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## **Maritime Labour Convention, 2006: Continuation of seafarer employment agreements in case of piracy or armed robbery**

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

*This notice should be read with the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers, etc) Regulations 2014 Part 4, as amended by the Merchant Shipping (Maritime Labour Convention and Work in Fishing Convention) (Amendment) Regulations 2020, and the latest amendment of MGN 477(M).*

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### **Summary**

- In 2018, the Maritime Labour Convention, 2006 (MLC) was amended to provide that a seafarer employment agreement (SEA) should not lapse if a seafarer is held captive as a result of piracy or armed robbery, until such time as they are repatriated.
- During that period, the seafarer must continue to be paid wages or remuneration and other entitlements in accordance with their SEA, including provision for allotments.
- The Merchant Shipping (Maritime Labour Convention and Work in Fishing Convention) (Amendment) Regulations 2020 (“the 2020 Regulations”) implement the 2018 amendments by amending the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers, etc.) Regulations 2014 (“the 2014 Regulations”).
- The amended 2014 Regulations provide that any clause in an SEA which purports to reduce, varies or stops payment during a period of captivity is void.
- The amendments come into force on 26 December 2020.
- No amendment of SEAs or the Declaration of Maritime Labour Compliance Part 2 is required by shipowners to implement these provisions.

## **1. Introduction**

- 1.1 The Merchant Shipping (Maritime Labour Convention and Work in Fishing Convention) Regulations 2020 (“the 2020 Regulations”) amend the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers) Regulations 2014 (“the 2014



Regulations” to bring UK legislation into line with amendments to the Maritime Labour Convention, 2006 adopted in 2018 (“the 2018 amendments”). A link to the 2020 Regulations is here: <https://www.legislation.gov.uk/ukxi/2020/1166/contents/made>

1.2 Part 4 of the 2014 Regulations sets out requirements to ensure that every seafarer, regardless of their employment status, has a written seafarer employment agreement (SEA) with the shipowner which is clear and enforceable and provides at least the minimum standards for terms and conditions laid down in the Convention.

1.3 Regulation 11 in part 4 sets out provisions relating to the termination of a SEA. The conditions under which a SEA is terminated must be clear from the SEA.

## **2. Protection for seafarers in the event of piracy or armed robbery**

2.1 The amendments introduced by the 2020 Regulations make provision for the event that a seafarer is held captive as a result of piracy or armed robbery.

2.2 For as long as the seafarer is held captive, their SEA cannot expire or be terminated. This applies until the seafarer has been repatriated or has died.

2.3 During that time, their wages must be paid in accordance with the SEA.

## **3. Definitions**

3.1 The 2020 Regulations use definitions for piracy and armed robbery from the United Nations Convention on the Law of the Sea (UNCLOS) Article 101:

**“armed robbery against a ship”** means any illegal act of violence or detention or any act or threat of depredation, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State’s internal waters, archipelagic waters and territorial sea, or any act of inciting or of intentionally facilitating such an illegal act;

**“piracy”** consists of any of the following acts:

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

## **4. Requirements for shipowners**

4.1 Provided that there is no provision in an existing SEA or Declaration of Maritime Labour Compliance Part 2 which is contrary to the protections provided by the 2020 Regulations, shipowners are not required to take any action.



- 4.2 No explicit provision is required in an SEA to implement this, as the 2020 Regulations provide that any clause in a SEA which purports to reduce or stop payment of wages during a period of captivity due to piracy or armed robbery is void.
- 4.3 However, were an SEA to include such a clause, it should be removed, as the SEA should be clear and transparent to the seafarer.
- 4.4 Similarly, the DMLC Part 2, setting out the shipowner's arrangements for compliance with the MLC, 2006 does not need to contain any explicit provision regarding protection of wages etc. in the event of a seafarer being held captive due to piracy or armed robbery.
- 4.5 The legislation ensures that the seafarer's SEA stays in force for the duration of any such period of captivity, and therefore the seafarer's entitlements including payment of wages remain due under the SEA.

## 5. Enforcement

- 5.1 There is no penalty or offence attached to this provision, as any SEA failing to comply with the requirements of regulation 11A would be illegal and therefore would not be valid.

## More Information

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