

SECTION 7

TITLE 2.2 WAGES

Introduction

8.1 This section seeks your views on the Maritime and Coastguard Agency's proposals for giving full effect to Regulation 2.2 and Standard A2.2 of the ILO Maritime Labour Convention 2006 which give minimum standards for payment of wages.

The current provisions relating to seafarer's wages are set out in:-

- (a) the Merchant Shipping (Maintenance of Seamen's Dependants) Regulations 1972 (SI 1972/1635) (as amended);
- (b) the Merchant Shipping (Seamen's Allotments) Regulations 1972 (SI 1972/1698) (the "Allotment Regulations") ;
- (c) the Merchant Shipping (Seamen's Wages) (Contributions) Regulations 1972 (SI 1972/1699); and,
- (d) the Merchant Shipping (Seamen's Wages and Accounts) Regulations 1972 (SI 1972/1700) (as amended) (the "Wages and Accounts Regulations") .

However only items (b) and (d) above are directly relevant to implementation of the Maritime Labour Convention provisions relating to wages.

8.2 The proposed Merchant Shipping (Maritime Labour Convention) (Wages) Regulations 20xx (the "Wages Regulations 20XX) would amend the Allotment Regulations and the Wages & Accounts Regulations so that, in combination with the new provisions contained in the proposed Regulations and other existing legislation, the requirements of Title 2.2 are fully implemented.

N.B. MCA is currently considering the responses from earlier consultations with regard to the definitions of "shipowner", "seafarer" and "sea-going ships". Those definitions are repeated unchanged in the draft Wages Regulations 20XX, YOU DO NOT NEED TO REPEAT YOUR COMMENTS - all regulations will be updated as necessary in line with the agreed definitions in due course.

Application

8.3 The current Wages and Accounts Regulations only apply to seafarers employed under a crew agreement on UK sea-going merchant ships and other vessels, apart from fishing vessels which are subject to their own Wage Regulations . These current Regulations are also not applicable to seafarers serving on sea-going vessels exempted from the requirement to have a crew agreement. Once amended by regulation 7 of the proposed Regulations, however, the references to crew agreements will be superseded by references to seafarer employment agreements, and there will be no exemptions from the requirement for each seafarer, including masters, on a UK vessel, other than a fishing vessel to have such an agreement. Seafarers serving on fishing vessels will remain covered by the existing fishing vessel regulations.

8.4 The current Allotment Regulations apply to seafarers employed on both merchant ships and fishing vessels other than those serving on vessels which are exempted from the requirement to have a crew agreement. This will continue. However, the additional provisions contained in the proposed Regulations will apply only to sea-going merchant ships.

8.5 The standalone provisions in the proposed Regulations apply to seafarers on sea-going merchant ships.

8.6 Whilst the UK is not applying the MLC itself to ships operating no more than 60 miles from a safe haven in the United Kingdom, the changes introduced by these Regulations are not considered too onerous for shipowners as it is understood they represent normal practice on most ships, and so in the interests of consistency and to avoid confusion for both shipowners and seafarers, we propose that these regulations should apply to all merchant ships, not explicitly excluded by regulation 8(4), regardless of where they operate.

8.7 *Consultees are invited to comment on any elements of these proposed regulations which would not be appropriate where they apply to vessels on domestic voyages, with evidence of any unreasonable costs or burdens.*

Summary of the Provisions

8.6. Regulation 2.2 and Standard A2.2 of the Maritime Labour Convention 2006 set down revised requirements for the payment of wages to seafarers on sea-going ships and Guideline B2.2 provides further guidance on these requirements. In the main these revised requirements are already covered by existing legislation. There are however 4 areas where changes will be required to existing legislation in order to give effect to the revised MLC requirements. These are the requirements that:-

- (a) payments of wages due to seafarers working on ships are to be made at no greater than monthly intervals.

Except where monthly payments are specified in a crew agreement, UK legislation in this area currently only provides that seafarers are only entitled to payment upon discharge from the ship, irrespective of how long they have been serving on board. Whilst it is understood that many seafarers are already paid monthly, regulation 9 and paragraph 2 of Part 2 of Schedule 1 of the proposed Merchant Shipping (Maritime Labour Convention) (Seafarer Employment Agreement) Regulations 20xx will require that every seafarer employed on a UK registered sea-going ship is to be paid at no greater than monthly intervals

- (b) seafarers are to be given a monthly account of the payments due and the amounts paid, including wages, additional payments and the rate of exchange used where payment has been made in a currency or at a rate different from the one agreed to.

Currently UK legislation in this area only provides that seafarers are required to be provided with an account of wages not less than 24 hours before discharge from the ship. Here again this is irrespective of how long they have been serving on board. Whilst it is understood that seafarers who are already paid monthly will receive accounts of pay at the same interval, regulation 10(2)(a) of the proposed Merchant Shipping (Maritime

Labour Convention) (Wages) Regulations 20xx will require that every seafarer employed on a UK registered sea-going ship is to be provided with an account of wages at no greater than monthly intervals

- (c) Regulation 10(2)(b) provides that an account of payments due etc, as provided for in paragraph (b) above shall also be provided to a seafarer [at the end of their period of employment] [within one month of the termination of their employment under the Seafarer Employment Agreement]

Currently UK legislation only provides for a final account of wages to be provided to a seafarer within one month of the termination of his employment under a crew agreement where he is entitled under that crew agreement to be paid his wages and receive his account of wages at not less than monthly intervals. However regulation 10(2)(b) of the proposed Merchant Shipping (Maritime Labour Convention) (Wages) Regulations 20xx will require that every seafarer employed on a UK registered sea-going ship is to be provided with an account of wages in such circumstances and at such specified interval..

- (d) seafarers are to be provided with an allotment service permitting them to transmit all or part of their earnings to their families or dependants or legal beneficiaries. Such allotments to be remitted in due time and directly to the person or persons nominated by the seafarers.

Currently a seafarer is permitted to allot part of their earnings. However under Regulation 3(1) of the Allotment Regulations, except with the agreement of the seafarer's employer or the master of the ship, a seafarer may not-

- (a) allot more than half of his wages; or*
- (b) allot that part of his wages to more than 2 persons.*

No such restrictions are contemplated in the Maritime Labour Convention 2006, and therefore the MCA considers that it is necessary to remove these restrictions so as to fully implement the MLC.

Additionally the current Regulations do not contain any requirement that the allotment(s) must be remitted directly to the person(s) nominated by the seafarer.

Regulation 6 of the proposed Merchant Shipping (Maritime Labour Convention) (Wages) Regulations 20xx will, by amending the current Allotment Regulations, remove the limit on the amount of wages that can be allotted and will require that the allotment(s) must be remitted directly to the person(s) nominated by the seafarer.

- (e) any charge for the allotment service are to be reasonable in amount, and the rate of currency exchange, unless otherwise provided, shall, in accordance with national laws or regulations, be at the prevailing market rate or the official published rate and not unfavourable to the seafarer.

Currently this is not covered by legislation but regulation 6(4) of the proposed Merchant Shipping (Maritime Labour Convention) (Wages)

Regulations 20xx will insert such a provision into the current Allotment Regulations.

- 8.7 In addition, section 33 of the Merchant Shipping Act 1995 would be revoked. This section provides for complaints about payment of wages to be investigated by a marine superintendent when referred to him by both the seafarer and the employer. This revocation is not specifically required by the MLC, but the MCA consider that it will be superseded by the provisions governing the investigation of complaints about wages in the proposed Merchant Shipping (Maritime Labour Convention)(Survey and Certification) Regulations which implement Title 5 of the MLC – [see separate consultation package on Title 5.]
- 8.8. The new provisions referred to above are set out in the attached draft Merchant Shipping (Maritime Labour Convention) (Wages) Regulations 20XX. A supporting draft Marine Guidance Note is also included in the package of documents for consultation which provides guidance on the requirements of the new Regulations. It is, however, not an authoritative interpretation of the Regulations as such an interpretation can only be given by the courts once the Regulations have been made.
- 8.9. Copies of the Merchant Shipping Act 1995 and the Merchant Shipping Regulations, which will be amended by the proposed Regulations, are not part of the consultation package but can be found on the legislation.gov.uk website using the following web addresses:-

Merchant Shipping Act 1995

<http://www.legislation.gov.uk/ukpga/1995/21/contents>

Merchant Shipping (Seaman's Wages and Accounts) Regulations 1972

<http://www.legislation.gov.uk/uksi/1972/1700/contents/made>

Merchant Shipping (Seaman's Allotments) Regulations 1972

<http://www.legislation.gov.uk/uksi/1972/1698/contents/made>
as amended by

- (i) The Merchant Shipping (Seamen's Wages and Accounts) (Amendment) Regulation 1978 (SI 1978/1757
<http://www.legislation.gov.uk/uksi/1978/1757/contents/made>
- (ii) The Merchant Shipping (Seaman's Wages and Accounts) (Amendment) Regulations 1985 (SI 1985/340)
<http://www.legislation.gov.uk/uksi/1985/340/contents/made>
- (iii) The Merchant Shipping (Seamen's Wages and Accounts) (Amendment) Regulations 1994 (SI 1994/791)
<http://www.legislation.gov.uk/uksi/1994/791/contents/made>
- (iv) The Merchant Shipping (Seamen's Wages and Accounts) (Amendment) Regulations 1999 (SI 1999/3360)
<http://www.legislation.gov.uk/uksi/1999/3360/contents/made>

INVITATION TO COMMENT

- 8.10 Your views on the consultation package are invited. In particular:

Draft Regulations

- Do you consider that, as drafted, the proposed Merchant Shipping (Wages) Regulations 20XX adequately cover the requirements of Regulation 2.2 and Standard A2.2 and, where appropriate, Guideline B2.2 of the Maritime Labour Convention? If not, it would be appreciated if you would indicate where and why you consider the requirements are not appropriately covered and how any perceived failure can be addressed.
- Some sets of Regulations, which give effect to other provisions of the Maritime Labour Convention are disapplied to vessels not engaged in international voyages; do not operate from a port outside the UK, and operate only within 60 miles of a “safe haven” which in this context means a harbour or shelter of any kind which affords entry to the vessel, subject to prudence in the weather conditions prevailing, and protection from the force of weather. In the case of the proposed Wages Regulations it is not however proposed to include such a disapplication as the existing Regulations do not contain such an exclusion and no reason is therefore seen for including it in the proposed Regulations.
Do you envisage any problems with the proposed new Wages Regulations extending into the 60 mile disapplication area given that should they not be disapplied the existing 1972 Wages Regulations will remain in force.
- Do you envisage any problems with the introduction of a requirement that an account of payments due etc, as provided for in paragraph (b) above shall be provided to seafarers
 - (a) at the end of their period of employment or
 - (b) within one month of the termination of their employment under the Seafarer Employment Agreement
- Section 40 of the Merchant Shipping Act 1995, currently permits a shipowner to retain, from the net wages due to a seafarer, such amount as shall have been notified to the shipowner by means of a notice issued by a responsible authority in respect of the maintenance of dependants of the seafarer. In this context “responsible authority” means the Secretary of State or other authority, including a local authority, responsible for the maintenance of the seafarer’s dependants and “dependants” means the seafarer’s spouse and any person under the age of 19 for whom the seafarer is liable. **As MCA has no involvement with such deductions, consultees comments would be appreciated regarding whether or not such retentions are still undertaken at the request of “responsible authorities”.**

Draft Marine Guidance Note

- Do you consider that the draft Marine Guidance Note provides adequate and appropriate information/guidance on the requirements of the proposed Wages Regulations? Should you consider that the MGN is inadequate in any way, it would be appreciated if you could please provide specific suggestions and details of how it might be amended, to make it more useful together with any requirement for additional or different information/guidance you consider would be helpful in making the MGN more informative and user friendly.

Draft Impact Assessment

- In producing the Impact Assessment supporting this consultation we have sought to identify any possible costs likely to arise from the introduction of the proposed Wages Regulations. However as payment of wages is generally left to negotiations between employers and their employees/employee representatives, MCA is not in a position to identify whether or not the proposals are likely to result in additional costs for either shipowners or seafarers and if so the order of magnitude of such costs. Our initial thoughts are that there are unlikely to be any significant changes to current costs or benefits, since the proposals reflect current good practice. We would however welcome confirmation that this is indeed the case. Alternatively, should you consider that costs are likely to rise or decrease significantly, we would welcome your comments together with any costings that are available.
- Finally do you foresee any potential benefits to you as a result of the introduction of the proposed Wages Regulations? If any benefits are envisaged it would be appreciated if these could be identified and costed in order that more detailed information can be included in the final Impact Assessment.