

SECTION 9

TITLE 2.5 - REPATRIATION

9.1 *This section seeks your views on the Maritime and Coastguard Agency's (MCA) proposals for new Regulations to give effect to the provisions of Regulation 2.5 and Standard A2.5 of the International Labour Organisation (ILO) Maritime Labour Convention 2006 (MLC) relating to the repatriation of seafarers on sea-going ships.*

9.2 The current provisions relating to repatriation are set out in the Merchant Shipping and Fishing Vessels (Repatriation) Regulations 1979 (SI 1979/97) (the "1979 Regulations") which give effect to the International Labour Organisation (ILO) Repatriation of Seamen Convention, 1926 (Convention No. 23) – one of the Conventions superseded by the MLC.

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 Merchant Shipping (Maritime Labour Convention) (Repatriation) 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

9.3 The 1979 Regulations apply to all United Kingdom seagoing merchant ships; fishing vessels; and other vessels on which seafarers/ fishermen are working irrespective of where they may operate and whether or not they operate commercially. The proposed regulations will supersede the 1979 regulations for all UK sea-going merchant ships, commercially operated yachts and other commercially operated vessels, Fishermen and seafarers employed on UK vessels not subject to the Maritime Labour Convention, which includes vessels not operating commercially, will however continue to be covered by the existing regulations.

9.4 The 1979 Regulations apply to all seafarers serving on UK ships who require repatriation from locations outside the United Kingdom as well as to non-UK seafarers serving on UK ships etc who were engaged outside the UK and require repatriation from the UK. This overall requirement will not change, although as indicated in the preceding paragraph some seafarers will remain covered by the 1979 Regulations whilst others will in future be covered by the proposed regulations and thus be subject to the following provisions.

Summary of the Provisions

9.5 Regulation 2.5 and Standard A2.5 of the Maritime Labour Convention 2006 revise the international requirements for the repatriation of seafarers. In the main these revised requirements are already covered by existing UK legislation.

9.6 There are however some areas where changes will be required to existing legislation in order to give effect to the revised MLC requirements or to make the current position clearer. These are the requirements that:-

- (i) a seafarer is entitled to repatriation if their seafarers' employment agreement expires while they are abroad

Whilst this is MCA's understanding of the purpose of the current regulations and is current practice, the existing Repatriation Regulations could be open to misinterpretation. They primarily refer to seafarers from UK ships being "left behind in ports outside the UK" and may not be considered as covering a non-UK seafarer who is left behind in the UK from a UK ship. It is therefore proposed to amend the Regulations following the wording of the MLC to make it clearer that UK seafarers from UK ships are entitled under the proposed Regulations to repatriation from ports outside the UK, and that non-UK seafarers from UK ships are entitled under the proposed Regulations to repatriation from ports outside the UK and also within the UK.

- (ii) a seafarer is entitled to repatriation when the seafarers' employment agreement is terminated by the shipowner; or by the seafarer for justified reasons

The draft Regulations follow the MLC by providing that a seafarer will be entitled to repatriation where the seafarer's employment agreement is terminated by the shipowner or is terminated by the seafarer in accordance with the terms of the agreement. It will then be for the shipowner and the seafarer to agree what is meant by "justified reasons" and to clarify what is meant in the employment agreement.

- (iii) a seafarer is entitled to repatriation when they are no longer able to carry out their duties under their employment agreement or cannot be expected to carry them out in the specific circumstances

As drafted the current draft Regulations do not go into detail and we would not propose defining them in the Regulations. Examples might however include illness or injury, the ship proceeding to a war zone, detention ashore and similar occurrences however these are basically matters for agreement between the seafarer and the shipowner. [However further information may be included in the MGN as a result of consultation responses]

- (iv) the maximum duration of service periods on board following which a seafarer is entitled to repatriation to be less than 12 months

This is a new provision. It links the entitlement to repatriation with the MLC provision on paid annual leave, under which the seafarer is entitled to take paid leave within the year in which it is earned. This principle is already established under existing UK legislation on paid annual leave, in the current Merchant Shipping (Hours of Work) Regulations 2002 (SI 2002/2125)). This effectively means that a seafarer spends less than 12 months on board. It is however proposed to spell out this requirement in the proposed new/amended Regulations);

- (v) shipowners be prohibited from requiring that seafarers make an advance payment towards the cost of repatriation at the beginning of their employment;

This is MCA's understanding of the current legal position. However the existing Repatriation Regulations do not make this clear and it is therefore proposed to cover this specifically in the new Regulations)

- (vi) shipowners be prohibited from recovering the cost of repatriation from the seafarers' wages or other entitlements except where the seafarer has been found, in accordance with UK laws or regulations or other measures, to be in serious default of the seafarer's employment obligations.

This is MCA's understanding of the current legal position. However the current Merchant Shipping (Wages and Accounts) Regulations 1972 (as amended) (the "Wages Regulations") lay down limits on the maximum amounts that can be recovered from any seafarer who breaches their obligations under a crew agreement and these limits are considered to apply to repatriation of a seafarer dismissed on disciplinary grounds. It is proposed to abolish these maximum limits in disciplinary dismissal cases so that any seafarer dismissed for breaching their employment obligations either under their Seafarer Employment Agreement, or any disciplinary code applicable to their employment, can be required to pay back his/her own repatriation costs. Charges in such cases have previously been limited to the amounts set down in the Wages Regulations. However these limits have not been amended for several years and, if it was felt that a limit should be retained, an alternative might be to revise these limits in line with the level of inflation that has occurred since they were set.

- (vii) expenses of repatriation are in no case be a charge upon the seafarers, except as provided for in item (vi) .

This is the current legal situation (but see paragraph (vi) on the amounts that can be recovered from a seafarer who breaches their obligations under a crew agreement). However the current Regulations do not explicitly state that under normal circumstances seafarers may not be charged for repatriation and it is accordingly proposed to make this clear in the revised/new Regulations.

- (viii) the precise entitlements to be accorded by shipowners for repatriation, including those relating to the destinations of repatriation, the mode of transport, the items of expense to be covered and other arrangements to be made by shipowners.

The proposed Regulations provide that a seafarer shall be entitled to repatriation to one of the following locations or to any other location agreed with the shipowner:-

- *the place at which the seafarer entered into the seafarer's employment agreement;*
- *the place specified in or determined by the seafarer's employment agreement [(including any provisions which have been incorporated from a collective agreement)];*
- *the seafarer's country of residence.*

This basically follows the provisions of the existing Repatriation Regulations except insofar as the current entitlement to repatriation to the country of residence only arises where the seafarer joined, or was engaged to join, his

ship in that country. [MCA can however see problems with giving seafarers the right to be repatriated to their country of domicile without such a restriction as there have been cases where seafarers have sought repatriation to locations situated a long distance away from where they actually joined the vessel e.g. repatriation sought to Australia when only joined a vessel in Antibes and sailed around that general area. This it is considered could give rise to an unacceptable burden being placed on the shipowner.

The proposed Regulations do not specify the mode of transport to be used when repatriating a seafarer however paragraph 6 of Guideline B2.5.1 suggests that the normal mode of transport should be by air. This is considered to be deliberate as, whilst air is likely to be the most expeditious means of return, there may be instances where other forms of transport, e.g. road, rail or sea, are more appropriate either because of the condition of the seafarer where a medical condition justifies repatriation or simply because air travel is not feasible.

So far as other arrangements are concerned the shipowner under current Regulations would be liable for the payment of any medical or other expenses, including legal expenses, food and accommodation, clothing etc until such time as the seafarer has been repatriated. No reason is seen to change this provision in so far as normal repatriation is being undertaken.)

- (ix) taking into account applicable international instruments, including the International Convention on Arrest of Ships, 1999, when the UK government has paid the cost of repatriation pursuant to the provisions of Regulation 2.5 and Standard A2.5.5 it may detain, or request the detention of, the ships of the shipowner concerned until reimbursement of its costs has been made (A2.5.6).

This is an entirely new provision which will be included in the revised/new Regulations to give the Secretary of State the powers to detain ships within UK waters in order to facilitate recovery of costs incurred by the Secretary of State.

- (x) provision is also made that the UK can detain a ship at the request of another flag state, in order to secure the reimbursement of costs from the shipowner.

This is a new provision.

- (xi) every UK ship shall carry and make available to seafarers a copy of the applicable UK provisions regarding repatriation written in a language which they understand.

This is an entirely new provision which will be included in the revised/new Regulations to ensure compliance.

9.7 The new provisions giving effect to the above changes are set out in the draft Merchant Shipping (Maritime Labour Convention)(Repatriation) Regulations 20XX. A supporting draft Marine Guidance Note also been produced which provides guidance on the requirements of the new Regulations.

9.8 A copy of the current Regulations can be found on the UK Government legislation website at <http://www.legislation.gov.uk/uksi/1979/97/made>

INVITATION TO COMMENT

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

Draft Regulations

- Do you consider that, as drafted, the proposed Merchant Shipping [and Fishing Vessels] (Repatriation) Regulations 20XX adequately cover the requirements of Regulation 2.5 and Standard A2.5 and, where appropriate Guideline B2.5 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.
- Nothing in the proposed Repatriation Regulations 20XX is intended to prejudice any right of the shipowner to recover the cost of repatriation from any other party, other than the seafarer except in disciplinary cases, under third-party contractual arrangements.
Do you consider that there are any circumstances in which such rights could be prejudiced? If so please provide details and reasons.
- 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 Repatriation 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 Repatriation Regulations extending into the 60 mile disapplication area given that should they not be disapplied the 1979 Regulations will remain in force.

Draft Marine Guidance Note

- Do you consider that the draft Marine Guidance Note provides adequate and appropriate information/guidance on the requirements of the Repatriation Regulations? Should you consider amended, additional or different information/guidance would be helpful, it would be appreciated if you could please provide specific suggestions and details of how you consider this could be achieved.

Draft Impact Assessment

- In producing the Impact Assessment in support of this consultation, we have sought to identify any possible costs and benefits likely to arise from the introduction of the proposed Repatriation Regulations. However as repatriation of seafarers normally proceeds smoothly and without incident.

MCA has not had occasion to become involved and accordingly we are not in a position to identify whether or not the proposed Repatriation Regulations are likely to result in additional costs for shipowners or seafarers.

- Also do you foresee any potential benefits to you as a result of the introduction of the proposed Repatriation 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.

Our initial thoughts are that there will be no changes to current costs or benefits but we would welcome confirmation that this is indeed the case. In the event that costs or benefits are likely to change we would welcome your comments together with any costings that are available.