

Circular - Series R

Circular Series R (Regulations) supersedes previous Series F. In the new Series R, relevant legal amendments and amendments to conventions are also published.

Circular recipients: (check box)

- Sdir: Norwegian Maritime Authority
- A: 16 specially authorised employment offices
- U: Selected foreign service missions
- P: Equipment manufacturers, any subgroups
- OFF: Offshore companies/OIM/operators
- Hov: Main organisations
- H.i. Bodies or agencies for their comments
- Others:

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New Regulations on diving operations from ships

Introduction

The Norwegian Maritime Authority (NMA) has adopted new Regulations on diving operations from ships, which will enter into force on 1 June 2020. The Regulations are issued pursuant to the Ship Safety and Security Act and include requirements for persons working on board who are involved in diving operations. The purpose of these Regulations is to ensure that divers covered by the Ship Safety and Security Act are protected by safety requirements in the same way as divers covered by the Working Environment Act.

The proposal was circulated for review from 29 April to 29 July 2019. The NMA received answers from 39 consultative bodies, whereof seven did not include any comments to the proposal. The adopted Regulations have been amended to take the consultative comments into account. A list of relevant consultative bodies and comments is included in the attached consultation matrix.

The NMA and the Norwegian Labour Inspection Authority circulated the Regulations for comments on assignment from the Ministry of Trade, Industry and Fisheries and the Ministry of Labour and Social Affairs. At the same time, a proposal was made to change the scope of application of the Working Environment Act in order to clarify whether an employment relationship is subject to the Working Environment Act or maritime legislation. The Regulations on working hours for diving personnel on board ships were also proposed repealed. The proposal also included a new provision on working hours to the existing Regulations on hours of work and rest on board¹ Norwegian passenger and cargo ships etc.

Consequently, the Regulations on diving operations from ships pursuant to the Ship Safety and Security Act are now being laid down. The Regulations on working hours for diving personnel on board ships² are repealed. The ministries will continue their work to amend the Working Environment Act.

The new Regulations imply that persons involved in diving operations under maritime legislation shall comply with the special diving rules laid down in chapter 26 of the Regulations concerning the performance of work, use of work equipment and related technical requirements (Regulations concerning the Performance of Work)³ under the Working Environment Act. Up to the present, there have been no equivalent safety provisions under the maritime legislation. The development of the

¹ Regulations of 26 June 2007 on hours of work and rest on board Norwegian passenger and cargo ships etc.

² Regulations of 26 June 1981 No. 3813 on working hours for diving personnel on board ships.

³ Regulations of 6 December 2011 No. 1357 concerning the performance of work, use of work equipment and related technical requirements.

industry has led to a need of such safety requirements, also for diving operations under maritime legislation. The Regulations do not amend existing legislation regarding which Act shall apply to persons involved in diving operations, i.e. the Ship Safety and Security Act, the Ship Labour Act or the Working Environment Act. In other words, in some cases it might still be unclear which set of rules apply to divers.

Further details on the Regulations

Section 1 of the Regulations states the purpose. First of all, the purpose is to ensure a fully satisfactory working environment for persons working on board who are involved in work under increased ambient pressure under water or in a compression chamber where the diver is supplied with breathing gas. Furthermore, the provision states that the purpose is to ensure that all professional diving operations are subject to an adequate regulatory system by harmonising the marine professional diving regulations with the corresponding provisions of the Working Environment Act. The harmonisation is reflected in these Regulations by referring to relevant requirements for diving operations pursuant to the Working Environment Act.

In the circulated proposed Regulations, a number of terms were used about persons working on board. In order to remove any doubts, the Regulations now laid down consistently use the term “persons working on board”, in accordance with the Ship Safety and Security Act. Thus, the Regulations will apply to the same circle of people as the Ship Safety and Security Act. This means that individual contractors working on board are covered by these Regulations.

To use the same terms as the Work Performance Regulations, the wording of section 1(a) of these Regulations has been amended to “work under water under increased ambient pressure or in a compression chamber where the diver is supplied with breathing gas”. The wording is equivalent to the definition of a diving operation included in the Regulations concerning the Performance of Work section 1-4 No. 12.

The scope of the Regulations is set out in section 2. The Regulations apply to persons working on board who are involved in diving operations. Furthermore, the provision must be seen in context with the geographical scope of application stipulated in section 3. First and foremost, the Regulations will apply to persons working on board Norwegian ships who are involved in diving operations, irrespective of the ship’s position. The provisions also apply to foreign ships in Norwegian territorial waters. Pursuant to the Ship Safety and Security Act, the company has an overall responsibility on board, whereas the master shall ensure that the work on board is so arranged that it can be carried out in a safe and proper manner and that the requirements for the working environment are satisfied⁴. If the employer is someone other than the company, the employer shall participate in ensuring that the ship has a fully satisfactory working environment pursuant to section 28(a) of the Ship Safety and Security Act.

Section 4 of the Regulations includes a reference stating that chapter 26 of the Regulations concerning the Performance of Work shall apply accordingly to persons working on board who are involved in diving operations. A specification has also been included, stating that the Norwegian Labour Inspection Authority shall be taken to mean the Norwegian Maritime Authority in chapter 26. This implies, among other things, that the companies must notify the NMA as stipulated in the Regulations concerning the Performance of Work section 26-47, and duty to notify of decompression diving stated in sections 26-7 and 26-8.

To reflect the exemption provision of the Regulations concerning the Performance of Work in section 1-5, an exemption provision has also been included in section 7 of the Regulations on diving operations from ships.

Regulations on working hours for diving personnel on board ships

In line with the proposal, the dormant Regulations on working hours for diving personnel on board ships from 1981 are repealed. The Regulations have not been used or enforced in a very long time.

⁴ Cf. section 29 of the Ship Safety and Security Act, cf. section 6.

Until a particular provision on hours of work and rest for divers are established pursuant to the maritime legislation, the provisions on hours of work and rest of the Ship Safety and Security Act and the Regulations on hours of work and rest on board Norwegian passenger and cargo ships etc. will apply.

Section 1 of the Ship Safety and Security Act sets out a requirement of a fully satisfactory work environment. The same requirement is stipulated in section 22 of the Ship Safety and Security Act. The NMA presupposes that the company, employer and master make sure that persons involved in diving operations are well rested and that the total workload has been considered.

Economic and administrative consequences

The Regulations on diving operations from ships include new substantive rules. However, it is our impression that most serious companies engaged in diving operations covered by maritime legislation already comply with the requirements of chapter 26 of the Regulations concerning the Performance of Work. This is confirmed through dialogue with and consultative comments from representatives subject to maritime legislation. Furthermore, the NMA has requested the companies to comply with the requirements⁵.

The new Regulations on diving operations from ships mean that the amendments of chapter 26 of the Regulations concerning the Performance of Work, which entered into force on 1 January 2020, also apply to diving operations carried out by persons working on board. In our experience, companies involved in diving operations have paid close attention to the diving rules of the Working Environment Act, and they are well aware of the amendments to the requirements. Nevertheless, it is assumed that some companies have delayed the implementation of all measures, awaiting the adoption of these Regulations. The NMA presupposes that the companies will comply with the requirements of the Regulations as soon as possible.

These requirements, which will include new qualification and manning requirements related to diving operations, may result in increased costs for the companies. However, it is our impression that the companies find the costs acceptable compared to the non-listed consequences, e.g. harmonised legislation, equal conditions of competition and increased security.

The NMA shall supervise diving operations that are subject to maritime legislation. This means that we need to rearrange some resources. Apart from this, the NMA will use the same supervisory methods as before. Increased supervisory activities for the vessel group involved in diving operations have already been planned. The NMA carries out many supervisions, up to 4500 to 5000 supervisions a year. Furthermore, internal diving competence has been registered, which will be used in training and supervision. Further training will be provided for supervisors who will carry out inspections pursuant to these Regulations. Costs for necessary training must therefore be considered.

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This document has been electronically approved, and therefore does not contain handwritten signatures.

Attachments:
Regulations on diving operations from ships
Consultation matrix

⁵ See Circular RSV 03-2018.