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## **Maritime Labour Convention, 2006: Repatriation**

**Notice to all shipowners, ship operators and ship managers; employers of seafarers; masters, officers and seafarers on sea-going ships ordinarily engaged in commercial operations**

*This notice should be read in conjunction with Part 6 of the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014 (“the MLC Minimum Requirements Regulations”)*

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### **Summary**

- This Note provides information on the circumstances in which shipowners are required to repatriate seafarers under the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014, and the provision that must be made, including the seafarer’s relief and maintenance whilst awaiting and during repatriation.
- Shipowners must have financial security in place to ensure that repatriation can take place.
- The MLC Minimum Requirements Regulations implement the provisions of the International Labour Organization Maritime Labour Convention 2006 governing the repatriation of seafarers.
- For the ships to which the MLC Minimum Requirements Regulations apply, these provisions supersede those in the Merchant Shipping (Repatriation) Regulations 1979 which have been amended by the Merchant Shipping (Maritime Labour Convention) (Consequential and Minor Amendments) Regulations 2014.
- Ships and other vessels not subject to the MLC Minimum Requirements Regulations will remain subject to the provisions of the Merchant Shipping (Repatriation) Regulations 1979

### **1. Introduction**

- 1.1 The Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014 (“the MLC Minimum Requirements Regulations”) give effect to the provisions of Regulation 2.5, Standard A2.5 and (where applicable) Guideline B2.5 of the International Labour Organization (ILO) Maritime Labour Convention, 2006 (the “MLC”) relating to the repatriation of seafarers.



1.2 The MLC Minimum Requirements Regulations supersede the Merchant Shipping (Repatriation) Regulations 1979, in respect of the ships to which they apply, and require shipowners to ensure that any seafarer employed on a UK registered ship is repatriated at no cost to themselves in the circumstances and under the conditions, set out in the Regulations, and explained in this Marine Guidance Note (“MGN”). In addition, owners of ships registered in the UK are required to provide financial security covering their duty to repatriate in order to ensure that seafarers employed on those ships are duly repatriated.

## 2. Application

2.1 The MLC Minimum Requirements Regulations apply to all seafarers on UK registered ships, yachts and other vessels which operate commercially. “Seafarer” in this context means any person, including the master, who is employed or engaged or who works in any capacity on board a ship, and whose normal place of work is on a ship. See MGN 471(M) for further guidance on who is a seafarer. The MLC Minimum Requirements Regulations do not however apply to the following categories of vessels:-

- (a) pleasure vessels
- (b) fishing vessels
- (c) ships of traditional build
- (d) warships or naval auxiliaries
- (e) vessels not ordinarily engaged in commercial activities

With the exception of warships, which are not subject to Merchant Shipping legislation, employers of seafarers on these ships will remain subject to the Merchant Shipping (Repatriation) Regulations 1979 (SI 1979/97).

## 3. Duty to repatriate seafarers

3.1 The MLC Minimum Requirements Regulations place a duty on shipowners to make provision for the repatriation of a seafarer (whether they are an employee or not) as soon as is practicable and at no cost to the seafarer in the following circumstances:

- (a) where the Seafarer Employment Agreement (“SEA”) expires,
- (b) when the SEA is terminated by the shipowner:
- (c) when the SEA is terminated by the seafarer in accordance with the terms of their SEA;
- (d) when the seafarer is no longer able to carry out their duties under their SEA, or cannot be expected to carry them out in the specific circumstances.

3.2 The specific circumstances referred to in paragraph 3.1 (d) include the following:

- (a) where the seafarer has an illness, injury or other medical condition which requires their repatriation when found medically fit to travel;
- (b) where the seafarer has been shipwrecked;
- (c) where the shipowner is not able to fulfil their legal or contractual obligations towards the seafarer by reason of insolvency, sale of the ship, or a change in the ship’s registration;



- (d) where the ship is bound for a war zone to which the seafarer does not consent to go. In this context, what constitutes a “war zone” may be defined in the seafarer’s SEA or by the Warlike Operations Area Committee.
- (e) where the seafarer has completed the maximum period of service on board following which the seafarer is entitled to repatriation in accordance with the SEA; and,
- (f) where the SEA is terminated pursuant to an order of a court or tribunal.

There may be instances where a seafarer gives a notice period less than that specified in their SEA because of extenuating personal reasons or for other justified reasons. In such circumstances the shipowner may agree to release the seafarer, without penalty for breach of their obligations under their SEA, and may well also agree to repatriate them at no cost to the seafarer. Given that what constitutes extenuating personal reasons or other justified reasons may vary between shipowners it is suggested that this is something that might usefully be made clearer in the seafarer’s SEA.

- 3.3 The MLC Minimum Requirements Regulations provide that entitlement to repatriation shall arise following the expiry of the maximum service period set out in a seafarer’s SEA (see Part 4, and Schedule 1 of those Regulations). The maximum service period is a matter for agreement between the shipowner and the seafarer, but may not exceed 365 days minus the 38 days statutory paid leave (see Merchant Shipping Notice MSN 1842(M)). Currently the maximum period of service permitted before a seafarer is entitled to repatriation in order to take leave is therefore 327 days per annum but this should not be regarded as the standard period of service and shipowners are encouraged to, wherever possible, repatriate seafarers for leave at lesser intervals.
- 3.4 Time spent awaiting repatriation, and repatriation travel time, should not be deducted from paid leave accrued by the seafarer except where any delay in repatriation, or breaks in travel, are at the request of the seafarer.

#### **4. Place for return**

- 4.1 Where there is a duty on a shipowner to repatriate a seafarer under the MLC Minimum Requirements Regulations, a seafarer is entitled to repatriation to the destination provided for in or under their SEA, or such other place as may subsequently be agreed with the shipowner.
- 4.2 If the SEA does not identify a destination, and there has been no agreement between the seafarer and the shipowner as to the destination, the seafarer is entitled to repatriation to the seafarer’s choice of the following destinations—
  - the place at which the seafarer entered into the SEA; or
  - the seafarer’s country of residence.

#### **5 Scope of duty to repatriate**

- 5.1 The duty of a shipowner to repatriate a seafarer at the shipowner’s expense ceases to apply once the seafarer has been repatriated to the place specified in the seafarer’s SEA or to such other place as may have been agreed between the shipowner and the seafarer. In addition the duty to repatriate ceases in the following circumstances:-
  - (a) where the seafarer fails without reasonable cause to comply with any reasonable arrangements made by the shipowner for their repatriation



(b) where, despite reasonable efforts made by the shipowner to contact them, the whereabouts of a seafarer remain unknown

(c) where a seafarer informs the shipowner in writing that they do not wish to be repatriated by the shipowner.

(d) where the seafarer has died.

5.2 Where, in accordance with paragraph 5.1(d) the obligation of a shipowner to repatriate a seafarer at the shipowner's expense has ceased as a result of the death of the seafarer, Part 10 of the MLC Minimum Requirements Regulations requires a shipowner to meet any expenses reasonably incurred in connection with the seafarer's burial or cremation. Should the shipowner fail to meet such expenses the estate of the seafarer may recover any sums due from the shipowner as a civil debt.

5.3 A shipowner is only responsible for bearing the cost of the burial/cremation of a seafarer who dies on board or ashore during the period of engagement. However there is nothing to prevent a shipowner agreeing with the next of kin to return the seafarer's body to them for burial/cremation where it is feasible to do so and it is acceptable to the relevant authorities in the countries concerned for such return to take place. Payment of any costs incurred in such return shall however be a matter for agreement between the shipowner and the next of kin.

## **6. Mode of transport**

6.1 The MLC Minimum Requirements Regulations provide that the mode of transport for the repatriation of a seafarer employed on a UK ship must be specified in the seafarer's SEA. The Regulations do not however specify what mode of transport is to be used. The choice of the mode of transport is therefore primarily a matter for agreement between the shipowner and the seafarer. While the normal mode of transport for repatriation should be by air, there is nothing to prevent a seafarer being repatriated by other means e.g. by road, rail or sea where air travel is not readily available or road, rail or sea travel is more expeditious or is necessary for some or all of the journey. Equally the circumstances justifying repatriation may render air travel inadvisable or inappropriate e.g. a seafarer having suffered an injury or illness might not be medically fit to undertake air travel.

## **7. Duty pending repatriation**

7.1 In addition to the actual repatriation cost, where a shipowner is under a duty to repatriate a seafarer he must also make such provision as is necessary for the seafarer's relief and maintenance both during and whilst awaiting repatriation.

7.2 The items of expense to be borne by the shipowner include:-

- (i) the provision of food and accommodation
- (ii) the provision of clothing
- (iii) the provision of toilet and other personal necessities
- (iv) surgical, medical, dental or optical treatment (including the repair or replacement of any appliance) for any condition requiring immediate care; and
- (v) in cases where the seafarer is not entitled to legal aid or legal aid is insufficient, reasonable costs for the defence of the seafarer in any criminal proceedings in



respect of any act or omission within the scope of his employment, being proceedings where the shipowner is not a party to the prosecution;

- (vi) sufficient money to meet any minor ancillary expenses necessarily incurred or likely to be incurred by the seaman for his relief and maintenance.

### 7.3 Other expenses to be borne by the shipowner

7.3.1 In addition to the costs of repatriation set out in the paragraph 7.2 above, the shipowner is responsible for the following:

- (a) costs incurred in bringing a shipwrecked seafarer ashore, and maintaining them until they are repatriated; and;
- (b) any other expenses which the shipowner is obliged to meet, as set out in the seafarer's SEA or any related Collective Bargaining Agreement or relevant legislation. (see Part 4 and Schedule 1 to the MLC Minimum Requirements Regulations);
- (c) the provision of medical treatment when necessary until the seafarer is medically fit to be repatriated.

### 7.4 Transportation of personal luggage

7.4.1 Whilst not specified in the MLC Minimum Requirements Regulations, MCA would recommend that shipowners consider bearing the cost of transporting a minimum of 30kg of the seafarer's personal luggage to the repatriation destination where this is not automatically provided for by the carrier transporting the seafarer.

## 8. **Prohibition on recovering costs from seafarer**

- 8.1 The shipowner is not permitted to require any seafarer employed on a UK ship to make an advance payment towards the cost of repatriation at the beginning of their employment.
- 8.2 The shipowner also cannot recover the cost of repatriation from any seafarer's wages or other entitlements except where the seafarer has been found to be in serious default of his obligations under their SEA (*see paragraph 8.3 below*) or has been guilty of serious misconduct such that dismissal from the ship is the appropriate penalty
- 8.3 Where a seafarer breaches their obligations under their SEA such that their employment is terminated on the grounds of serious misconduct, the shipowner may, where a provision to this effect is included in the seafarer's SEA, recover from the seafarer, by means of a deduction from the seafarer's wages, the full cost of repatriation, together with any relief and maintenance costs. However where such a provision is not included in the SEA, the shipowner may only recover damages in respect of repatriation, relief and maintenance costs by means of a civil claim.

## 9. **Recovery of cost of repatriation from a third party**

9.1 Nothing in the MLC Minimum Requirements Regulations is intended to prejudice any right of the shipowner to recover the cost of repatriation from any other party, other than the seafarer, under third party contractual arrangements. Costs may only be recovered from a seafarer who has been dismissed from the ship on a serious disciplinary basis.



## **10. Seafarer property**

- 10.1 Where a shipowner is under a duty to repatriate a seafarer on a UK ship, and property belonging to that seafarer has been left behind on that ship, the master must take charge of that property and enter a description of each item in the official log book and the master and the shipowner must ensure that reasonable care is taken of the property pending its delivery to the seafarer, or their next of kin (where the seafarer has died)
- 10.2 The master may at any time sell any part of the property which is of a perishable or deteriorating nature or destroy or otherwise dispose of any part of the property considered a potential risk to the health or safety of any person. Where any property is sold, the proceeds of any sale is the property of the seafarer and the master must ensure details of the sale are entered into the official log book as the proceeds of any sale are for the seafarer.. The master must also ensure that details of the destruction or disposal of any property is also entered into the official log book.
- 10.3 The shipowner must subsequently arrange for any property left behind by a seafarer, together with a record of the information required under paragraphs 10.1 and 10.2 above to be delivered to the seafarer or to the seafarer's next of kin as appropriate. This duty is complied with if the shipowner arranges for the delivery of the property etc. to be made to the last known address of the seafarer or the next of kin, as the case may be.
- 10.4 As was the case with the Merchant Shipping (Repatriation) Regulations 1979, provision is made for a shipowner to request, from the seafarer or next of kin as appropriate, reimbursement of the reasonable delivery costs incurred in returning a seafarer's property. It is however up to the shipowner to decide whether or not to request reimbursement in the light of the individual circumstances of each case.

## **11. Duty to carry documents**

- 11.1 Under the MLC Minimum Requirements Regulations every UK ship must carry and make available to seafarers working onboard, a copy of the provisions of those Regulations governing repatriation together with a copy of this MGN. Where the working language used on board the ship is not English and English is not understood by one or more of the seafarers on board, the shipowner is required to provide a copy or copies of the UK legislation and this MGN translated into such language or languages as are understood by the seafarers concerned to ensure that such information is available to them.

## **12. Financial security requirement**

- 12.1 Under the MLC Minimum Requirements Regulations, a shipowner must not allow a ship to operate at sea unless there is in force a contract of insurance or other security that is adequate to ensure that the shipowner will be able to meet any liabilities arising from the duty to make provision for the repatriation of seafarers.

## **13. Secretary of State functions in the event of shipowner default**

- 13.1 Should the shipowner of a UK ship fail to comply with the duty to repatriate a seafarer and/or to make provision for the seafarer's relief and maintenance (including food and lodging) whilst awaiting or during repatriation, the Secretary of State will make the necessary arrangements and recover the cost from the shipowner.





13.2 Where the shipowner of a non-UK ship fails to repatriate a seafarer and/or make provision for the seafarer's relief and maintenance (including food and lodging) whilst awaiting or during repatriation, responsibility will pass to the Flag State of the vessel. Should the Flag State in turn fail to repatriate a seafarer or provide for their relief and maintenance, either the State of which they are a national or the UK Secretary of State (where the vessel is in the UK) may make the necessary arrangements. Where it is the UK Secretary of State who makes the arrangements in such circumstances all costs incurred will be recovered from the Flag State who in turn will recover them from the shipowner.

#### **14. Young seafarers**

14.1 Whilst not required by the MLC Minimum Requirements Regulations shipowners may wish to consider giving young seafarers under the age of 18 the opportunity of being repatriated at no expense to themselves from the first suitable port of call when, having served for at least four months during their first foreign-going voyage, it has become apparent that they are unsuited to life at sea. Notification of any such repatriation, with the reasons therefore, should be provided to the manning agent, training provider or (where applicable) any national authority which issued documentation which enabled the young seafarer to take up seagoing employment.

#### **More Information**

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