

MARITIME LABOUR CONVENTION, 2006 AND COVID-19

This guidance is valid for the period 1 March 2020 to 31 August 2020, subject to review at least at monthly intervals from 1 May 2020.

General

The company should provide seafarers with information on the risks of infection, best practice guidance on hygiene measures and social distancing, and measures being taken for their protection. Operational changes as a result of COVID-19 should wherever practicable be subject to consultation with seafarers and/or with seafarers' organisations.

Seafarers who are onboard vessel beyond their contracts for reasons connected with the Covid-19 virus.

The company should ensure that seafarers are kept informed about the reasons why they are required to stay on board and inform them about arrangements for their repatriation. A valid Seafarer's Employment Agreement (SEA) must remain in force until repatriation. If any of the SEAs have expired, they must be extended, or new ones issued, on the same terms and conditions.

The situation should be kept under review and the company needs to ensure that the seafarers are sent home at the first available opportunity even if this is part way through an extension to their SEA. *The MCA should be informed if the extension is likely to extend for more than 30 days (mlc@mcga.gov.uk).* Evidence should be retained by both the seafarer and the company including an entry in the Official Log Book clearly demonstrating the reason why the seafarer was asked to extend their contract.

Carry over of annual leave/deferring repatriation of crews

MGN 479(M) points out that, in addition to the statutory entitlement for seafarers to be repatriated at intervals of no more than 12 months, seafarers on UK ships are also entitled to 38 days of statutory paid leave per year of employment (or pro rata for periods of less than a year). This is expected to be taken within the leave year. In effect therefore, seafarers should normally be repatriated at intervals of no more than 11 months.

Many seafarers have contractual leave entitlements in excess of the statutory leave entitlement. This guidance applies to statutory paid leave.

Arrangements for taking leave and the time when leave is to be taken are matters for agreement between shipowners and seafarers.

As a result of the current pandemic, it is increasingly difficult for shipowners to make arrangements for repatriation and crew changes due to reduced availability of flights and travel restrictions in many ports. Seafarers may therefore be requested to, or may unavoidably have to, remain on board for longer than their contracted period of service and so in some cases may be unable to take their statutory leave within the leave year. This is currently primarily an issue for the deep-sea sector but may spread into the short sea sectors where non-UK residents are employed, if the situation worsens. Where such a situation arises, shipowners and seafarers should consider the following:

- Extended periods working on board ship without leave are likely to give rise to greater risk of fatigue, and a dip in morale particularly if anticipated leave is deferred at short notice.
- MGN 505 (M) includes guidance on recognising the signs of fatigue¹, and the master and all seafarers should monitor and be alert for such signs and report any concerns to the master or the safety committee.
- Consideration should be given to rearranging work patterns to allow for additional rest periods/shore leave where possible, and to providing increased connectivity to allow seafarers to contact home and entertainment on board.
- The seafarer's informed consent should be obtained in any case where the shipowner is advising/requesting the seafarer to stay on board, where repatriation might be possible.
- Even where deferred repatriation/leave is unavoidable, seafarers and/or seafarers' organisations should be kept informed of the reasons and consulted on possible impacts and mitigating measures. A record of such discussions and outcomes should be kept.
- Any right to repatriation or annual leave which is deferred should not be lost, but the opportunity provided to take it (subject to any conditions in the seafarer's SEA) as soon as practicable, reviewing the situation at regular short intervals.
- If that is not possible before the termination of the seafarer's SEA, and so the seafarer receives pay in lieu of untaken leave they have accrued, it is the responsibility of seafarers to take sufficient leave before embarking on a new contract to ensure that they are properly rested and fit for duty when they start work.

Shipowner liability

If in doubt, shipping companies should contact their financial security provider to confirm that insurance or other financial security is in place for additional costs pending repatriation (e.g. isolation), medical care, and any costs and expense of crew transfer for suspected cases.

¹ MGN 505(M) pp 13 and 14 "Checklist! Recognising the danger signs in individuals" and "Checklist! Recognising the operational danger signs"

Under MLC provisions relating to repatriation and medical care, shipowners remain liable for accommodation and maintenance costs pending repatriation (e.g. isolation), any necessary medical care, and any costs or expense of crew transfer for seafarers infected with coronavirus or suspected of being so infected.