

SECTION 6

TITLE 2.1 SEAFARER EMPLOYMENT AGREEMENTS

7.1 This section seeks your views on the Maritime and Coastguard Agency's proposals for new Regulations to give effect to the provisions of Regulation 2.1 and Standard A2.1 of the International Labour Organization (ILO) Maritime Labour Convention 2006 (the "MLC") which relates to seafarer employment agreements for seafarers on UK sea-going ships.

7.2 Regulation 2.1 and Standard A2.1 of the MLC introduce a new requirement for individual Seafarer Employment Agreements ("SEAs") for every seafarer who is employed or engaged or who works in any capacity on board any sea-going ship covered by the MLC 2006. The aim is ensure that each seafarer has fair terms and conditions of employment. Regulation 2.1, and Standard A2.1 are both mandatory however the associated B2.1.1 is only advisory, but member states are obliged to consider its requirements when implementing the Regulations and Standards.

N.B. MCA is 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 SEA Regulations, YOU DO NOT NEED TO REPEAT YOUR COMMENTS - all regulations will be updated as necessary in line with the agreed definitions in due course.

7.3 The proposals in this and the attached documents were developed by a specialised sub-group of the Tripartite Working Group, established to advise the MCA on implementation of the MLC.

Main provisions

7.4 Regulation 2.1 and Standard A2.1 of the MLC introduce new requirements relating to a seafarer's terms and conditions of employment by requiring that each seafarer employed on a sea-going ship to be provided with an individual Seafarer Employment Agreement signed by both the seafarer and the shipowner (or their representative) which provides the seafarer with decent living and working conditions whilst at sea. by setting out details of his employment terms and conditions in a form akin to a contract of employment. The shipowner should also be in possession of a signed copy of the SEA. SEAs will replace the crew agreements currently in use which applies collectively to all seafarers employed on a ship and are much more limited in the information they contain.

7.5 A copy of the SEA for each seafarer is required to be carried on board the vessel, on which the seafarer to whom it relates is employed, for production to any inspector who asks to see it. Where an SEA is not in English an English translation must be carried on the vessel as well as English translations of any other document(s) referred to in the SEA if these

also are not in English. However it is not necessary for a translation of each individual SEA to be carried where multiple SEAs are in the same format. In such cases a single translation covering those SEAs will be acceptable.

NOTE - A consequential effect of the replacement of Crew Agreements by SEAs will be that any exemptions, from the requirement to have a crew agreement in place on a specified ship, will cease to apply from the date on which the proposed Regulations come into force and SEAs will be required for all seafarers on those vessels by that date.

Current legislation

7.6 The current Regulations applicable to seafarer's terms of employment are regulations 3 to 10 of the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991 (the "Crew Agreement Regulations"). For all sea-going ships covered by the MLC regulations 3-10 of the Crew Agreement Regulations will however be replaced by the proposed Merchant Shipping (Maritime Labour Convention) (Seafarer Employment Agreement) Regulations 20xx (the "SEA Regulations"). The remaining provisions of the Crew Agreement Regulations i.e. those covering crew lists and discharge of crew will in the main remain in force.

7.7 Seafarers not subject to Regulation 2.1 and Standard A2.1 of the ILO Maritime Labour Convention 2006 will however remain subject to all provisions of the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991 with which they are currently required to comply.

7.8 A copy of the draft Merchant Shipping (Maritime Labour Convention) (Seafarer Employment Agreement) Regulations 20xx is attached together with a supporting draft Marine Guidance Note (MGN) which will be introduced to provide guidance on the requirements of the SEA Regulations.

Application

7.9 Under the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991, a single crew agreement is required which covers all members of crew. Under the proposed SEA Regulations crew agreements will be replaced by individual Seafarer Employment Agreements for every person who is employed, engaged or works on board a ship to which the MLC applies. Where a seafarer is not an employee they will be required to have evidence of contractual or similar arrangements providing them with decent working and living conditions on board the ship on which they are serving.

7.10 Vessels not currently subject to the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations, or which are specifically excluded from the MLC, will not be subject to the SEA Regulations. This covers pleasure vessels, fishing vessels; ships of traditional build, and warships or naval auxiliaries. However only pleasure vessels which

are not used for commercial purposes at any time, will fall outside the scope of the MLC and thus not be subject to the SEA Regulations. Pleasure vessels which are used commercially at any time will be subject to the SEA Regulations

7.11 Currently pleasure vessels that are not used commercially fall under the requirements of the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991 and are required to have a crew agreement if they undertake voyages, other than "coastal voyages" and more than 4 members of their crew receive wages for their employment. MCA are however considering whether the exemption from the requirement to have a crew agreement should be extended to all pleasure vessels not used commercially irrespective of the voyage(s) to be undertaken. In this context it should be noted that "coastal voyage" means a voyage between places in the British Islands (including the Republic of Ireland) or from and returning to such a place during which, in either case, no call is made at any place outside those islands.

7.12 As an alternative to the complete exemption all non-commercial pleasure vessels from the requirement to have a crew agreement, MCA are considering whether it might be appropriate to exempt such vessels from the requirement to have a crew agreement if they have introduced SEAs on a voluntary basis.

Consultee's comments on the proposals in paragraphs 7.12 and 7.13 would be welcomed.

Recording of sea service

7.13 Under Standard A2.1.1(e) seafarers are required to be given a document containing a record of their employment on board a ship. For service on UK ships this requirement will be met by the making of an appropriate entry in the seafarer's discharge book, or similar document, or the issue of a Certificate of Discharge where a discharge book is not available at the time of discharge.

Summary of the Provisions

Employed seafarers

7.14 The way we are proposing to implement the changes identified in paragraph 7.3 is by means of the introduction of the proposed SEA Regulations which will impose a duty on all shipowners with UK ships to enter into a written Seafarer Employment Agreement (an "SEA") with every seafarer employed on those ships. Such SEA will be required to contain the information set out in Parts 1 (Provisions to be included in all agreements) and 2 (Provisions to be included where seafarer is an employee) of Schedule 1 to the SEA Regulations. Further requirements are contained in the main body of those Regulations.

Non-employed seafarers

7.15 Where any seafarers are not employees, Standard A2.1.1(a) requires that such seafarers have evidence of contractual or similar arrangements providing them with decent working and living conditions on board the ship on which are working. The form such evidence of contractual or similar arrangements shall take is not set out in the MLC. MCA is therefore proposing that seafarers who are not employees should also be covered by an SEA albeit in a different form to that required for employed seafarers. Such an SEA for non-employed seafarers would be required to contain the information set out in Parts 1 (Provisions to be included in all agreements) and 3 (Provisions to be included where seafarer is not an employee) of Schedule 1 to the SEA Regulations.

Consultee's views are invited on whether the SEA Regulations give full effect to Regulation 2.1 and Standard A2.1 of the MLC and on the proposal for a separate SEA for non-employed seafarers. Information regarding the use of "non-employed seafarers" on UK ships would also be welcome including the extent to which "non-employed seafarers" are used on ships, the capacities in which they work would be welcome and the terms and conditions currently applicable to them.

Additional items to be included in SEAs

7.16 Whilst Parts 1 and 2 of Schedule 1 to the SEA in the main reflect the requirements of the MLC as regards items to be included in an SEA, items 3 (hours of work), 5 (Pension benefits) and 6 (Grievance and Disciplinary Procedures) of Part 2 of Schedule 1 to the proposed SEA Regulations have, in line with Article III of the MLC, been included at the request of the UK's social partners in order to bring SEAs into line with employment agreements for UK workers ashore. However the information to be included in the SEA need only advise the seafarer on where this information can be obtained See sections 6.4 to 6.7 of the Impact Assessment for further details.

Consultee's views are invited on whether any problems are foreseen with the inclusion of the additional items requested by the social partners? If so please provide details.

Production of SEAs and Lists of Crew etc.

7.17 With the move from Crew Agreements to SEAs, MCA is proposing to discontinue the production of crew lists etc and will also not be producing blank SEAs for use by shipowners. Responsibility for the production of SEAs, crew lists etc will in future become the responsibility of shipowners and such documentation should follow the format set out in the draft Merchant Shipping Notice. It will also be the shipowner's responsibility to ensure that any SEA which contains information in a different form to the Marine Guidance Note or which contains additional information, complies fully with relevant UK legislation as MCA will no longer be considering and approving non-standard

agreements. Compliance will be assured however by inspection of SEAs during MLC surveys and other inspections.

Do you foresee any problem with the transfer of responsibility for the production of SEA/Crew List documentation, and the transfer of responsibility for ensuring compliance of SEA with UK law, to shipowners? If so please provide details.

LEVYING OF FINES ON SEAFARERS FOR DISCIPLINARY OFFENCES

7.18 Prior to the coming into force of the Merchant Shipping Act 1979¹, masters of UK ships, other than those subject to National Maritime Board Agreements, were permitted to levy fines on seafarers found guilty of disciplinary offences. Such fines were however required to be paid to the Board of Trade which, at the time, was responsible for maritime matters

7.19 With the coming into force of the Act, the power for masters to levy fines was removed and disciplinary matters were required to be dealt with in accordance with the provisions of the “Code of Conduct for the Merchant Navy” which provided for dismissal from the ship to be the most serious punishment for the most serious disciplinary offences. Lesser punishments (warnings etc) were provided for in lesser cases of indiscipline.

7.20 Guideline B2.2.2.4(j) of the MLC provides that monetary fines against seafarers, other than those authorised by national laws or regulations, collective agreements or other measures should be prohibited. The provisions referred to in paragraph 7.18 above may not be sufficient to prevent all fines being levied i.e. it is possible they could be imposed, on a contractual basis, if included in a collective agreement, forming part of an SEA or included in the SEA itself.

7.21 Views are invited on whether additional measures should be included in the draft SEA Regulations to implement B2.2.2.4(j). Consultees are asked to advise MCA if they are aware of any instances where fines are levied on seafarers on UK ships and if so, whether it is envisaged that a prohibition on fines for disciplinary offences would have any adverse effects on discipline.

7.22 In the event that consultees consider that a ban on fines should be included in the SEA Regulations, comments would be appreciated on whether such a prohibition should:-

- (a) ban all disciplinary fines whether included in collective agreements, SEAs or other documents irrespective of whether or not they have been agreed and signed by the seafarer; or,

¹ (Commencement No.9) Order 1985 (the “Commencement Order”), which repealed sections 34-38 of the Merchant Shipping Act 1970 and related legislation, including the Merchant Shipping (Disciplinary Offences) Regulations 1972.

- (b) ban all disciplinary fines other than those included in collective agreements, SEAs or other documents which have been agreed and signed by the seafarer

Alternatively, is it considered that it is only necessary, in the light of the provisions referred to in paragraph 7.18, to set out in the Marine Guidance Note that fines should not be levied for disciplinary offences?