

SECTION 10

TITLE 1.4 RECRUITMENT AND PLACEMENT

11.1 This section invites views on the MCA's proposals for implementation of title 1.4 of the Maritime Labour Convention, 2006 on minimum standards on recruitment and placement, via the Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations 201* (referred to as the Recruitment and Placement Regulations for short).

Background including relevant Existing Provisions

11.2 Ratifying States are required to ensure that Recruitment and Placement Services (RPS) operating in its territory which fall under the Convention to comply with MLC standards. The existing UK legislation relevant to recruitment and placement – which, though not specifically about the recruitment and placement of seafarers, include the recruitment and placement of seafarers - are principally:

- a) the Employment Agencies Act 1973 (EAA 1973); and
- b) the Conduct of Employment Agencies and Employment Business Regulations 2003 (CEABR 2003);
- c) the Conduct of Employment Agencies and Employment Business (Amendment) Regulations 2010 (CEAB(A)R 2010);
- d) Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 (E(MP)O 1981);
- e) Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 (CEABR(NI) 2005);
- f) Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations (Northern Ireland) 2010 (CEAB(A)R(NI) 2010);
- g) the Employment Relations Act 1999 (Blacklists) Regulations 2010 (ERA(B) 1999).

11.3 Recruitment and Placement Services in the UK are divided into two main categories, Employment Agencies (EAs) and Employment Businesses (EBs), depending on the nature of their functions. Employment Agencies and Employment Businesses are defined in sections 13(2) & (3) of the Employment Agencies Act 1973 (EAA 1973) respectively. To summarise, Employment Agencies are organisations which supply job-seekers to clients for whom they work and who become their employers – the EA has no ongoing relationship with them. Employment Businesses supply job-seekers to clients for whom they carry out work, under the direction of the client, but the Employment Business remains the employer of the individual.

11.4 The Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations, for which the Department for Business, Innovation and Skills (BIS) have lead responsibility, regulate GB based recruitment and placement services in general, not just those which

deal with the recruitment and placement of seafarers. This legislation covers Great Britain, but not Northern Ireland, which has its own parallel legislation administered by the Department of Employment Learning Northern Ireland (DELNI), the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005. Some small relaxations were made by the Employment Agencies and Employment Businesses (Amendment) Regulations 2010 and the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations (Northern Ireland) 2010 in respect of Employment Agencies.

11.5 The object of this proposed legislation is to bridge the gap between the current UK legislative position and the legislative position required to achieve full UK compliance with the Convention.

MAIN CHANGES

11.6 As the Convention applies specifically to seafarers, the intention is to amend the relevant legislation only to the extent which it regulates the recruitment and placement of seafarers.

11.7 A gap analysis was carried out between the provisions of existing legislation and those to be implemented by Title 1.4 of the Convention. This revealed that most of the mandatory provisions of MLC Title 1.4 are already included in UK law. However, the table below shows the gaps which were identified, and the proposed approach to addressing them.

MLC Provision	Obligation	Relevant existing UK legislation	Comment
Standard A1.4.5(c)(ii)	(ii) make sure that seafarers are informed of their rights and duties under their employment agreements prior to or in the process of engagement and that proper arrangements are made for seafarers to examine their employment agreements before and after they are signed and for them to receive a copy of the agreements;	There is not a suitable provision in existing legislation to cover this requirement.	Gap needs to be plugged in legislation.
Standard A1.4.5(c)(iii)	(iii) verify that seafarers recruited or placed by them are qualified and hold the documents necessary for the job concerned, and that the seafarers' employment agreements are in accordance with	r19 CEABR 2003, as amended by CEAB(A)R 2010, and r19 CEABR(NI) 2005, as amended by CEAB(A)R (NI) 2010 require Employment Businesses to do this but not Employment Agencies.	Gap needs to be plugged in legislation.

	applicable laws and regulations and any collective bargaining agreement that forms part of the employment agreement;		
Standard A1.4.5(c)(vi)	establish a system of protection, by way of insurance or an equivalent appropriate measure, to compensate seafarers for monetary loss that they may incur as a result of the failure of a recruitment and placement service or the relevant shipowner under the seafarers' employment agreement to meet its obligations to them. (Not BIS responsibility)	No direct equivalent in current UK legislation.	Gap needs to be plugged in legislation.

APPLICATION

11.8 The new Convention requirements implemented by the Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations 201* would apply to UK based recruitment and placement services to the extent that their activity relates to the recruitment and placement of seafarers, and these regulations would be enforced against them. However, shipowners will have a substantial interest in ensuring that their ships are MLC compliant, and have a responsibility to ensure that their seafarers are sourced via compliant RPSs. The method by which they do this will need to be demonstrated in the ship's Declaration of Maritime Labour Compliance (DMLC) Part II. Evidence that seafarers have been sourced through a RPS based in a ratifying flag State will normally be sufficient for this. If there are seafarers who have not been sourced through such a RPS, evidence will be required that the shipowner has ensured the RPS has met the Convention standards.

11.9 Consideration was given to whether RPSs should or should not be regulated directly. It was determined that this was the only way to implement the MLC, the Convention requires RPS regulation as part of the underlying expectation that RPS within ratifying states can be taken as compliant with MLC.

Implementing the changes

11.10 The way we envisage implementing the changes identified above are outlined below.

11.11 **MLC Standard A1.4.5(c)(ii)** – a provision is required to implement this Standard which obliges the RPS to be pro-active in ensuring the seafarer is

informed of rights and duties under employment agreement prior to, or in the process of, engagement. Regulation 21 of Conduct of Employment Agencies and Employment Business Regulations 2003 (CEABR 2003) and Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 (CEABR(NI) 2005) appear to go some way towards this. However, in this existing legislation, the RPS is only required to provide information it has itself received, and only information limited to that specified in the relevant parts of regulation 18. The proposed regulations put the onus of the RPS to provide the information – and thus to obtain it if it does not already possess it – and also ensures the information in question includes all the rights and responsibilities in the seafarer employment agreement (SEA) as required by the MLC, some of which could fall outside the items already specified in regulation 18, depending on the content of the SEA. **Standard A1.4.5(c)(ii) is implemented via regulation 5 of the draft regulations.**

11.12 MLC Standard A1.4.5(c)(iii) – requires the RPS to check seafarer is qualified, holds necessary documents for the job concerned, and that the SEAs are in accordance with applicable laws and regulations relating to the employment, and any collective bargaining agreement which forms part of the employment agreement. In the CEABR 2003 as originally made, regulation 19 required both EAs and EBs broadly to make these checks. In the case of EAs, the hirer became the employer and the checks had to be carried out again, resulting in duplication. (For shore based employees, this appears to be unnecessary duplication, but for seafarers joining a ship on the other side of the world, it is apparent that it makes good sense for these checks need to be carried out prior to the seafarer travelling – and this is an MLC obligation.) Also, for EAs which were effectively internet “job boards” (websites advertising jobs) such checks were not always practical. So the CEAB(A)R 2010 amended regulation 19 to relax this requirement for EAs, retaining it for EBs. This regulation therefore only applies to EAs. The draft Recruitment and Placement Regulations reintroduce the requirement into law for EAs to carry out these checks, but only in relation to the recruitment and placement of seafarers. This is necessary to implement MLC Standard A1.4.5(c)(iii). **Standard A1.4.5(c)(iii) is implemented by regulation 4 of the draft regulations.**

11.13 MLC Standard A1.4.5(c)(vi) – System of protection/ insurance for SEA liabilities. This is a new requirement imposed by the Convention designed to give additional protection to the seafarer and encourage RPSs to deal with reputable shipowners. Draft regulation 6(3) is in square brackets because the legal need for it is still under consideration. However, even if this is removed, it is our intended meaning of “obligations to the seafarer”. **This new requirement is introduced into law by draft regulation 6.**

11.14 Do you agree that the above approach on these three issues is appropriate implementation of the Convention?

11.15 The text in the draft regulations concerning the System of Protection is basically “copy out” from the Convention. Do you consider the features of the System of Protection should be prescribed in more

detail in the regulations (given that there is more detail prescribed for the non-mandatory certification scheme as detailed in the MGN)?

11.16 BIS are currently consulting on reforms to the Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended) with a view to removing anything which is outdated, empowering more individuals to enforce their own rights, and the sector to regulate itself, as opposed to regulation by central government. Possible changes could have knock-on changes to enforcement. Consideration will be given by the Department for Transport and the MCA, in conjunction with BIS, of how seafarer recruitment agencies and businesses will be regulated, and how that regulation should be enforced, should gaps appear as a result of the conduct regulations consultation.

Non-mandatory certification scheme and explanatory MGN

11.17 Given that the UK government's proposed approach to regulation of seafarer recruitment and placement services does not include any form of compulsory licensing or certification, some maritime recruitment and placement services have expressed a desire to have the opportunity to gain some sort of certification to demonstrate their compliance with the UK's implementation of the MLC recruitment and placement element. They consider this will enhance their business opportunities in the MLC era.

11.18 The MCA, in conjunction with UK MLC implementation Tripartite Working Group social partners (ie., shipowners' and seafarers' representatives) has designed such a scheme, which is described in the Marine Guidance Note (MGN) attached to this consultation. Recruitment and Placement Services and representative organisations have also been informally consulted. Views are welcome on the non-mandatory scheme, but at the same time it is emphasised that this is a separate and parallel consideration to the regulatory measures upon which this consultation focuses, and which implement the MLC provisions for recruitment and placement services.