



MLN 2.1

Revision No 5

DEPARTMENT OF ECONOMIC DEVELOPMENT

MLC Title 2.1 Seafarers' Employment Agreements

This MLN provides guidance on compliance with Isle of Man (IOM) regulations which give effect to MLC 2006 Title 2.1. Implementation of these guidelines will be taken as evidence of compliance with the Isle of Man regulations.

The guidelines do not preclude the shipowner from demonstrating an equivalent or higher standard as an "alternative method" of evidence of compliance.

Documents referred to in this notice:

Maritime Labour Convention 2006;

ILO Seamen's Articles of Agreement Convention 1926 (No.22); and

Collective Agreements.

Most regulations and notices are available on the Isle of Man Government website: www.iomshipregistry.com or by contacting marine.survey@gov.im

Seafarer Employment Agreement

1. The MLC Regulation 2.1 and Standard A2.1 Seafarers' Employment Agreements (SEA), requires that there should be individual Seafarer Employment Agreements between the shipowner and each seafarer working on board the vessel, or that seafarers who are not employees (e.g. self-employed seafarers) are in possession of evidence of contractual or similar arrangements providing them with decent working and living conditions on board the ship as required by the Maritime Labour Convention.
2. The SEA is a contractual agreement between an individual seafarer and the shipowner or shipowner's representative.
3. MLC requires that there should be one named body – the "shipowner" who has ultimate responsibility for all aspects of the working and living conditions of all "seafarers" employed on-board a ship to which the MLC applies irrespective of who may actually employ them.
4. MLC uses the term "shipowner" to mean the owner of the ship or another organisation or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with MLC, regardless of whether any other organisation or

persons fulfil certain of the duties or responsibilities on behalf of the shipowner. In the majority of cases this will be the ISM Code DOC holder, but it does not have to be.

5. There will be situations where seafarers are legally employed by an employer other than the shipowner. For example, an employment business may employ and place seafarers on various ships either on a long term or short term basis. In such circumstances the employment business may potentially sign a seafarer's SEA because that seafarer may work on ships operated by different shipowners whilst employed under the same SEA. In such circumstances there should be evidence that the employment business is authorised by the shipowner to sign SEAs in respect of service on the ship.
6. An employer other than the shipowner may also be directly responsible for meeting some of the obligations placed on the shipowner by a Seafarer Employment Agreement, e.g. repatriation, payment of wages etc. Final responsibility will nonetheless fall upon the shipowner should the actual employer of the seafarer(s) fail to meet those obligations. Shipowners are recommended to ensure that there is in place some form of contractual or indemnity arrangement between them and the actual employer to ensure that all obligations to seafarers arising from the MLC will be met.
7. The SEA sets out principal terms and conditions of the seafarer's employment. It must be in writing and both the seafarer and the shipowner must have an original SEA, signed by the seafarer and by the shipowner or a representative of the shipowner.
8. It is the responsibility of the shipowner to ensure that each seafarer has an opportunity to examine the SEA and seek advice before signing it, in order to ensure that all seafarers signing employment agreements do so of their own volition and with a sufficient understanding of their rights and responsibilities under the agreement. It is important that seafarers are not coerced into signing an SEA and that no undue pressure is placed on any seafarer to sign.
9. Shipowners must explain to seafarers to whom they offer employment their right to review their SEA and seek advice on it before signing, and should allow seafarers a reasonable time frame in which to do this. The seafarer's trade union, a friend or an independent advisor are potential sources of advice on SEAs.
10. It is the responsibility of the shipowner to inform seafarers of their rights and duties under their employment agreement prior to or in the process of engagement.
11. It is the shipowner's responsibility to ensure that clear information concerning the conditions of their employment can be easily obtained on board by all seafarers and that such information including a copy of the seafarer's employment agreement, is also accessible for review by officers of a competent authority, including those in ports to be visited.
12. The shipowner is responsible for ensuring there is a copy of each SEA on board the ship in the English language.

Collective Agreements (CAs)

13. CAs may be incorporated into an SEA.

Where MLC 2006 allows collective agreements to prescribe the terms and conditions of employment of seafarers, this will be reflected in Isle of Man (IOM) MLC regulations.

This will mean that where a seafarer's SEA incorporates a CA and the CA includes terms and conditions of employment, for example on repatriation then those terms and conditions will apply to their employment.

However if a seafarer's SEA does not incorporate a CA, then the IOM terms and conditions for repatriation as prescribed in IOM MLC regulations will apply to that seafarer.

The shipowner is responsible for ensuring that the CAs on board the ship are available in the English language.

Content of Seafarers' Employment Agreement

14. The SEA is required to contain, as a minimum, the following information relating to the individual seafarer, the shipowner, and the terms and conditions under which the seafarer is to be employed:
 - a. the seafarer's full name, date of birth or age, and birthplace;
 - b. the shipowner's name and address;
 - c. the place where and date when the seafarer's employment agreement is entered into;
 - d. the capacity in which the seafarer is to be employed;
 - e. the amount of the seafarer's wages or, where applicable, the formula used for calculating them;
 - f. the amount of paid annual leave or, where applicable, the formula used for calculating it;
 - g. the termination of the agreement and the conditions thereof, including:
 - i. if the agreement has been made for an indefinite period, the conditions entitling either party to terminate it, as well as the required notice period, which shall not be less for the shipowner than for the seafarer;
 - ii. if the agreement has been made for a definite period, the date fixed for its expiry; and
 - iii. if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the seafarer should be discharged.
 - h. the health and social security protection benefits to be provided to the seafarer by the shipowner;
 - i. the seafarer's entitlement to repatriation, including repatriation destination;
 - j. reference to the collective agreement, if applicable.

Early termination of Seafarers Employment Agreement

15. The minimum notice period for termination of an SEA is 7 days, and if for an indefinite period, must not be less for the shipowner than for the seafarer.
16. An SEA may be terminated at shorter notice or without notice under circumstances agreed in an applicable CA or:
 - a. if the seafarer, shipowner or shipowners representative agree that a shorter or no notice period is acceptable;
 - b. in the case of misconduct of the seafarer;

- c. if the seafarer has need to terminate the agreement for compassionate or other urgent reasons without penalty to the seafarer.

Shorter notice period or without notice

17. a. For those seafarers not covered by a CA who wish to terminate their SEA at shorter notice or without notice then the shipowner or shipowner's representative must have a policy or procedure which allows both parties to the SEA to come to an agreement on the termination.

Evidence of compliance: Where termination at shorter notice or without notice has been agreed between the seafarer and shipowner or shipowner's representative then any costs to be borne by the seafarer must be agreed in writing and signed by both the seafarer and shipowner or shipowner's representative.

Misconduct of the Seafarer

18. For those seafarers not covered by a CA the shipowner or shipowner's representative must inform the seafarer of any disciplinary rules or procedures applicable to the seafarer's employment.

Evidence of compliance: The shipowner or shipowner's representative should have disciplinary rules and procedures in place which substantially meet the provisions contained in the "The Code of Conduct for the Merchant Navy".

The Isle of Man does not allow fines against the seafarer. Unless it is agreed in a CA the seafarer cannot be made to pay for his repatriation due to dismissal or misconduct, unless the seafarer has refused to work a notice period and just walks off a ship.

Compassionate and other urgent reasons

- 19.c. For those seafarers not covered by a CA the need to terminate their SEA for compassionate and other urgent reasons without penalty must be addressed by the shipowner or shipowner's representative.

Evidence of compliance: Termination of employment on compassionate grounds without penalty to the seafarer should include the death of next of kin or nominated beneficiary. Compassionate grounds should also take account of the same people becoming seriously or dangerously ill.

Termination of employment for other urgent reasons without penalty to the seafarer should include emergency situations which would not be expediently resolved without the seafarer's attendance.

Language(s) to be used

20. SEAs and any incorporated CAs must be in a language understood by the seafarer who is signing the agreement. Where such a language is not English, an English translation of the SEA and CA must be maintained on board.

Availability of information

21. Shipowners must ensure that seafarers are able to obtain clear information on board concerning the conditions of their employment, including a copy of the seafarer's signed employment agreement. This information must also be made available to Isle of

Man surveyors, recognised organisations and port state officials.

Seafarer's record of employment

22. All seafarers must be given a record of their employment on board the ship; a seafarer's discharge book may be used for this purpose. The record of employment must be provided in English and contain the following minimum particulars:
- a. seafarer's full name, date of birth or age and birth place;
 - b. name, port of registry, gross tonnage and IMO number of the ship;
 - c. description of voyage;
 - d. capacity in which the seafarer was employed;
 - e. date of employment; and
 - f. date of discharge.
23. The record of employment must not contain any statement as to the quality of a seafarer's work or their wages.

Model format of an SEA

24. Annex 2 - Is a model format of an SEA, its use is not compulsory but it would be deemed to be *Evidence of Compliance* with new IOM MLC regulations.

Transition from using crew agreements to using SEA

To require all seafarers to have an Seafarer Employment Agreements from the same date would potentially create a significant administrative burden on shipowners. To alleviate this burden the IOMSR requires that Seafarer Employment Agreements should be in place on each vessel by no later than the date when the Isle of Man MLC regulations come into force. Shipowners are however recommended to introduce Seafarer Employment Agreements at the earliest opportunity and not wait until the last possible date to do so.

Similarly, for some shipowners with responsibility for a large number of seafarers it may not be possible to effect a change from a crew agreement system to a Seafarer Employment Agreement system overnight. For that reason it will be permissible, while the changeover is underway, for some seafarers to have Seafarer Employment Agreements whilst at the same time remaining covered by a Crew Agreement provided there is no conflict between the two. Such dual coverage, and indeed crew agreements themselves will cease to apply when the Isle of Man MLC regulations come into force. From that date all seafarers will be required to have individual Seafarer Employment Agreements.

Annex 2 – MODEL FOR A SEAFARER EMPLOYMENT AGREEMENT

1 . Parties to the Employment Agreement

This agreement is made between:

[Seafarer's full name].....
[Seafarer's date of birth or age]
[Seafarer's place of birth].....

and

[Shipowner's or shipowners representative's name]

.....

of [Shipowner's or shipowners representative's address]

.....

2. Capacity in which seafarer is to be employed

The capacity in which the seafarer is employed
[insert details of rank/position].

3. Period of employment

#The seafarer will be employed for a voyage from.....[insert place] to.....[insert place]

OR

The seafarer will be employed for a period of.....weeks/months# commencing on[insert date] and ending on.....[insert date]#

OR

The seafarer will be employed without time limit until such time as the agreement is terminated by either party in accordance with this agreement.

(# delete whichever is inapplicable)

4. Place of work

The seafarer's place of work will be on[ship name]# and/or [any vessel owned, managed, bareboat chartered or operated by]#:

[Shipowner's name]

.....

[Shipowner's address]

.....

(#delete whichever is inapplicable)

5. Wages and account of wages

The seafarer's wages on commencement will be..... [amount]..... [currency] per [week/month/year#] payable by..... [method of payment] at [weekly/monthly#] intervals on the[number] day of each [week/month#].

(#delete whichever is inapplicable)

[Overtime hours if applicable, i.e. hours worked outside of normal working hours, will be paid at a rate of..... [rate] per hour]

The seafarer will be provided with a monthly account of all payments due and the amounts paid, including wages, additional payments, permitted/statutory deductions and the rate of exchange used where payment has been made in a currency which is different from that agreed above.

6. Paid annual leave

The seafarer is entitled to take..... [insert number] days paid annual leave (a minimum of 30 days) in each year of employment. The seafarer will be paid normal basic remuneration during such leave.

The seafarer will also be entitled to 10 days public holidays in each year of employment.

If the seafarer's employment commenced or terminates part way through the year, entitlement to paid annual leave and public holidays during that year will be assessed on a pro rata basis.

7. Notice of termination of employment – indefinite period agreement #

The length of notice which the seafarer is obliged to give to terminate employment is[insert period which shall be not less than seven days].

The length of notice the seafarer is entitled to receive from the shipowner to terminate employment is[insert period which shall be not less than seven days].

The above notice period shall not be less for the shipowner than for the seafarer.

OR

Notice and termination of employment - defined period agreement #

The seafarer's employment is for the period of[insert length of period in months/weeks] commencing on..... [date] and terminating on [date].

The length of notice which the seafarer is obliged to give to terminate employment is[insert period which shall be not less than seven days].

The length of notice which the seafarer is entitled to receive from the shipowner to terminate employment is[insert period which shall be not less than seven days].

OR

Notice and termination of employment - voyage agreement #

The seafarer's employment is for the length of the voyage of[name of ship] commencing on..... [date] from the port of..... [name of port] until[date] #/ [arrival in the port of..... [name of port] and the time.....[hrs] after arrival at which point it will terminate.

(# delete whichever is inapplicable)

8. Termination of Employment at shorter notice periods or without notice.

This agreement may be terminated at shorter notice or without notice under circumstances agreed in an applicable collective agreement or:

- a. if the seafarer, the shipowner or shipowner's representative agree that a shorter or no notice period is acceptable;
- b. in the case of the seafarer's misconduct; and

- c. when the seafarer needs to terminate the agreement for compassionate or other urgent reasons, this shall be without penalty.

On termination of this agreement all remuneration due to the seafarer will be paid without undue delay. This includes any accrued and untaken annual leave with pay.

9. Health and Social Security Benefits

If the seafarer is on a voyage and becomes sick or injured, the seafarer will be paid full wages as stated or calculated within this agreement until the seafarer has been repatriated in accordance with section 10 below. After the seafarer has been repatriated, the seafarer will receive basic pay or consolidated pay, whichever is applicable. This entitlement is subject up to a minimum of [16 or above] weeks, or until recovery if earlier, and commences from the day of injury or the commencement of the sickness.

The seafarer will be provided with any medical care on board that should become necessary, free of charge, including access to necessary medicines, medical equipment and facilities for diagnosis and treatment and medical information and expertise. Where practicable and appropriate, the seafarer will be given leave to visit a qualified medical doctor or dentist in ports of call for the purpose of obtaining treatment.

In the event of sickness or incapacity, the seafarer will be provided with medical care, including medical treatment and the supply of necessary medicines and therapeutic devices, and board and lodgings whilst away from home until recovery or until the sickness or incapacity has been declared of a permanent character, subject to a minimum period of..... [16 or above] weeks. In addition the shipowner will meet the cost of the return of property left on board to the seafarer or the seafarer's next of kin or nominated beneficiary.

In the event of the seafarer's death or long-term disability due to an occupational injury, illness or hazard occurring from the date on which the seafarer leaves home to join the vessel to the date on which the seafarer is duly repatriated, the seafarer will be entitled to compensation, the levels of which will be attached as an annex to this agreement.

In the event of the seafarer's death the shipowner will also meet the cost of burial expenses or cremation and the return of property left on board to the seafarer's next of kin or nominated beneficiary.

10. Repatriation

The seafarer will be entitled to repatriation at the shipowner's expense:

- when this agreement expires;
- when this agreement is terminated;
- in the event of illness, injury or other medical condition the seafarer requires repatriation, (when medically fit to do so);
- the ship is proceeding to a Warlike Operations Area/war zone and the seafarer does not consent to go;
- in the event of termination or interruption of employment in accordance with an industrial award or collective agreement;
- in the event of shipwreck;
- in the event of the shipowner not being able to continue to fulfil their legal or contractual obligations as an employer of seafarers by reason of insolvency, sale of the ship or change in ship's registration; and
- the maximum period of service on board following which the seafarer is entitled to repatriation will always be less than 12 months.

The entitlement to repatriation includes transport to the place where the seafarer signed this agreement, the seafarer's country of residence, place stipulated by a collective agreement, or such other place as mutually agreed with the shipowner when signing this agreement.

The agreed repatriation destination is.....

The Isle of Man Regulations on repatriation shall be made available to the seafarer on board the ship.

11. Applicable Collective agreement(s)(delete if not applicable)

The seafarer's employment will also be subject to the Collective agreement(s) entered into on.....(insert date(s)) between the shipowner and(insert details of the other parties to the collective agreement(s))

12. Shipowner's Complaint Procedure

If the seafarer has a complaint regarding employment, the seafarer should follow the shipowner's on board complaint procedure. The procedure will be made available to the seafarer, if requested, before signing this agreement. The shipowner's complaint procedure will also be provided to the seafarer on board the ship.

13. Disciplinary Rules and Procedure

The disciplinary rules applicable to the seafarer shall meet the standards set out in the Code of Conduct for the Merchant Navy or, if the seafarer's employment is covered by an applicable collective agreement, the disciplinary rules contained therein.

The disciplinary rules which are applicable to the seafarer's employment will be made available, if requested, before signing this agreement.

14. Shipowner's Additional Provisions (if applicable)(delete if not applicable)

The seafarer's employment will be subject to the following additional provisions except where any such provision conflicts with Isle of Man MLC regulations, that provision shall not apply to employment under this Agreement.

I confirm that I have freely entered this agreement with a sufficient understanding of my rights and responsibilities, and I have been given an opportunity to review and seek advice on the Agreement before signing.

Signed.....

(Seafarer)

Date.....

I confirm that the seafarer has been informed of their rights and duties under this agreement prior to or in the process of the seafarer's engagement onto the vessel.

Signed.....

(Shipowner or Shipowner's Representative)

[Place this Agreement is entered into].....

[Date this Agreement is entered into].....