



## MGN 480 (M) Amendment 2

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### Maritime Labour Convention, 2006: Shipowners' Liabilities including Seafarer Compensation

**Notice to all Shipowners, Masters, Manning Agents and Seafarers**

*This notice should be read with the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers, etc.) Regulations 2014 as amended and replaces MGN 480 Amendment 1.*

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#### Summary

This MGN outlines the extent of shipowner liability under the Maritime Labour Convention (2006) as amended (MLC), for

- Compensation for seafarers' injury, loss or unemployment in the case of the loss or foundering of the ship;
- liability for burial/cremation costs; and
- wages in case of the seafarer's incapacity due to sickness or injury.

It also explains the requirement for financial security to assure compensation in the event of death or long-term disability of a seafarer due to occupational injury.

Amendment 1 provided an amended section 3 to reflect amendments to the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers, etc.) Regulations 2014 which provide that

- the shipowner's liability for wages in case of incapacity ceases if the seafarer's employment agreement expires or is terminated in accordance with the terms of the agreement;
- a seafarer's employment agreement may not be terminated for the sole or main purpose of avoiding liability;
- the amount or proportion of wages payable during the period of incapacity may be set in a collective bargaining agreement (CBA). In the absence of a provision in a CBA, basic wages must be paid.



Amendment 2 includes the 2014 Amendments to the MLC which came into force internationally in January 2017. The 2014 amendments are implemented through the Merchant Shipping (Maritime Labour Convention) (Compulsory Financial Security) (Amendment) Regulations 2018, and update provisions to:

- ensure the welfare of seafarers if they are abandoned by a shipowner;
- make financial security compulsory for shipowners to cover the costs of maintaining and repatriating abandoned seafarers; and
- expand the existing provisions on shipowners' liability for sickness, injury and death in service to ensure that contractual compensation is paid in full and without delay to the seafarer or their representative.

## **1. Compensation for the seafarer in the event of loss or foundering of a ship**

1.1 The Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014 ("the MLC Minimum Requirements Regulations") impose liability on the shipowner to compensate a seafarer for injury, loss or unemployment resulting from the loss or foundering of a ship. For ships and seafarers covered by the MLC, this replaces section 38 of the Merchant Shipping Act 1995. The MLC Minimum Requirements Regulations use the phrase "loss or foundering" rather than "wreck or loss" in order to be consistent with the MLC terminology.

1.2 In these circumstances, the shipowner is liable to pay -

- 1.2.1 an amount equivalent to the wages that the seafarer would have been paid for the period of unemployment resulting from the loss or foundering of the ship (MLC Standard A2.6.1); their liability is limited to two months following the date of the loss or foundering of the ship, as cited in MLC Guideline B2.6.1; and
- 1.2.2 compensation regarding the loss (of possessions) and injury (Standard A2.6.2). The maximum amount the shipowner will pay as compensation for loss in such circumstances must be specified in the Seafarer's Employment Agreement.

## **2. Financial Security Requirements for all ships.**

2.1 The 2014 amendments to the MLC expand the existing provisions on shipowners' financial liability for compensation for sickness injury or death in service to ensure that contractual compensation is paid in full and without delay to the seafarer or their representative. They also introduce an additional requirement for the shipowner to provide financial security provisions for financial assistance to seafarers to cover the costs of repatriation and welfare of the seafarer if abandoned by the shipowner as set out in A2.5.2 of the MLC 2006 as amended. The amendments to the MLC Minimum Requirements Regulations are contained in the Merchant Shipping (Maritime Labour Convention) (Compulsory Financial Security) (Amendment) Regulations 2018 ("the 2018 Amendment Regulations"), by inserting Parts 10a and 10b respectively.

2.2 The shipowner must provide financial security, a contract of insurance or other security adequate to ensure that the shipowner will be able to meet any liabilities the shipowner may have under UK law or under Seafarer Employment Agreements (SEA) to provide compensation in the event of death or long-term disability to seafarers arising from occupational injury, illness or hazard and to cover costs relating to abandonment of seafarers.

2.3 In the majority of cases the financial security will take the form of an insurance or policy or mutual type cover to meet this liability. While the requirement does not preclude other forms of security, any alternative arrangements must meet all the requirements of the MLC 2006 as amended in full. It is therefore recommended that any proposed alternative be discussed with



the Maritime and Coastguard Agency (MCA) well in advance of business decisions being taken. (Part 10, 10a and 10b of the MLC Minimum Requirements Regulations as amended refer.)

2.4 The shipowner has a duty to ensure that the certificate or other documentary proof that the financial security provisions are in place is on display in a conspicuous place onboard the ship. If the document is not in English an English translation must be provided and displayed.

2.5 A financial security provider wishing to terminate financial security provisions before the end of the period of validity must give the MCA 30 days' notice of the proposed date of termination. The proposed termination of financial security provisions cannot take effect in law unless the 30 day notice period has been given. Following this notice period the security provider must also inform the MCA within 30 days of termination of the policy that termination has taken place.

2.6 The ship owner must give notice to all seafarers who work onboard a ship when financial security provisions are going to be, or are, terminated, until the policy is replaced or reinstated.

## 2.7 **Compensation for sickness injury or death in service**

2.7.1 Where compensation is due to the seafarer and the amount payable is set out in the SEA, compensation must be paid within 14 days of the financial security provider being satisfied that the shipowner concerned is liable to pay compensation. In cases of long term disability, if it takes longer than 7 days from the point at which the ship owner becomes liable to determine the amount of compensation due and the seafarer is suffering hardship, interim payments may be made to the seafarer.

## 2.8 **Abandonment of seafarers**

2.8.1 The shipowner must provide a contract of insurance or other form of financial security which provides financial assistance to seafarers who are abandoned by the shipowner. Abandonment is defined as in standard A2.5.2 of the MLC 2006 as amended.

A2.5.2 2: *"For the purposes of this standard a seafarer shall be deemed to have been abandoned where, in violation of the requirements of this Convention or the terms of the seafarers' employment agreement, the shipowner:*

- (a) Fails to cover the cost of the seafarer's repatriation; or*
- (b) Has left the seafarer without the necessary maintenance and support; or*
- (c) Has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months."*

The abandonment security provision must cover the costs of abandonment including repatriation and unpaid wages of up to four months as set out in regulation 53N of the 2018 Amendment Regulations.

2.8.2 The seafarer must be able to make a claim for financial assistance directly to the abandonment security provider, who must in turn determine whether or not a seafarer is entitled to receive financial assistance within 7 days of receipt of a claim. Having determined that there is an entitlement to any part of the claim the abandonment security provider must provide the assistance within 14 days of receipt of the claim

## 3. **Liability for wages following sickness or injury sustained by a seafarer**

3.1 The shipowner must pay wages to incapacitated seafarers whilst onboard or put ashore up to the time they recover, or until they are repatriated.

3.2 Once repatriated, wages must be paid –

3.2.1 until the seafarer recovers; or



- 3.2.2 until the seafarer's employment agreement expires or is terminated in accordance with the terms of the agreement; or
- 3.2.3 until 16 weeks have elapsed since the day after the date of the injury or commencement of sickness;
- whichever is the sooner.

3.3 The shipowner's liability for wages may be offset by any state benefits paid. Part 10 of the MLC Minimum Requirements Regulations and MLC Standard A4.2.3 (a) & (b), and Standard A4.2.4 refer.

3.4 The amount or proportion of wages payable during the period of incapacity may be set in a collective bargaining agreement which forms part of the seafarer's SEA. In the absence of a provision in a collective bargaining agreement, basic wages must be paid.

3.5 A SEA may not be terminated for the sole or main purpose of avoiding liability. However, this provision would not, for example, prevent termination of a contract where there was gross misconduct and the SEA provided for termination without notice in such circumstances.

#### **4. Burial and Cremation**

4.1 The shipowner must meet any expenses reasonably incurred in the cost of burial or cremation of a deceased seafarer, wherever this takes place, except:

- 4.1.1 if the seafarer dies ashore in their country of residence; or
- 4.1.2 to the extent the expenses are met by a public authority.

4.2 Part 10 of the MLC Minimum Requirements Regulations and MLC Standard A4.2.1(d) refer.

#### **5. Medical Care**

5.1 The shipowner must ensure that the seafarer is provided with medical care on board, so far as is practicable, and meet the cost of –

- 5.1.1 surgical, medical, dental and optical treatment (including the repair or replacement of any appliance), while the seafarer is employed or onboard,
- 5.1.2 board and lodging away from home when not onboard the ship.

These costs must be met up to the time the seafarer has recovered or the incapacity has been declared of a permanent nature.

5.2 Shipowners should note that if, following the incapacity being declared of a permanent nature by an Approved Doctor, the seafarer lodges a successful appeal against this decision, the shipowner's obligation towards the seafarer will be re-instated as if it had continued without interruption.

5.3 This obligation is limited to 16 weeks from the date of sickness injury occurring and does not apply when those expenses are met by a public authority. These obligations do not affect any obligations the shipowner has under the repatriation aspect of the MLC Minimum Requirements Regulations. Further information on obligations relating to medical care may be found in MGN 482(M). Part 10 of the MLC Minimum Requirements Regulations and MLC Standard A4.2.1(a) and (c) refer.

5.4 If a seafarer's Seafarer Employment Agreement (SEA) expires during the period in which above liabilities are payable, the liabilities continue to be payable as if the SEA continued to be in force during this period.



## 6. Exceptions

6.1 The shipowner obligations in paragraphs 3, 4 and 5 do not apply if:

- 6.1.1 the seafarer is injured when not at work;
- 6.1.2 if sickness or injury was due to the seafarer's wilful misconduct; or
- 6.1.3 the seafarer concealed an existing sickness or incapacity from the shipowner when they entered into the Seafarer Employment Agreement.

## More Information

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