

Newsletter No 3 - Seafarers Employment Agreements

In Newsletter No 3 we want to look in detail at one of the biggest changes that MLC will bring in and that is the Seafarers Employment Agreement, (or from now on the SEA). This Newsletter explains the minimum requirements the SEA must contain and what we consider would make a model SEA for use on Isle of Man registered ships.

(When we started this newsletter it wasn't planned to be eleven pages - but bear with us as it is only 3 pages of news and 8 pages of some examples).

Every seafarer working on an Isle of Man registered ship or commercial yacht will need to have an SEA between themselves and the shipowner, or a representative of the shipowner. This is one major change and will also mean there is no longer a requirement for crew agreements and signing on articles, as the SEA will replace both of these documents.

As all seafarers will have to agree to and sign a SEA, the definition of seafarer has to be taken into account and this is defined in MLC as:-

'A seafarer means any person, including the master, who is employed or engaged or works in any capacity on board a seagoing ship to which MLC 2006 applies'.

The definition of seafarer does not apply to those persons whose work is not part of the routine business of the ship and whose principal place of work is ashore, for example, marine professionals such as harbour pilots, inspectors, or superintendents, scientists, researchers, divers and specialist offshore technicians. Also those persons working on a seagoing ship on an occasional and short-term basis for example fitters, guest lecturers and entertainers, repair technicians, surveyors or port workers.

The SEA is in MLC under Regulation and Standard 2.1 which is shown in Annex 1 and this gives the minimum detail of what the SEA must contain. When you read these requirements they do not appear too onerous and are what you would expect to have in any reasonable contract of employment. However, there are references to the SEA in other MLC titles (5.1.5 Onboard complaints procedure and 2.5 repatriation, for example) so it can grow to be a substantial document.

For a shipowner with a multi flag fleet there could be a danger in each flag having differing requirements of what should be in an SEA and we have kept the requirements to only cover the requirements of MLC.

SEA's will generate some interesting challenges to the shipowner and the seafarer namely:-

1. the shipowner and the seafarer shall each have a signed original of the SEA.
2. that the shipowner has given the seafarer enough time to review and take advice on the content and conditions of the agreement before the seafarer signs the SEA;
3. that the shipowner has informed the seafarer of their rights and duties under their employment agreement prior to or in the process of engagement; (see MLC Standard A1.4.(c)(ii))
4. the seafarer enters the agreement freely having a sufficient understanding of their rights and responsibilities. (MLC A2.1(b))

The SEA is one of the 14 areas included in the shipboard inspection and certification so a shipowner will have to be able to demonstrate how they comply with 1-4 above.

In order to assist with this process a model format of an SEA has been written (see Annex 2). We appreciate that there is not a model format from the ILO and it may be something that will eventually be produced. Until then there is no requirement to use a standard format, just to have the required information, though we thought it would help the shipowner to have a model format, and also this would avoid the Ship Registry from having to approve individually written SEA's from each shipowner.

SEA's will replace crew agreements and the list of crew, traditionally used when a seafarer signs on to the crew agreement. We are proposing a new crew list to be adopted and all seafarers who are employed, engaged or work on board the ship will be required to be entered onto it. The new crew list will contain the following information, which is the same as required by the IMO FAL Form 5, so the FAL form can be used to avoid duplication.

- Name and type of ship, IMO Number and call sign
- Port of arrival/departure (ship)
- Date of arrival/departure (ship)
- Flag state of ship
- Last port of call
- Nature and No. of Identity document. (seaman's passport)
- Number in the list. (sequential numbering) 1,2,3.....
- Family and given names
- Rank or rating
- Nationality
- Date and place of birth

- Date and signature by Master, authorised agent or officer.

It will also be a requirement for the shipowner to maintain an up to date copy of this crew list and it will be the duty of the Master to notify the shipowner of any changes to this crew list. Also the shipowner will have to supply a copy of the crew list to the Ship Registry if requested to do so.

One area that will not be changing is MLC standard A2.1.1 (e). This requires a seafarer to be "given a document containing a record of their employment on board the ship" which may be a seafarer's discharge book. If for any reason a discharge book is not used then the shipowner must provide the seafarer a record of their employment on board containing the following information a copy of which shall be in English.

- Name, port of registry, gross tonnage and IMO number of the ship
- Description of voyage
- Capacity in which seafarer is employed
- Date on which employment started
- Date of discharge

As can be seen in this news letter there are some changes that will be required by both the shipowner and the seafarers on the vessel, for example the introduction of the SEA and the removal of articles of agreement. However most shipowners already have contracts of employment with their seafarers which cover most of the areas in the SEA so only minor changes may be required. Also the FAL form 5 crew list is already in use, and most seafarers use a discharge book in order to record their record of employment. In order to comply with MLC the Ship Registry is currently in the process of creating new Isle of Man legislation.

The rest of this newsletter is made up with;

Annex 1 – The 19 points that are required to be in an SEA. If you currently have contracts of employment that address all of these points then you will have cleared one of the biggest tasks for shipowners in MLC.

Annex 2 - Is a model for an SEA, it's use isn't compulsory but it may be a starting point if you have nothing in place.

You can contact the MLC team by e-mail at: marine.mlc@gov.im

Annex 1

Provision to be included in a Seafarers' Employment Agreement

- 1.** The full name, date of birth and birthplace of the seafarer.
- 2.** The name and address of the shipowner.
- 3.** The place where the agreement is entered into.
- 4.** The date on which the agreement is entered into.
- 5.** The capacity in which the seafarer is to be employed.
- 6.** The wages (either the amount or the formula to be used in determining them).
- 7.** The manner in which wages must be paid, including payment dates and the circumstances (if any) in which wages may or must be paid in a different currency.
- 8.** Hours of work.
- 9.** The paid annual leave (either the amount or the formula to be used in determining it).
- 10.** Termination of employment.
- 11.** If the agreement has been made for a definite period, the termination date. the period of notice of termination required and the circumstances in which such notice may be given.
- 12.** If the agreement has been made for an indefinite period, the period of notice of termination required and the circumstances in which such notice may be given.
- 13.** If the agreement has been made for a voyage, the destination port and the period following arrival after which the agreement terminates. the period of notice of termination required and the circumstances in which such notice may be given.
- 14.** The health and social security protection benefits to be provided to the seafarer by the shipowner.
- 15.** The maximum duration of service periods on board following which the seafarer is entitled to repatriation (such periods to be less than 12 months).
- 16.** The seafarer's entitlement to repatriation (including the mode of transport and destination of repatriation) and the circumstances in which the seafarer may be required to reimburse the shipowner a maximum of £XXX's pounds towards the costs of repatriation. A copy of the Isle of Man Repatriation regulations shall be available to the seafarer on board.
- 17.** Reference to Collective Bargaining Agreements where applicable.
- 18.** Shipowner's complaint procedure.
- 19.** Disciplinary rules and procedures.

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 Name]
of [Shipowner's Address].....

2. Capacity in which seafarer is to be employed

The capacity in which you are initially employed is.....
[insert details of capacity].

3. Period of employment

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

OR

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

OR

#you 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

You will be employed on.....[ship name]#

OR

You will be employed on any vessel owned, managed or chartered by the shipowner#

(#delete whichever is inapplicable)

5. Wages and Account of Wages

Your 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 (see clause 6 below) will be paid at a rate of..... [rate] per hour]

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

6. Hours of Work and Rest

Your hours of work will be arranged such as to ensure that you receive a minimum of 10 hours available for rest in each 24-hour period and a minimum of 77 hours rest in each seven-day period.

Your hours of rest may be divided into no more than two periods, one of which shall be at least six hours in length, and the interval between consecutive periods of rest shall not exceed 14 hours.

Isle of Man Merchant Shipping Regulations, require the Master or a person authorised by the Master to maintain a record of your daily hours of rest. The records should be kept in English and the working language of the ship if that is not English.

The records of your hours of rest are required to be endorsed by the Master or a person authorised by the Master, and by you, and a copy of the record as endorsed will be presented to you.

You may be required, at the absolute discretion of the Master, to work additional hours during an emergency affecting the safety of the ship, its passengers, crew or cargo or the marine environment or to give assistance to other ships or persons in peril. You may also be required to work additional hours for safety drills such as musters, fire-fighting and lifeboat drills. In such circumstances you will be provided subsequently with (a) compensatory rest period(s).

7. Paid annual leave

You are entitled to take..... [insert number] working days (a minimum of 40 days which includes 10 days for public holidays) in each year of employment. You will be paid your normal basic remuneration during such leave.

If your employment commenced or terminates part way through the year, your entitlement to paid annual leave during that year will be assessed on a pro rata basis. Deductions from final salary due to you on termination of employment will be made in respect of any paid annual leave taken in excess of your entitlement.

You will be entitled to payment in lieu of paid annual leave accrued due but untaken as at the date of termination of employment.

8. Termination of Employment

Your employment under this agreement may be terminated in the following circumstances:-

- (a) by mutual consent;
- (b) Your misconduct as prescribed in the Code of Conduct for the Merchant Navy;
- (c) Your need to terminate the agreement for compassionate or other urgent reasons, this shall be without penalty to you;
- (d) If in the opinion of the Master your continued employment would be likely to endanger the vessel or any person onboard;

(e) By appropriate notice in accordance with paragraph 9 below;

9. Notice of termination of employment – Indefinite Agreement #

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

The length of notice which you are entitled to receive from the shipowner to terminate your 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 #

Your 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, unless it is terminated for justified reasons in advance of this point.

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

The length of notice which you are entitled to receive from the shipowner to terminate your 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.

(# delete whichever is inapplicable)

10. Health and Social Security Benefits

If you are on a voyage at the time that you become sick or injured, you will be paid your normal basic remuneration until you have been repatriated in accordance with Clause 8 below. After you have been repatriated, you will be paid [number] per cent of your normal

basic remuneration up to a maximum of[16 or above] weeks [less the amount of any Statutory Sick Pay or social security sickness benefit to which you may be entitled for..... [number] working days in total in anyone sick pay year].

You 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, you 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, you will be provided with medical care, including medical treatment and the supply of necessary medicines and therapeutic devices and board and lodging away from home until your recovery or until your sickness or incapacity has been declared of a permanent character, subject to a maximum period of..... [16 or above] weeks. In addition the shipowner will meet the cost of the return or your property left on board to you or your next of kin.

In the event of your death occurring on board or ashore during a voyage, the shipowner will meet the cost of burial expenses and the return or your property left on board to your next of kin.

11. Repatriation

You will be entitled to repatriation; at the expense of the shipowner

- in the event of illness or injury or other medical condition requiring your repatriation, in the event that the ship is proceeding to a Warlike Operations Area or the event of termination or interruption of employment in accordance with an industrial award or collective agreement;
- in circumstances where you are no longer able to carry out your duties under this agreement or cannot be expected to do so e.g. shipwreck, the sale of your ship or a change in your ship's registration , and
- Your maximum period of service on board following which you are entitled to repatriation shall always be less than 12 months.

The entitlement to repatriation entails transport to the place where you signed your employment agreement, your country of residence, or such other place as mutually agreed

with the shipowner when you sign the SEA.

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

12. Collective Bargaining Agreement (where applicable)

The Collective Agreement(s) dated.....between [shipowner] and[trade union(s)] contain details of additional terms and conditions and forms part of this Seafarers' Employment Agreement, as attached.

13. Shipowners Complaint Procedure

If you have a complaint regarding your employment you should follow the shipowner's seafarers complaint procedure. The procedure will be made available to you, if so requested, before you sign this agreement. The shipowner's seafarers complaint procedure will also be provided to you when you join your ship.

14. Disciplinary Rules and Procedure

The disciplinary rules applicable to you are set out in the Code of Conduct for the Merchant Navy, which has been agreed between the Chamber of Shipping, Nautilus UK and the National Union of Rail, Maritime and Transport Workers.

The code will be made available to you, if so requested, before you sign this agreement.

If you are dissatisfied with any disciplinary decision taken in relation to you, you should refer to the disciplinary procedure set out in the Code of Conduct for the Merchant Navy, which may be obtained from.....[state contact details]

MLC Update



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 where this Agreement is entered into].....

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