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6 Seamen

Section 8(1) of the 1971 Act states: “Where a person arrives at a place in the United Kingdom as a member of the crew of a ship or aircraft under an engagement requiring him to leave on that ship as a member of the crew, or to leave within seven days on that or another aircraft as a member of its crew, then unless either -

- ◆ there is in force a deportation order made against him; or
- ◆ he has at any time been refused leave to enter the United Kingdom and has not since then been given leave to enter or remain in the United Kingdom; or
- ◆ an IO requires him to submit to examination in accordance with Schedule 2 to this Act;

he may without leave enter the United Kingdom at that place and remain until the departure of the ship or aircraft on which he is required by his engagement to leave.”

Section 33(1) of the 1971 Act defines "crew" as all persons actually employed in the working or service of a ship or an aircraft. In practical terms, this may include for example waiters, croupiers, hairdressers, painters and repairmen arriving with the ship from abroad and departing with it or being repatriated. (However, crew lists sometimes include supernumeraries, stowaways and passengers. Such persons may **not** be regarded as crew members and do not benefit from section 8(1)).

A deserter may only be regarded as such when he has arrived in the United Kingdom from foreign waters, as an operational crewmember, is not examined by an IO and fails to sail with the ship in which he arrived.

For detailed information on Seaman Deserters or Contract Seamen, see IDIs Chapter 16 Section 1 and annexes.

6.1. Procedures when detecting a seaman who has failed to comply with

limited leave or a seaman deserter

On detecting a seaman deserter **or** a seaman who has failed to comply with his conditions of entry:

- ◆ interview under caution and serve form IS 85A (notice to subject that he is to be treated as a seaman deserter);

If asylum is claimed, or if an appeal is lodged under section 84(1)(c) of the 2002 Act that the decision (under Section 82) is unlawful under section 6 of the Human Rights Act 1998 as being incompatible with the appellant's convention rights, follow procedures set out in Section C. Otherwise:

- ◆ Serve a Notice of Appeal IS87 (non-UK). Once removal has been set up, serve form IS85B (notice to crew member of directions given for his removal) fax form IS 158 (notification of an illegal entrant or seaman deserter) to the relevant casework unit (IOs should make full use of form IS158 to record family members or other information but, if this is impractical owing to the quantity of data involved, then a separate report should be submitted).

- ◆ If the subject appears on the PNC, complete form IS 274 and copy it to WICU and the Command and Control Unit (CCU), where the notification criteria are met.

- ◆ if necessary, arrange the retrieval of the deserter's documents from Seaman's Deserters Bureau at the Overseas Visitors Records Office, Ground Floor, Brandon House, 180 Borough High Street, LONDON SE1 1LH who will hold them for 5 years; the PNC entry will then be cancelled and the documents sent to WICU.

If detention is appropriate:

- ◆ serve detention forms IS91 and IS91R on the detaining agency and follow procedures for detention, **See also:** Levels of authority for detention 55.7;

- ◆ only in order to identify him, take fingerprints, photograph and measure the person if necessary in accordance with paragraph 18(2) of Schedule 2 to the 1971 Act;

- ◆ after 28 days' detention send the following forms to Management of Detained Cases Unit (MODCU)

- ◆ IS91R
- ◆ IS93e (detention record) Pages 1 and 2*;
- ◆ IS93 (cont.) where detention is maintained; and
- ◆ IS126e

*all sections of form IS93e must be completed, whether or not a valid travel document is held. If one is not held then form IS93e should contain information about arrangements for documenting the subject for removal e.g. use of EU Standard Pro-forma letter, "application for Indian ETD sent to RGDU on...." etc.

If temporary release is appropriate:

- ◆ Serve IS 96 and inform the local enforcement office of reporting conditions.

In all cases:

- ◆ ascertain whereabouts of passport if possible and try to obtain it (if an asylum applicant, follow documentation procedures in Attendance for fingerprinting 24.6
- ◆ If there are no further circumstances to consider, follow procedures for removal.

Removal will be under paragraph 12 or 13 of Schedule 2 to the 1971 Act:

- ◆ Endorse the person's passport "Served with IS85A at (LEO acronym e.g. APX, DEU, Eaton/Becket House) on (date)".

The ***Urmaza*** judgement held that a seaman deserter or one who does not comply with his conditions of entry should be treated as an illegal entrant with regard to compassionate circumstances, e.g. marriage (see 53.5).

The responsibility of the costs of removal and expenses connected to the removal are covered in IDIs Chapter 16 Section 1.11.3.

A contract seaman admitted on Code 7 who fails to sail with his ship or is suspected of intending to fail to do so may be removed under paragraph 12(2) of Schedule 2 to the 1971 Act.

A seaman who has been given limited leave other than on Code 5N, for repatriation, hospital treatment, to rejoin his ship or transfer on Code 6, and remains beyond the time limit or is reasonably suspected of an intention to do so may be removed under paragraph 13(2) of Schedule 2 to the 1971 Act.

NB

◆ **the level of authority required for removal is CIO;**

If the subject makes a human rights claim **see also** Human Rights and Racial Discrimination Claims.