 - (iii) a ship that does not proceed beyond the inshore limits; and
- (b) the owner and the master of that ship and each seafarer on that ship.

52.81 Minimum age for ship's cook

The owner and the master of a ship must ensure no person under the age of 18 years is employed or otherwise engaged as a cook on board the ship.

³ Refer to the Convention Title 3. Subpart B of Part 51 also relates to the Convention Title 3

Subpart E Health Protection, Medical Care, Welfare, and Social Security Protection⁴

52.100 Applicability of Subpart E

This Subpart applies to—

- (a) a New Zealand ship that is a commercial ship, except—
 - (i) fishing ships;
 - (ii) ships under 200 gross tonnage on domestic voyages;
 - (iii) a ship that does not proceed beyond the inshore limits; and
- (b) the owner and the master of that ship and each seafarer on that ship.

52.101 Burial costs

In the case of death of a seafarer occurring on board or ashore during the period of engagement of that seafarer on a ship, the owner of the ship must, to the extent not otherwise provided in legislation or any applicable insurance policy, cover the reasonable cost of the burial.

Subpart F Maritime Labour Certificates⁵

52.120 Applicability of Subpart F

This Subpart applies to—

- (a) a New Zealand ship that is a commercial ship 500 gross tonnage or over on an international voyage, except fishing ships; and
- (b) any other New Zealand ship for which the owner voluntarily holds or applies for a Maritime Labour Certificate and a Declaration of Maritime Labour Compliance; and
- (c) the owner and the master of that ship.

52.121 Requirement to hold certificate – New Zealand ships

- (1) The owner of a New Zealand ship must hold a—
 - (a) current Maritime Labour Certificate; or
 - (b) current Interim Maritime Labour Certificate.
- (2) The owner of a New Zealand ship must hold a current Declaration of Maritime Labour Compliance.
- (3) The owner and the master of a New Zealand ship must ensure that a copy of each document required under subrules (1) and (2) is—
 - (a) kept on board the ship at all times; and
 - (b) produced when requested by the Director.

⁴ Refer to the Convention Title 4

⁵ Refer to the Convention Title 5

52.122 Certification

The applicant for a Maritime Labour Certificate must make an application in accordance with section 35 of the Act, and include, in a form required by the Director—

- (a) a declaration, signed by the applicant, that the applicant will comply, and ensure compliance, with the requirements set out in Part I of Appendix A5-II of the Convention; and
- (b) such further particulars relating to the applicant as may be required by the Director.

52.123 Issue of Maritime Labour Certificate

- (1) The Director must issue a Maritime Labour Certificate if satisfied that—
 - (a) the applicant meets the applicable requirements of this Part and the requirements of section 41 of the Act; and
 - (b) the owner has completed a declaration that the applicant will comply, and ensure compliance, with the requirements set out in Part I of Appendix A5-II of the Convention; and
 - (c) the relevant requirements in the Convention are met.
- (2) The Director must, when issuing a Maritime Labour Certificate, include with it a Declaration of Maritime Labour Compliance.
- (3) A Maritime Labour Certificate is a maritime document.

52.124 Conditions of Maritime Labour Certificate

- (1) It is a condition of every Maritime Labour Certificate issued under this Subpart that—
 - (a) an intermediate inspection is satisfactorily completed within the periods specified under subrule (2); and
 - (b) the certificate is endorsed in accordance with subrule (2)(d); and
 - (c) an intermediate inspection is conducted and satisfactorily completed in the following circumstances:
 - (i) when a ship changes flag;
 - (ii) when the owner ceases to assume the responsibility for the operation of a ship;
 - (iii) when substantial changes have been made to the structure or equipment referred in Subpart B of Part 51; and
 - (d) the standards and requirements referred in rules 52.123(1)(a), (b), and (c) continue to be met.
- (2) A Maritime Labour Certificate issued under this Subpart shall be subject to the condition that all matters relevant to the Certificate are subject to at least one intermediate inspection by the Director in accordance with the following:
 - (a) the intermediate inspection is conducted between the time of issue or renewal of the certificate and its date of expiry, to ensure continuing compliance with the Convention;
 - (b) if only one intermediate inspection is carried out and the period of validity of the certificate is five years, it shall take place between the second and third anniversary dates of the certificate;
 - (c) the scope and depth of the intermediate inspection shall be equal to an inspection for renewal of the certificate:

- (d) the certificate shall be endorsed following satisfactory intermediate inspection.
- (3) Evidence of a major non-conformity with the Convention or failure to undertake an intermediate inspection may result in the suspension under section 43 of the Act, or the revocation under section 44 of the Act, of the relevant maritime document.

52.125 Duration of Maritime Labour Certificate

- (1) A Maritime Labour Certificate may be issued for a period not exceeding 5 years.
- (2) Notwithstanding subrule (1)—
 - (a) when the renewal inspection has been completed within three months before the expiry of the existing Maritime Labour Certificate, the new Maritime Labour Certificate shall be valid from the date of completion of the renewal inspection for a period not exceeding five years from the date of expiry of the existing certificate; and
 - (b) when the renewal inspection is completed more than three months before the expiry date of the existing Maritime Labour Certificate, the new Maritime Labour Certificate shall be valid for a period not exceeding five years starting from the date of completion of the renewal inspection.

52.126 Interim Maritime Labour Certificate

- (1) The owner of a ship may make an application to the Director under section 35 of the Act for an interim Maritime Labour Certificate if the purpose of the interim Maritime Labour Certificate is to facilitate an efficient transition in any of the following circumstances:
 - (a) it relates to a new ship on delivery;
 - (b) it relates to a change of flag of a ship;
 - (c) when an owner assumes responsibility for the operation of a ship where the ship is new to that owner.
- (2) The Director may issue an interim Maritime Labour Certificate if the Director is satisfied—
 - (a) the ship has been inspected, as far as reasonable and practicable, for the matters listed in Appendix A5-I of the Convention, taking into account verification that—
 - (i) the owner has demonstrated that the ship has adequate procedures to comply with this Convention; and
 - (ii) the master is familiar with the requirements of this Convention and the responsibilities for implementation; and
 - (iii) relevant information has been submitted to the Director to produce a Declaration of Maritime Labour Compliance.
- (3) An interim Maritime Labour Certificate—
 - (a) may be issued for a period not exceeding 6 months; and
 - (b) may not be renewed or extended.
- (4) A full inspection must be carried out prior to expiry of the interim certificate to enable issue of a Maritime Labour Certificate.
- (5) For the avoidance of doubt, a Declaration of Maritime Labour Compliance need not be issued for the period of validity of the interim Maritime Labour Certificate.
- (6) Within the period of validity of an interim Maritime Labour Certificate, the owner must demonstrate to the Director, as and when required by the Director,

evidence that the owner is in the process of developing a Declaration of Maritime Labour Compliance and meeting the requirements for the issue of a Maritime Labour Certificate.

Subpart G Miscellaneous

52.140 Consequential amendments to other Parts related to the Convention Title 1

Part 34 Amendments – seafarer medical standards

Part 34 Part objective

- (1) Delete from the last sentence of the first paragraph of the Part objective of Part 34, “International Labour Organisation (ILO) Medical Examination of Young Persons (Sea) Convention, 1921.”, and replace with—
“International Labour Organization’s “Maritime Labour Convention” in relation to the medical examination of young persons.”.
- (2) Insert, after the third paragraph of the Part objective of Part 34, the following paragraph—
“Subpart B also implements, through an amendment to this Part in 2016, requirements of the International Labour Organization’s “Maritime Labour Convention”. This amendment implements a wider applicability (in terms of seafarers and ships) for medical certificates and also provides for the transitioning of expiring medical certificates.”.

rule 34.20 Application

- (3) Insert, after rule 34.20(3)(d), the following rule 34.20(4):
“(4) Every seafarer who is not referred to in subrules (2) and (3) on a ship to which rule 52.1(1) applies must meet the requirements of rules 34.22, 34.23, 34.31, and 34.32.”.

rule 34.28 Expiry of certificates of medical fitness of holders of STCW certificates in course of voyage

- (4) Amend rule 34.28 as follows:
 - (a) delete “of holders of STCW certificates in course of voyage” from heading;
 - (b) insert the subrule reference “(1)” before the current rule;
 - (c) replace the full stop “.” after the current rule with “; and”;
 - (d) insert, after the current rule—
 - “(2) If the period of validity of a medical certificate of fitness of a holder expires in any case other than under subrule (1), then the medical certificate may be treated as being in force until the next port of call where a medical practitioner recognised by the Party is available, provided that—
 - (a) the period shall not exceed 3 months; and
 - (b) the holder is in possession of an expired medical certificate of recent date.”.

52.141 Consequential amendments to other Parts related to the Convention Title 2

Part 31 Amendments – Crewing and watchkeeping

Part 31 Part objective

- (1) Insert, after the two bullet points of the second paragraph of the Part objective of Part 31, the following paragraph—
- “Through an amendment to Section A-VIII/I of the STCW Code, Subpart A also aligns with requirements of the International Labour Organization’s “Maritime Labour Convention” related to working conditions on a ship.”.

52.142 Consequential amendments to other Parts related to the Convention Title 3

Part 31 Amendments – Crewing and watchkeeping

Rule 31.43 Unlimited area

- (1) Replace 31.43(1)(c)(i) with the following:
- “holds a National Certificate in Hospitality (Cookery) (Level 3) or an equivalent, or a New Zealand Certificate in Cookery (Level 3) or an equivalent; and”.