



# MIN 632 (M) Amendment 4

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## COVID – 19 EXTENSION OF SEAFARER EMPLOYMENT AGREEMENTS

### Notice to all Shipowners, Masters, Manning Agents and Seafarers

*This notice should be read with the Merchant Shipping (Maritime Labour Convention) (Minimum Standards for Seafarers, etc) Regulations 2014 and replaces MIN 632(M) Amendment 3.  
This MIN expires 30<sup>th</sup> September 2021*

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#### Summary

- Under UK legislation implementing the Maritime Labour Convention, every seafarer on a UK ship is entitled to repatriation on the expiry of their seafarer employment agreement or after a maximum of 11 months of continuous service on board their ship. The requirements of the MLC apply at all times, and there is no provision which allows them to be suspended under any circumstances.
- Restrictions on crew changes that have been applied in some ports in response to the COVID-19 pandemic mean that many seafarers are having to remain on board beyond their contracted period.
- While recognising the exceptional obstacles in some jurisdictions to crew changes in the current situation, as a flag state which has ratified the MLC, the UK has legal obligations to protect the living and working conditions of seafarers on its ships.
- This notice therefore requires shipowners of UK ships to notify the MCA (via [mlc@mcga.gov.uk](mailto:mlc@mcga.gov.uk)) of any seafarers remaining on board beyond their contracted period.
- Where seafarers have been on board for 11 months or longer, the MCA will only consider further extensions in exceptional circumstances and if satisfied that any health, safety and wellbeing concerns are being addressed (see section 4).
- Extensions will be considered case by case, and will only be granted with the consent of the seafarers concerned.
- Where approved, extensions will be agreed only for the minimum amount of time necessary to reach a port where repatriation can be facilitated, or for thirty days at a time, unless the seafarer concerned has requested to remain on board for a longer period.
- This MIN takes account of the ILO "Information note on maritime labour issues and coronavirus (COVID-19)"<sup>1</sup> and other related ILO and IMO publications on the issue.

Amendment 4 adds guidance to shipowners and seafarers regarding shore leave in section 6.4.

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<sup>1</sup> [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/briefingnote/wcms\\_741024.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/briefingnote/wcms_741024.pdf)



## 1. Introduction

1.1 Since the MCA first issued MIN 632 (M+F) in June 2020, progress has been made on agreeing international protocols to facilitate crew changes and ensure the welfare of seafarers in this difficult situation. The *Industry Recommended Framework of Protocols for Ensuring Safe Ship Crew Changes and Travel during the Coronavirus (Covid-19) Pandemic* have been published by the IMO as MSC.1/Circ 1636 and are available at the following link: <https://www.imo.org/en/MediaCentre/HotTopics/Pages/Coronavirus.aspx>

1.2 However, the situation remains uncertain, with some port restrictions re-instated in response to a resurgence in outbreaks and the identification of new variants of the COVID-19 virus. Problems are continuing in many areas and many crew members have been working on board for significantly longer than originally contracted for. This raises serious concerns about seafarer wellbeing and the risk of fatigue affecting safety on board.

1.3 Seafarers have a right to be repatriated –

- (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.

1.4 “shipowner” in this notice is used as defined in UK legislation implementing the Maritime Labour Convention, 2006:

“shipowner” means –

- (a) in relation to a ship which has a valid Maritime Labour Certificate, the person identified as the shipowner on that Certificate;
- (b) in relation to any other ship, the owner of the ship or, if different, any other organisation or person such as the manager, or the bareboat charterer, that has assumed the responsibility for the operation of the ship from the owner.

## 2. Planning for crew changes

2.1 While the UK will continue to work for key worker status for seafarers globally and for universal recognition of international protocols for crew changes, it now seems likely that national and local measures to combat the COVID-19 virus will continue to affect transit and travel for many months, often at short notice.

2.2 For seafarers now joining ships, shipowners and manning agents should give consideration to:

- (a) Length of contracts, so that if there are last minute obstacles to repatriation, seafarers do not exceed the permitted maximum time on board;
- (b) Selection of planned locations for crew changes;
- (c) Where possible, negotiation of flexibility as regards routes and operating patterns to ensure timely crew changes.

2.3 The Officers of the ILO’s Special Tripartite Committee on the MLC have advised that no charter contracts should contain clauses preventing necessary crew changes from being conducted, as such clauses could negatively affect the safe operation of maritime trade and the protection of the well-being and contractual rights of seafarers, as well as putting shipowners in a position of non-compliance with the MLC, if necessary crew changes are not permitted by the charter. [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/statement/wcms\\_764724.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/statement/wcms_764724.pdf)



### **3. Seafarers who are onboard UK vessels longer than originally contracted for reasons connected with the COVID-19 virus.**

3.1 Extension of seafarers' employment agreements (SEAs) should only be used as a last resort and the shipowner should make every effort to repatriate the crew in the first available port once the SEA has expired. Any delay to repatriation or deferral of their annual leave (except with consent) should only occur where it is impossible to safely repatriate seafarers because of circumstances outside the control of shipowners. Seafarers must be repatriated as soon as those circumstances are no longer present.

3.2 However, it is recognised that there are still situations where crew changes are not possible for a variety of reasons. In all such cases, the shipowner should consult the seafarers and obtain their informed consent as regards any further extension of their SEA and agree mitigating measures to avoid fatigue and to support seafarer well-being. Seafarers have the right, and should be enabled if they wish, to contact their trade union for advice. A SEA, or any extension to it must be agreed by the seafarer in conditions where they have an opportunity to review and seek advice on its terms and conditions and freely accept them before signing. In situations where neither the shipowner nor the seafarer is able to exercise free choice as regards repatriation, seafarers should nevertheless be fully informed as to the situation and given the opportunity to ask questions and take advice.

3.3 Where SEAs have been or are to be extended because of restrictions due to the COVID-19 virus -

- (a) for more than 30 days longer than their original contract; or
  - (b) for more than 50% longer than the original contractual obligation,
- whichever is less, the shipowner must inform MCA.

Please email [MLC@MCGA.gov.uk](mailto:MLC@MCGA.gov.uk) stating clearly your shipowner name, ship name and the number and the rank/role of seafarers affected. Please also indicate the date of expiry of the earliest SEA(s) due to expire.

3.4 Upon receiving notification that SEA extension are required, the MCA will provide a blank copy of our 'SEA Extension Spreadsheet', this will include all the information we need for each SEA extension application. This information is required for us to ensure we are aware how long seafarers have been on board, and where, how and when they are being repatriated.

3.5 The MCA will also require:

- Information around any arrangements being explored / made for future repatriation, including the health and safety of seafarers whilst in transit
- Provision for monitoring for signs of crew fatigue and measures taken to address it
- Measures to support wellbeing, including arrangements for contacting family and friends at home;
- Copies of written consent from seafarers to the extension of time on board as a result of COVID-19 restrictions, and confirmation that seafarers are being kept informed of the reasons for the delay in repatriation and of future plans.

3.6 Agreement should not be considered as automatic. The MCA cannot make a decision on extension of contracts without the minimum information requested. Personal data is not required – approvals will refer to seafarers by rank/role. If it is considered necessary to identify individuals, other than by their rank/role, it is suggested that the individual's number from the list of crew is used.

3.7 Where contracts are extended by a significant period this may lead to safety and wellbeing concerns. The MCA may intervene in these circumstances.



3.8 As a matter of policy, the MCA will not agree extensions of more than 30 days at a time. Any further extension that is required will need further notification to MCA around 7 days before the amended expiry date, accompanied by updated information regarding arrangements for repatriation.

#### **4. Seafarers who have been onboard UK vessels for the maximum period of 11 months for reasons connected with the COVID-19 virus.**

4.1 Every seafarer on a UK ship is entitled to repatriation after a maximum of 11 months on board (see MGN 479(M)). For seafarers whose time on board exceeds or is likely to exceed 11 months, where it has not been possible to arrange repatriation due to COVID-19 restrictions, the MCA will consider case by case whether a further extension to the SEA can be approved.

4.2 The MCA will only grant approval for extension beyond 12 months -

- a) case by case, with the written consent of the seafarers concerned; and
- b) where the shipowner's plans for repatriation or supply of replacement crew have been frustrated and alternative arrangements are in place within a reasonable timeframe (around 30 days); or
- c) where the seafarers affected have explicitly requested in writing to stay on board and given reasonable justification (for example to avoid travelling through countries with high infection rates).

4.3 It is very likely that travel disruption and late changes to travel restrictions will continue for some months to come, due to local fluctuations in infection rates or the identification of new variants of the COVID-19 virus. Shipowners are therefore strongly encouraged to plan on the basis that seafarers will be repatriated before they reach the maximum 11 month period on board, so that if arrangements are frustrated, there is still time to arrange a crew change at an alternative time and place before the seafarer reaches the maximum 11 months on board. The MCA will not approve extensions where no plans have been made to repatriate seafarers until they reach the statutory maximum period on board.

4.4 The MCA will use the information provided by shipowners on numbers and locations of crew, to work with the social partners and government colleagues to seek to address obstacles to crew changes and facilitate repatriation.

#### **5. Extension of SEAs**

5.1 The shipowner should ensure that seafarers are kept informed about the reasons why they are required to stay on board and about any arrangements for their repatriation. A valid SEA must remain in force until repatriation. If necessary, they should be offered an extension or a new SEA issued, on the same terms and conditions.

5.2 The situation should be kept under review and the shipowner needs to ensure that the seafarers are allowed to return home at the first available opportunity even if this is part way through an extension to their SEA. Evidence should be retained by both the seafarer and the shipowner including an entry in the Official Log Book clearly demonstrating the reason why the seafarer was asked to extend their contract.

#### **6. Safety and welfare measures to consider**

6.1 Where seafarers unavoidably have to remain on board for longer than their contracted period of service, shipowners and seafarers should consider the following:

- Extended periods working on board ship without leave are likely to give rise to greater risk of fatigue, and a dip in morale particularly if anticipated leave is deferred at short notice.



- MGN 505 (M) includes guidance on recognising the signs of fatigue, and the master and all seafarers should monitor and be alert for such signs and report any concerns to the master or the safety committee.
- Consideration should be given to rearranging work patterns to allow for additional rest periods/shore leave where possible, and to providing increased connectivity to allow seafarers to contact home and access entertainment on board.
- The seafarer's informed consent should be obtained in any case where the shipowner is advising/requesting the seafarer to stay on board, where repatriation might be possible.
- Where deferred repatriation/leave is unavoidable, seafarers and/or seafarers' organisations should be kept informed of the reasons and consulted on possible impacts and mitigating measures. A record of such discussions and outcomes should be kept and be available to the seafarer.
- If repatriation is not possible through scheduled ports of call, consideration should be given to diverting the ship to a port where it is possible.
- Shipowners should consider whether it is safe to continue operating where there are signs of fatigue or a significant or sustained deterioration in the wellbeing of crew members.

6.2 **Quarantine:** The ILO has advised that quarantine costs prior to repatriation are considered part of repatriation costs and should be met by the shipowner.

[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/normes/documents/genericdocument/wcms\\_741024.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/normes/documents/genericdocument/wcms_741024.pdf)

Where seafarers are required to undertake managed quarantine on arrival in their home country, this may fall outside the scope of the shipowner's liability for repatriation (if their repatriation destination is given as the country of residence). However, under UK legislation in addition to the prohibition on recovering the costs of repatriation from seafarers, there is also a prohibition on recovering the costs of relief and maintenance, and the MCA considers that costs arising from managed quarantine, even if not forming part of the seafarer's repatriation, fall into that category.

6.3 Seafarers are advised, before signing a new SEA with an indeterminate repatriation destination in the country of residence, to consider seeking clarification from the shipowner on their policy on costs associated with quarantine at the point of repatriation such that they can make an informed decision on whether to sign the SEA

6.4 Seafarers are entitled to shore leave "to benefit their health and wellbeing and consistent with the operational requirements of their positions". National restrictions may not allow shore leave, and controls on crew changes in some ports require confirmation that seafarers have not been ashore for at least 14 days. However, shipowners should wherever possible without breaching such requirements permit seafarers to have shore leave. While it is appropriate to base decisions on shore leave on a risk assessment, this should be specific to the risk to safety in the context of the ship's operations. Shore leave should only be withheld or restricted where that is proportionate to the risk, taking into account other measures which might be taken to reduce the risk of infection for seafarers going ashore. Recognising risk cannot be eliminated, a balance needs to be struck between the detriment to seafarers' wellbeing of withholding or restricting shore leave and the risk of infection. Shipowners should always consult with crews and/or the safety committee on the measures proposed in accordance with health and safety regulations and provide information on the risk assessment and the safety measures agreed



## 7. Carry over of annual leave

7.1 Many seafarers have contractual leave entitlements in excess of the statutory leave entitlement. This guidance applies to statutory paid leave. Arrangements for taking leave and the time when leave is to be taken are matters for agreement between shipowners and seafarers.

7.2 As a result of the current pandemic, in some cases seafarers may be unable to take their statutory leave within the leave year. In such cases, the following should be noted:

- Any right to annual leave which is deferred should not be lost, but the opportunity provided to take it (subject to any conditions in the seafarer's SEA) as soon as practicable, reviewing the situation at regular short intervals.
- If that is not possible before the termination of the seafarer's SEA, and so the seafarer receives pay in lieu of untaken leave they have accrued, it is the responsibility of seafarers to take sufficient leave before embarking on a new contract to ensure that they are properly rested and fit for duty when they start work.

### More Information

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