

	<b>CIRCULAR 2012-013</b>		
	DEPARTMENT OF MARINE SERVICES AND MERCHANT SHIPPING (ADOMS)		
	<b>Guidelines on Stowaways</b>	<table border="1"> <tr> <td style="text-align: center;">Ref</td> <td style="text-align: center;">MSC.312(88)</td> </tr> </table>	Ref
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**Companies operating ships under the flag of Antigua and Barbuda.  
Ships registered under the flag of Antigua and Barbuda.**

This Circular was previously published as Circular 02-005-2012 It is renumbered but not changed.

**Background.**

The IMO adopted a revised set of guidelines in 2010 on dealing with stowaways. The guidelines form the current agreed best practice for these situations.

With the new guidance it is considered that a Directive on this topic is no longer necessary and accordingly, with effect from the date of this Circular the existing Directive 05-2002 is withdrawn and replaced by this Circular.

The Annex contains the text of the IMO guidelines set out in MSC.312(88) and ADOMS would ask companies, owners and ship's staff to be aware of these guidelines and to follow them as closely as possible in any case where stowaways are encountered.

Any incident involving stowaways should also be notified to ADOMS St. John's at the first opportunity

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December 2012.

## ANNEX

This annex contains the text of MSC.312(88) as adopted by the Maritime Safety Committee in December 2010.

### REVISED GUIDELINES ON THE PREVENTION OF STOWAWAY INCIDENTS AND THE ALLOCATION OF RESPONSIBILITIES TO SEEK THE SUCCESSFUL RESOLUTION OF STOWAWAY CASES

#### 1. Introduction

- 1.1. Masters, shipowners, public authorities, port authorities and other stakeholders, including those providing security services ashore, have a responsibility to cooperate to the fullest extent possible in order:
  - 1.1.1. to prevent stowaway incidents; and
  - 1.1.2. to resolve stowaway cases expeditiously and secure that an early return or repatriation of the stowaway will take place. All appropriate measures should be taken in order to avoid situations where stowaways must stay on board ships indefinitely.
- 1.2. However, no matter how effective port and ship security measures are, it is recognized that there will still be occasions when stowaways gain access to vessels, either secreted in the cargo or by surreptitious boarding.
- 1.3. The resolution of stowaway cases is difficult because of different national legislation in each of the several potentially involved States: the State of embarkation, the State of disembarkation, the flag State of the ship, the State of apparent, claimed or actual nationality/ citizenship or right of residence of the stowaway, and States of transit during repatriation.

#### 2. Definitions

For the purpose of these Guidelines:

- 2.1.1. *Attempted stowaway*. A person who is secreted on a ship, or in cargo which is subsequently loaded on the ship, without the consent of the shipowner or the master or any other responsible person, and who is detected on board the ship before it has departed from the port.
- 2.1.2. *Port*. Any port, terminal, offshore terminal, ship and repair yard or roadstead which is normally used for the loading, unloading, repair and anchoring of ships, or any other place at which a ship can call.
- 2.1.3. *Public authorities*. The agencies or officials in a State responsible for the application and enforcement of the laws and regulations of that State which relate to any aspect of the present Guidelines.
- 2.1.4. *Security measures*. Measures developed and implemented in accordance with international agreements to improve security on board ships, in port areas, facilities and of goods moving in the international supply chain to detect and prevent unlawful acts. (Reference is made to chapter XI-2 of the International Convention for the Safety of Life at Sea, 1974, as amended (1974 SOLAS Convention) and the International Ship and Port Facility Security Code, as amended (the ISPS Code); and to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988 (1988 SUA Convention) and its 2005 Protocol (2005 SUA Protocol).

- 2.1.5. *Shipowner*. One who owns or operates a ship, whether a person, a corporation or other legal entity, and any person acting on behalf of the owner or operator.
- 2.1.6. *Stowaway*. A person who is secreted on a ship, or in cargo which is subsequently loaded on the ship, without the consent of the shipowner or the master or any other responsible person and who is detected on board the ship after it has departed from a port, or in the cargo while unloading it in the port of arrival, and is reported as a stowaway by the master to the appropriate authorities.

### 3. **Basic principles**

On the basis of the experience thus far, the application of the following basic principles have been useful in preventing stowaway incidents and have been helpful in the speedy resolution of stowaway cases:

- 3.1.1. Stowaway incidents should be dealt with in a manner consistent with humanitarian principles. Due consideration must always be given to the operational safety and security of the ship and to the safety and well-being of the stowaway.
- 3.1.2. Public authorities, port authorities, shipowners and masters, should co-operate to the fullest extent possible in order to prevent stowaway incidents.
- 3.1.3. Shipowners, masters, port authorities and public authorities should have adequate security arrangements in place which, as far as practicable, will prevent intending stowaways from getting aboard a ship or, if this fails, will detect them before the ship leaves port or, at the latest, before it arrives at the next port of call.
- 3.1.4. Adequate, frequent and well timed searches minimize the risk of having to deal with a stowaway case and may also save the life of a stowaway who may, for example, be hiding in a place which is subsequently sealed and/or chemically treated.
- 3.1.5. Public authorities, port authorities, shipowners and masters, should co-operate to the fullest extent possible in order to resolve stowaway cases expeditiously and secure that an early return or repatriation of the stowaway will take place. All appropriate measures should be taken in order to avoid situations where stowaways must stay on board ships indefinitely.
- 3.1.6. Stowaways arriving at or entering a State without the required documents are, in general, illegal entrants. Decisions on dealing with such situations are the prerogative of the States where such arrival or entry occurs.
- 3.1.7. Stowaway asylum-seekers should be treated in accordance with international protection principles as set out in international instruments, such as the provisions of the United Nations Convention relating to the Status of Refugees of 28 July 1951 and of the United Nations Protocol relating to the Status of Refugees of 31 January 1967 and relevant national legislation.

- 3.1.8. Every effort should be made to avoid situations where a stowaway has to be detained on board a ship indefinitely. In this regard States should co-operate with the shipowner in arranging the disembarkation of a stowaway to an appropriate State.
- 3.1.9. States should accept the return of stowaways who have full nationality/citizenship status in that State, or have a right of residence in that State.
- 3.1.10. Where the nationality or citizenship or right of residence cannot be established, the State of the original port of embarkation of a stowaway should accept the return of such a stowaway for examination pending final case disposition.

#### 4. Preventive measures

##### 4.1. Port/terminal authorities

- 4.1.1. States and port and terminal owners, operators and authorities should ensure that the necessary infrastructure, and operational and security arrangements for the purpose of preventing persons attempting to stowaway on board ships from gaining access to port installations and to ships, are established in all their ports, taking into consideration when developing these arrangements the size of the port, and what type of cargo is shipped from the port. This should be done in close cooperation with relevant public authorities, shipowners and shore-side entities, with the aim of preventing stowaway occurrences in the individual port.
- 4.1.2. Operational arrangements and/or security plans should, *inter alia*, address the following issues where appropriate:
  - 4.1.2.1. regular patrolling of port areas;
  - 4.1.2.2. establishment of special storage facilities for cargo subject to high risk of access of stowaways, and continuous monitoring of both persons and cargo entering these areas;
  - 4.1.2.3. inspections of warehouses and cargo storage areas;
  - 4.1.2.4. search of cargo itself, when presence of stowaways is clearly indicated;
  - 4.1.2.5. cooperation between public authorities, shipowners, masters and relevant shore-side entities in developing operational arrangements;
  - 4.1.2.6. cooperation between port authorities and other relevant authorities (for example, police, customs, immigration) in order to prevent smuggling of humans;
  - 4.1.2.7. developing and implementing agreements with stevedores and other shore-side entities operating in ports to ensure that only personnel authorized by these entities participate in the stowing/unstowing or loading/unloading of ships or other functions related to the ships stay in port;

- 4.1.2.8. developing and implementing agreements with stevedores and other shoreside entities to ensure that their personnel having access to the ship are easily identifiable, and a list of names of persons likely to need to board the ship in the course of their duties is provided; and
- 4.1.2.9. encouraging stevedores and other persons working in the port area to report to the public and port authorities, the presence of any persons apparently not authorized to be in the port area.

#### **4.2. Shipowner/Master**

- 4.2.1. Shipowners and masters should ensure that adequate security arrangements are in place which, as far as practicable, will prevent intending stowaways from getting aboard the ship, and, if this fails, as far as practicable, will detect them before the ship leaves port or, at the latest, before it arrives at the next port of call.
- 4.2.2. When calling at ports and during stay in ports, where there is risk of stowaway embarkation, security arrangements should at least contain the following preventive measures;
  - 4.2.2.1. all doors, hatches and means of access to holds or stores, which are not used during the ship's stay in port should be locked;
  - 4.2.2.2. access points to the ship should be kept to a minimum and be adequately secured;
  - 4.2.2.3. areas seaward of the ship should be adequately secured;
  - 4.2.2.4. adequate deck watch should be kept;
  - 4.2.2.5. boardings and disembarkations should, where possible, be tallied by the ship's crew or, after agreement with the master, by others;
  - 4.2.2.6. adequate means of communication should be maintained; and .7 at night, adequate lighting should be maintained both inside and along the hull.
- 4.2.3. When departing from a port, where there is risk of stowaway embarkation, a ship should undergo a thorough search in accordance with a specific plan or schedule, and with priorities given to places where stowaways might hide. Search methods, which are likely to harm secreted stowaways should not be used.
- 4.2.4. Fumigation or sealing should not be carried out until a thorough search of the areas to be fumigated or sealed has taken place in order to ensure that no stowaways are present in those areas.

### **5. Responsibilities in relation to the resolution of stowaway cases**

#### **5.1. Questioning and notification by the master,**

It is the responsibility of the master of the ship which finds any stowaways on board:

- 5.1.1. to make every effort to determine immediately the port of embarkation of the stowaway;

- 5.1.2. to make every effort to establish the identity, including the nationality/citizenship and the right of residence of the stowaway;
- 5.1.3. to prepare a statement containing all available information relevant to the stowaway for presentation to the appropriate authorities (for example, the public authorities at the port of embarkation, the flag State and any subsequent ports of call if relevant) and the shipowner. In this respect the reporting form provided in the Appendix should be used and completed as far as practicable;
- 5.1.4. to notify the existence of a stowaway and any relevant details to the shipowner and appropriate authorities at the port of embarkation, the next port of call and the flag State; with the understanding that when a stowaway declares himself/herself to be a refugee, this information should be treated as confidential to the extent necessary for the security of the stowaway;
- 5.1.5. not to depart from the planned voyage to seek the disembarkation of a stowaway discovered on board the ship after it has left the territorial waters of the State where the stowaways embarked unless permission to disembark the stowaway has been granted by the public authorities of the State to whose port the ship deviates, or repatriation has been arranged elsewhere with sufficient documentation and permission given for disembarkation, or unless there are extenuating safety, security, health or compassionate reasons;
- 5.1.6. to ensure that the stowaway is presented to the appropriate authorities at the next port of call in accordance with their requirements;
- 5.1.7. to take appropriate measures to ensure the security, general health, welfare and safety of the stowaway until disembarkation, including providing him/her with adequate provisioning, accommodation, proper medical attention and sanitary facilities;
- 5.1.8. to ensure that stowaways are not made to work on board the ship, except in emergency situations or in relation to the stowaway's accommodation on board; and
- 5.1.9. to ensure that stowaways are treated humanely, consistent with the basic principles.

## **5.2. The shipowner**

It is the responsibility of the shipowner of the ship on which stowaways are found:

- 5.2.1. to ensure that the existence of, and any relevant information on, the stowaway has been notified to the appropriate authorities at the port of embarkation, the next port of call and the flag State;
- 5.2.2. to comply with any removal directions made by the competent national authorities at the port of disembarkation; and
- 5.2.3. to cover any applicable costs relating to the removal, detention, care and disembarkation of the stowaway in accordance with the legislation of the States which may be involved.

### **5.3. The State of the first port of call according to the voyage plan**

It is the responsibility of the State of first port of call according to the voyage plan after the discovery of the stowaway:

- 5.3.1. to accept the stowaway for examination in accordance with the national laws of that State and, where the competent national authority considers that it would facilitate matters, to allow the shipowner and the competent or appointed P&I Club correspondent to have access to the stowaway;
- 5.3.2. to favourably consider allowing disembarkation and provide, as necessary and in accordance with national law, secure accommodation which may be at the expense of the shipowner, where:
  - 5.3.2.1. a case is unresolved at the time of sailing of the ship, or
  - 5.3.2.2. the stowaway is in possession of valid documents for return and the public authorities are satisfied that timely arrangements have been or will be made for repatriation and all the requisites for transit fulfilled, or
  - 5.3.2.3. other factors make it impractical to remove the stowaway from the ship on arrival; such factors may include but are not limited to cases where a stowaway's presence on board would endanger the safe and secure operation of the ship, the health of the crew or the stowaway;
- 5.3.3. make every effort to cooperate in the identification of the stowaway and the establishment of his/her nationality/citizenship or right of residence;
- 5.3.4. to make every effort to cooperate in establishing the validity and authenticity of a stowaway's documents and, when a stowaway has inadequate documents, to whenever practicable and to an extent compatible with national legislation and security requirements, issue a covering letter with a photograph of the stowaway and any other important information. The letter, authorizing the return of the stowaway either to his/her State of origin or to the point where the stowaway commenced his/her journey, as appropriate, by any means of transportation and specifying any other conditions imposed by the authorities, should be handed over to the operator effecting the removal of the stowaway. This letter will include information required by the authorities at transit points and/or the point of disembarkation;
- 5.3.5. to give directions for the removal of the stowaway to the port of embarkation, State of nationality/citizenship or right of residence or to some other State to which lawful directions may be made, in co-operation with the shipowner;
- 5.3.6. to inform the shipowner on whose ship the stowaway was found, as far as practicable, of the level of cost of detention and return of the stowaway, if the shipowner is to cover these costs. In addition, public authorities should keep such costs to a minimum, as far as practicable, and according to national legislation, if they are to be covered by the shipowner, as well as keeping to a minimum the period during which shipowners are held liable to defray costs of maintenance of a stowaway by public authorities;

- 5.3.7. to consider mitigation of charges that might otherwise be applicable when shipowners have cooperated with the control authorities to the satisfaction of those authorities in measures designed to prevent the transportation of stowaways; or where the master has properly declared the existence of a stowaway to the appropriate authorities in the port of arrival, and has shown that all reasonable preventive measures had been taken to prevent stowaways gaining access to the ship;
- 5.3.8. to issue, if necessary, in the event that the stowaway has no identification and/or travel documents, a document attesting to the circumstances of embarkation and arrival to facilitate the return of the stowaway either to his/her State of origin, to the State of the port of embarkation, or to any other State to which lawful directions can be made, by any means of transport;
- 5.3.9. to provide the document to the transport operator effecting the removal of the stowaway;
- 5.3.10. to take proper account of the interests of, and implications for, the shipowner when directing detention and setting removal directions, so far as is consistent with the maintenance of control, their duties or obligations to the stowaway under the law, and the cost to public funds;
- 5.3.11. to report incidents of stowaways to the Organization,
- 5.3.12. to cooperate with flag State of the ship in identifying the stowaway and their nationality/citizenship and right of residence, to assist in removal of the stowaway from the ship, and to make arrangements for removal or repatriation; and
- 5.3.13. if disembarkation is refused, to notify the flag State of the ship the reasons for refusing disembarkation.

#### **5.4. Subsequent ports of call**

When the disembarkation of a stowaway has not been possible at the first port of call, it is the responsibility of the State of subsequent port of call to follow the guidance provided in paragraph 5.3.

#### **5.5. State of embarkation**

It is the responsibility of the State of the original port of embarkation of the stowaway (i.e. the State where the stowaway first boarded the ship):

- 5.5.1. to accept any returned stowaway having nationality/citizenship or right of residence;
- 5.5.2. to accept a stowaway back for examination where the port of embarkation is identified to the satisfaction of the public authorities of the receiving State; the public authorities of the State of embarkation should not return such stowaways to the State where they were earlier found to be inadmissible;



- 5.5.3. to apprehend and detain the attempted stowaway, where permitted by national legislation, if the attempted stowaway is discovered before sailing either on the ship or in cargo due to be loaded; to refer the attempted stowaway to local authorities for prosecution, and/or, where applicable, to the immigration authorities for examination and possible removal: no charge is to be imposed on the shipowner in respect of detention or removal costs, and no penalty is to be imposed;
- 5.5.4. to apprehend and detain the stowaway, where permitted by national legislation, if the stowaway is discovered while the ship is still in the territorial waters of the State of the port of his/her embarkation, or in another port in the same State (not having called at a port in another State in the meantime): no charge is to be imposed on the shipowner in respect of detention or removal costs, and no penalty is to be imposed;
- 5.5.5. to report incidents of stowaways or attempted stowaways to the Organization; and
- 5.5.6. to reassess the preventative arrangements and measures in place and to verify the implementation and effectiveness of any corrective actions.

**5.6. State of nationality or right of residence**

It is the responsibility of the apparent or claimed State of nationality/citizenship of the stowaway and/or of the apparent or claimed State of residence of the stowaway:

- 5.6.1. to make every effort to assist in determining the identity and nationality/citizenship or the rights of residence of the stowaway and to document the stowaway, accordingly once satisfied that he or she holds the nationality/citizenship or the right of residence claimed;
- 5.6.2. to accept the stowaway where nationality/citizenship or right of residence is established; and
- 5.6.3. to report incidents of stowaways to the Organization

**5.7. The flag State**

It is the responsibility of the flag State of the ship:

- 5.7.1. to be willing, if practicable, to assist the master/shipowner or the appropriate authority at the port of disembarkation in identifying the stowaway and determining his/her nationality/citizenship or right of residence;
- 5.7.2. to be prepared to make representations to the relevant authority to assist in the removal of the stowaway from the ship at the first available opportunity;
- 5.7.3. to be prepared to assist the master/shipowner or the authority at the port of disembarkation in making arrangements for the removal or repatriation of the stowaway; and
- 5.7.4. to report incidents of stowaways to the Organization.

**5.8. States of transit during repatriation**

It is the responsibility of any States of transit during repatriation to allow, subject to normal visa requirements and national security concerns, the transit through their ports and airports of stowaways travelling under the removal instructions or directions of the State of the port of disembarkation.



**Other details:**

1) Method of boarding, including other persons involved (e.g., crew, port workers, etc.), and whether the stowaway was secreted in cargo/container or hidden in the ship:

2) Inventory of the stowaway's possessions:

3) Statement made by the stowaway:

4) Statement made by the master (including any observations on the credibility of the information provided by the stowaway):

Date(s) of interview(s):

Stowaway's signature:

Master's signature:

Date::

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