

Draft Merchant Shipping Protection Regulation

Version: October 19th 2021; DRAFT for online consultation

Regulation of the Minister of Justice and Security of [...] laying down additional rules for the implementation of the Merchant Shipping Protection Act and the Merchant Shipping Protection Decree (Merchant Shipping Protection Regulation)

The Minister of Justice and Security,

Having regard to Sections 4(4), 6(1), (3) and (4), 8, 11(5), 12(1) and (3), 13(5) and (6) and 17(1) and (2) of the Merchant Shipping Protection Act and Articles 2.2(6), 2.4(5), 3.2(2), 5.4(3), 5.5(3)(c) and (4), 5.6(2), 5.7(4), 5.8(3), 5.9(3), 5.10(3), 5.13(2) and 6.1(2) of the Merchant Shipping Protection Decree,

Hereby decrees:

Chapter 1. General provisions

Article 1

In this regulation, the terms below have the following meanings:

- a. Decree: Merchant Shipping Protection Decree;
- b. medical certificate: medical certificate of fitness to perform maritime security work;
- c. Inspectorate: The Human Environment and Transport Inspectorate;
- d. Minister: the Minister of Justice and Security;
- e. supervisory officials: officials from the Inspectorate who, pursuant to Section 16(1) of the Act, are charged with monitoring compliance with the provisions laid down in or pursuant to the Act;
- f. transport case: a repository for authorised weapons, capable of being locked;
- g. weapons locker: a place capable of being locked for storing transport cases containing designated weapons on the ship, as referred to in Article 3.2 of the Decree.

Chapter 2. Permission for the deployment of private maritime security personnel

Article 2

When applying for permission as referred to in Section 4 of the Act, the model form set out in Annex 1 must be used to provide the necessary information and supporting documents.

Article 3

1. The ship manager must, at a minimum, ensure the availability of the following protective measures, as referred to in Section 6(1) of the Act:
 - a. binoculars for the team on the bridge;
 - b. fixed searchlights;
 - c. concertina razor wire, with a roll diameter of at least 730 mm;
 - d. materials that enable the locking of the doors and hatches that give access to the bridge, the crew and passenger quarters and the engine rooms; and
 - e. materials that enable windows and portholes to be reinforced.
2. Prior to the passage through the high-risk area, the master will, at a minimum, take the following protective measures as referred to in Section 6(1) of the Act:
 - a. designate a safe room or safe muster point for seafarers and passengers on board the ship;
 - b. place concertina razor wire with a roll diameter of at least 730 mm in designated locations;
 - c. mount water or foam sprayers on the deck near potential boarding points;
 - d. prepare the crew by means of anti-piracy exercises;

- e. lock the doors and hatches that give access to the bridge, the crew and passenger quarters and the engine rooms;
 - f. reinforce large windows and portholes that require reinforcement;
 - g. protect the equipment and machinery of the ship against use by third parties; and
 - h. inform UK Maritime Trade Operations (UKMTO) and the Maritime Security Centre – Horn of Africa (MSCHOA) about the transport for which permission has been obtained in accordance with Section 4 of the Act.
3. During the passage through the high-risk area, the master will, at a minimum, apply the following protective measures as referred to in Section 6(1) of the Act:
- a. deploy trained crew members to one or more lookout posts;
 - b. ensure binoculars are used by the team on the bridge; and
 - c. use fixed searchlights.
4. If, due to special circumstances, it is not possible to take one or more of the measures described in paragraphs 1 to 3, the ship manager must state this on the form referred to in Article 2 and must give reasons.

Chapter 3. Deployment of private maritime security personnel

Article 4

- 1. The weapons locker must be accessible only to the master, or with the express permission of the master, the team leader or another official designated by the master.
- 2. The master must make a record of persons who have access to the weapons locker.
- 3. Opening a transport case and issuing weapons may be done only with express permission from the master.
- 4. On board the ship, a transport case may be opened only by the team leader or the team leader's deputy.
- 5. The firearms stored in a transport case must not be loaded with ammunition. Ammunition must be stored in a separate transport case.
- 6. The master must record the make, type, serial number and quantity of weapons present in each transport case. To that end, the team leader must make a daily inventory of the weapons that are present, after which the master will sign the inventory.
- 7. Two hours before the high-risk area is reached, the team leader will take the transport cases to the bridge after consultation with the master.
- 8. Any weapons not being used during the passage through the high-risk area must be stored in a transport case on the bridge. The transport cases must be unlocked during the passage and must be supervised by the armed member of the security team on duty on the bridge.
- 9. No more than two hours after leaving the high-risk area, the team leader must return the weapon transport cases to the weapons locker.
- 10. The team leader must ensure that the firearms are regularly maintained and function appropriately, in accordance with the instructions of the permit holder.

Article 5

- 1. Anyone who is part of the private maritime security personnel must use a helmet camera with a microphone to make video and audio recordings as referred to in Section 11(2) of the Act.
- 2. The helmet cameras must:
 - a. create footage of at least HD quality (1280 x 720);
 - b. create footage of at least 30 frames per second;
 - c. have video stabilisation;
 - d. add the time and date to the video recordings;
 - e. have a built-in microphone;
 - f. create synchronised video and audio recordings; and
 - g. have a battery life of at least six hours.

Article 6

- 1. The ship manager must provide the master with the information referred to in Article 2.4(1) and (2) of the Decree at least four hours prior to the embarkation of the security team, the weapons and the equipment.

2. In performing the 'duty to ascertain' as referred to in Section 6(2) of the Act and Article 2.4(1) and (2) of the Decree, the master and the team leader must use the model forms as included in Annex 2 and Annex 3.
3. To submit the reports referred to in Section 12(1) of the Act, the master and the team leader of the private maritime security personnel must use the model forms set out in Annexes 4 and 5 respectively. The forms referred to in the first paragraph are part of these reports.
4. When notifying the Public Prosecution Service as referred to in Section 12(3) of the Act, the master will use the notification forms set out in Annex 6.

Chapter 4. Permits

Article 7

1. When applying for a permit, the model form set out in Annex 7 must be used to provide the necessary information. The applicant must attach to the application the supporting documents listed on the application form.
2. After receipt of the application, the presence of supporting documents will be checked against the requirements set out in Articles 9 to 15.
3. After receiving the application and supporting documents and before making a decision with regard to the permit application, the Inspectorate may perform an audit at the premises of the applicant.
4. Permits may be subject to conditions aimed at ensuring:
 - a. good cooperation and good communication with government institutions;
 - b. compliance with the regulations laid down in or pursuant to the Act;
 - c. the quality of the operations of the permit holder;
 - d. the quality of the maritime security to be provided.

Article 8

1. The fee for applying for a permit is €17,220.00.
2. The fee for applying for renewal of a permit is €14,190.00.
3. The fee for transferring a permit to a third party as referred to in Article 4.5 of the Decree is €17,220.00.

Chapter 5. Legal requirements for the permit

Section 5.1 Requirements imposed on the company

Article 9

1. The continuity of the maritime security company is deemed to be reasonably assured if the company has:
 - a. an extract from the Trade Register of the Chamber of Commerce issued within the past six months or an equivalent document from another Member State of the European Union;
 - b. liability insurance covering the risks to which the permitted activities may give rise;
 - c. a statement from an auditor issued within the past six months that declares that the company is not in a state of bankruptcy, the company has not been granted a suspension of payments, no seizure order has been executed with respect to a substantial part of the assets of the maritime security company or with respect to one or more of its operating resources that forms a substantial part of its assets; and
 - d. a list of key suppliers.
2. At a minimum, the insurance referred to in the first paragraph under (b) includes professional liability, general liability and employer liability insurance. The insurance must cover the liability of the company for at least €2,500,000 per claim for personal injury and at least €750,000 per claim for property damage that may result from the permitted activities.

Article 10

1. The reliability of the company and of the persons who set or help to set its policies is deemed to be assured if:
 - a. in view of their plans and history, there is a reasonable expectation that they will comply with the rules laid down in or pursuant to the Act;
 - b. when applying for a permit, they hold a Certificate of Good Conduct, or, if the persons concerned are not residents of the Netherlands, an extract from court records or an equivalent certificate from the authorities of the country where they reside, issued within the past six months;
 - c. these persons are not subject to a guardianship order;
 - d. they are not affiliated with any national government;
 - e. the company supports explicitly the principles of the International Code of Conduct Association; and
 - f. it can reasonably be assumed that the company will act in accordance with the generally accepted standards for a good security organisation.
2. Without prejudice to Article 5.3(2) of the Decree, if the registered office, administrative headquarters or principal place of business of the maritime security company is not in the Netherlands, any permit or recognition from the competent authorities of the country where the company has its registered office, administrative headquarters or principal place of business will be taken into account when assessing the reliability of the company and of the persons who set or help to set its policies.
3. In his assessment as referred to in Article 5.5(3)(c) of the Decree, the Minister must take into account the Certificate of Good Conduct or the extract from court records.
4. The reliability of the maritime security company will be deemed not to be assured if the company, or the persons who set or help to set its policies, have been convicted of crimes referred to in Title XVIII, Title XIX, Title XX, Titles XXIII to XXVI and Title XXIX of the Criminal Code and have exhausted all possibilities of appeal.

Article 11

1. The operations of the maritime security company must be set up in such a way that, at a minimum, the company has:
 - a. personnel records, including records on the private maritime security personnel, with evidence of their reliability and professional competence, the training they have received, their medical fitness and their command of the English language;
 - b. relevant policy documents, work instructions and overviews, as referred to in the second, third and fourth paragraphs;
 - c. an officer who is responsible for compliance with statutory requirements and the associated risk management; and
 - d. continuous access to and availability of maritime legal advice.
2. At a minimum, the policy documents referred to in the first paragraph under (b) must include:
 - a. an ethics policy;
 - b. a general security policy;
 - c. a working conditions policy, covering health and security policies in particular;
 - d. a policy on the recruitment, selection and training of maritime security guards;
 - e. a policy on weapons, including storage, maintenance and destruction;
 - f. an internal and external communication policy;
 - g. a policy on the handling of complaints;
 - h. whistleblowing procedures;
 - i. a risk analysis;
 - j. human rights;
 - k. crisis management; and
 - l. the export of strategic goods, including export control certificates.
3. At a minimum, the work instructions referred to in the first paragraph under (b) must include instructions regarding:
 - a. the performance of the transport to be secured, including communication and reporting during the passage;
 - b. the deployment of maritime security guards during a transport;
 - c. life-saving actions on board (the lifesaving rules);
 - d. the use of force;
 - e. the procedure for firing a personal weapon;
 - f. the use of floating armouries;
 - g. the use of cameras and microphones;

h. the use of handcuffs.

3. At a minimum, the overviews referred to in the first paragraph under (b) must include:

- a. training, including refresher training, of the private maritime security guards;
- b. firearms licences; and
- c. maintenance plans.

Article 12

The internal monitoring system of the maritime security company must include written evidence of:

- a. a quality policy;
- b. a policy on the process of continuous improvement;
- c. management reviews;
- d. internal auditing;
- e. a policy on the reporting and handling of incidents; and
- f. document checks.

Paragraph 5.2 Requirements imposed on the security guards

Article 13

- 1. When applying for a permit, the maritime security company must provide evidence that the maritime security guards meet the requirements of reliability, medical fitness, professional competence and training for the performance of maritime security activities.
- 2. A maritime security company that holds a permit must submit the evidence referred to in the first paragraph to the Inspectorate before a maritime security guard is deployed, if that guard was not part of the maritime security personnel at the time the permit was issued.

Article 14

- 1. The maritime security guards must hold a Certificate of Good Conduct (VOG) issued within twelve months prior to the date of the permit application.
- 2. Maritime security guards who are not residents of the Netherlands must hold, at a minimum, an extract from court records or an equivalent certificate, issued by the authorities of the country where the security guard is a resident within the twelve months preceding the permit application, along with an authenticated Dutch or English translation of this document.

Article 15

- 1. The members of the security team must at all times hold a medical certificate declaring their fitness to perform maritime security activities.
- 2. The medical certificate must be issued by a medical examiner who is not the usual doctor or specialist of the person concerned, and who has established that the person concerned meets the medical requirements for performing maritime security work.
- 3. At a minimum, the examination of general physical fitness must include:
 - a. an investigation of past diseases and accidents (medical history);
 - b. a general assessment of the mental condition of the person concerned;
 - c. chemical testing of urine; and
 - d. a general examination of the person's body, including eyesight and hearing,in such a way that it can be determined whether the candidate is fit to perform maritime security work.

Article 16

The members of the security team must have:

- a. at least four years of operational service experience in a military or police organisation, after which they received an honourable discharge;
- b. a declaration of professional competence and training for the performance of maritime security activities, issued within the past twelve months;
- c. a declaration of professional competence and training for handling semi-automatic firearms, issued within the past twelve months; and

- d. a certificate of command of English at Marlins TOSE or NATO STANAG 6001 Intermediate III level.
- 1. To obtain a declaration of professional competence and training, as referred to in the first paragraph under (b), at a minimum, the education and training requirements set out in Annex 8 must be satisfied.
- 2. The member of the security team designated as team medic must have successfully completed, at a minimum, a First Person On Scene Intermediate course run by a qualified entity.

Chapter 6 Operational requirements

Article 17

- 1. Without prejudice to the provisions laid down in or pursuant to Sections 6, 9, 11 and 12 of the Act, the team leader must:
 - a. provide operational leadership to the other members of the security team in the performance of the maritime security work;
 - b. supervise and monitor the other members of the security team;
 - c. act as an intermediary between the security team and the master;
 - d. act as an intermediary between the permit holder and the master;
 - e. provide a job-specific procedure manual to the other members of the security team;
 - f. advise the master on security measures to be taken on board the ship that do not involve the use of weapons;
 - g. manage the weapons and equipment of the security team;
 - h. ensure the proper use and functioning of the camera and microphone by the private maritime security personnel; and
 - i. monitor the safety, wellbeing and behaviour of the other members of the security team.
- 2. The team leader will perform the following actions prior to embarking:
 - a. inform the other members of the security team about the procedure manual and rules of engagement;
 - b. have the other members of the security team sign a statement showing that the members of the security team are aware of the content of the procedure manual and rules of engagement;
 - c. control the weapons and equipment of the members of the security team;
 - d. run an exercise with the security team, in particular on the use of weapons; and
 - e. appoint a member of the security team to serve as the team medic.

Chapter 7. Administrative enforcement and fines

Article 18

1. The highest administrative fine that may be imposed on the permit holder for a breach of Section 15 of the Act or of Article 3.1, 3.3(3), 4.5, 5.2 or 5.5 to 5.14 of the Decree is a Category 4 fine as defined in Article 23(4) of the Criminal Code.
2. The highest administrative fine that may be imposed on the permit holder for a breach of Article 6(3) of the Act in conjunction with Article 2.4(1) or (2) of the Decree is a Category 3 fine as defined in Article 23(4) of the Criminal Code.
3. The highest administrative fine that may be imposed on the permit holder for a breach of the conditions attached to the permit pursuant to Section 13(4) of the Act is a Category 3 fine as defined in Article 23(4) of the Criminal Code.

Article 19

The highest administrative fine that may be imposed on the ship manager for a breach of Section 6(1) of the Act or Section 6(3) of the Act in conjunction with Article 2.4(1) or (2) of the Decree is a Category 3 fine as defined in Article 23(4) of the Criminal Code.

Article 20

The highest administrative fine that may be imposed on the master for a breach of Section 6(1) or (4) or 12(1) or (2) of the Act or Section 6(2) in conjunction with Article 2.4 of the Decree is a Category 2 fine as defined in Article 23(4) of the Criminal Code.

Article 21

The highest administrative fine that may be imposed on the team leader for a breach of Article 6(2) or 12(1) or (2) is a Category 2 fine as defined in Article 23(4) of the Criminal Code.

Article 22

1. Without prejudice to Sections 3.4, 5.41 and 5.46 of the General Administrative Law Act, the supervisory officials must, at a minimum, take the following circumstances into account when determining an administrative fine, insofar as they apply:
 - a. the seriousness and duration of the breach;
 - b. the extent to which the breach can be attributed to the offender;
 - c. the absence of previous breaches by the offender of the regulations laid down in or pursuant to the Act;
 - d. the extent to which the offender cooperates in establishing the breach; and
 - e. the measures taken by the offender after the breach to prevent a recurrence of the breach.
2. The supervisory officials will reduce the amount of the fine by a proportionate percentage if the circumstances listed in the first paragraph justify such a reduction.

Chapter 7. Protection of personal data and processing of data

Article 23

1. The files containing video and audio recordings must be destroyed by private maritime security personnel after being sent to the Minister or the Public Prosecution Service with the reports referred to in Article 12(2) and (3), and no later than 28 days after leaving the high-risk area.
2. By way of derogation from the first paragraph, the files containing video and sound recordings may be kept for a longer period by the private maritime security personnel if this is necessary for the institution, execution or substantiation of a legal claim.
3. The master and the team leader are entitled to view or listen to the video and sound recordings.

Article 24

1. With regard to the personal data referred to in Section 14a(1) and (2) of the Act, the supervisory officials must communicate in a privacy statement:
 - a. how the right to access and correct personal data may be exercised;

- b. with what parties and under what conditions personal data will be shared; and
 - c. what measures have been taken to prevent misuse, loss, unauthorised access, undesirable disclosure or unauthorised modification of personal data.
2. The privacy statement must be posted on the Inspectorate website.

Chapter 8. Final provisions

Article 25

This regulation takes effect on the date on which the Merchant Shipping Protection Act and the Merchant Shipping Protection Decree take effect.

Article 26

This regulation should be referred to as the: Merchant Shipping Protection Regulation.

The Minister of Justice and Security