



Maritime Labour Convention 2006: Recruitment and Placement

Notice to all maritime Recruitment and Placement Services, shipowners, ship operators and ship managers; employers of seafarers; masters, officers and seafarers on seagoing ships ordinarily engaged in commercial operations

Summary

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1. Introduction/ Background

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2. UK implementation of the Convention

2.1 The UK ratified the MLC on 7 August 2013, and is therefore required to ensure UK domestic legislation is in line with Convention standards. The requirements on UK based RPS contained in the mandatory aspects of Title 1.4 of the MLC which are not already in UK law have been incorporated in the Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations 2014. The proposed legislation imposes the relevant MLC standards on RPSs, but does not introduce a mandatory licensing or certification scheme for RPSs which supply seafarers to certify their compliance with that legislation. There are no plans for such a mandatory scheme in the UK. It is considered that the remaining obligations imposed by the MLC already exist in UK law by virtue of the Employment Agencies Act 1973, the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended) and the Employment Relations Act 1999 (Blacklists) Regulations 2010 in Great Britain and the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 and the Conduct of Employment Agencies and Employment Businesses Regulations 2005 (as amended) in Northern Ireland, together with the Employment Relations (Northern Ireland) Order 1999 (Blacklists) Regulations (Northern Ireland) 2014. However, a non-mandatory certification scheme is being made available for those Employment Businesses (EB) and Employment Agencies (EA) requesting it – this scheme is explained in section 6.

3. Obligations on shipowners

3.1 Part 3 of the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014 specifies that UK shipowners must not use Recruitment and Placement Services which do not fall within one of the descriptions contained in Part 3.

3.2 The descriptions in Part 3 are as follows:

- a) they are based in the UK (as a ratifying country);
- b) they are based in another country which has ratified the MLC;
- c) they are based in a country to which another country's ratification of the MLC has been extended;
- d) they comply with the requirements of MLC Standard A1.4.5.

3.3 This is intended to achieve the outcome that shipowners only use MLC compliant services. It is recognised that if an RPS is based in another ratifying country, the ratifying ILO member country in which it is located is under an obligation to ensure it regulates its seafarer RPSs to the required standards (see point (b) in paragraph 3.2 above). The shipowner may therefore reasonably expect that the RPS is compliant. However, this does not prevent non-compliances being investigated and acted upon if they come to light – which may happen, for example, when a surveyor checks paperwork onboard a ship, or when a seafarer makes a complaint.

3.4 If none of the points in paragraph 3.2 (a) to (c) above apply, the shipowner will be required to provide evidence to the satisfaction of the Maritime and Coastguard Agency (MCA) that they have taken all reasonable steps to ensure that any RPS in question is compliant with MLC Standard A1.4.5, (see Table in section 6.1). This may take the form of an audit carried out by the shipowner, or the shipowner producing evidence of a suitable and sufficiently thorough third party audit which verifies this.

3.5 It is an offence not to comply with Part 3, but the Regulations also include a defence for a shipowner who has made reasonable endeavours to check the compliance of a RPS which is later found not to be compliant.



4. Obligations on UK Recruitment and Placement Services (RPS) operating in the UK

4.1 RPSs in the UK which fall under the definitions of “Employment Agency” and “Employment Business” in existing UK legislation are already required to comply with the relevant provisions in those instruments.

4.2 The Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations 2014 are designed to bridge the gap between the existing UK legislation on this subject and the few additional requirements imposed by the MLC. However, the wording of the definitions of “Employment Agency” and “Employment Business” in these Regulations differ slightly from the ones which appear in the Employment Agencies Act 1973 and the Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981. While the definition of “Employment Business” in the Merchant Shipping legislation is not intended to mean anything different from the definitions in that Act and Order, the definition of “Employment Agency” in the new Merchant Shipping Regulations is deliberately narrower, excluding those recruiting organisations which only provide information and do not influence the selection process. This means that EAs which do not have any input into the selection of candidates may fall outside the definitions in the 2014 Regulations. See the Annex to this MGN for further detail.

5. Additional requirements for RPSs recruiting seafarers

Additional checks to be carried out by Employment Agencies

5.1 Regulation 4 of the Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations 2014 requires Employment Agencies (as defined in those regulations) to carry out checks to confirm the identity of the seafarer (referred to in the Regulations as “work-seeker”) and that the seafarer has the experience, training, qualifications and authorisations required to fill the position the Employment Agency’s shipowner is seeking to fill. There is a broadly similar obligation contained in Regulation 19 of the existing Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended) and the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 (as amended). Similar obligations for Employment Agencies were removed from the both sets of Regulations by the Conduct of Employment Agencies and Employment Businesses Regulations (Amendment) Regulations 2010 and Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations (Northern Ireland) 2010.

Additional information to be provided to seafarers by Employment Agencies

5.2 Regulation 5 of the Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations 2014 requires Employment Agencies and Businesses (as defined in those regulations) to ensure that:

- a) the seafarer is informed of rights and duties under the Seafarer Employment Agreement prior to or in the process of engagement;
- b) arrangements are made for the seafarer to examine the Seafarer Employment Agreement before and after it is signed;
- c) arrangements are made for the seafarer to receive a copy of the Seafarer Employment Agreement after they sign it.

5.3 There are broadly similar obligations contained in Regulations 20 and 21 of the existing Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as



amended) and Regulations 20 and 21 of the existing Conduct of Employment Agencies and Employment Businesses Regulations 2005 (as amended). Similar obligations for Employment Agencies were removed from the both sets of Regulations in amending Regulations in 2010.

Requirement to establish a financial System of Protection (SoP)

5.4 Regulation 6 of the Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations 2014 requires EAs and EBs (as defined in those regulations) to establish a financial System of Protection (SoP), by way of insurance or other equivalent measure, to compensate the seafarer in the event the RPS or the shipowner fails to meet its statutory or contractual obligations to the seafarer.

Record keeping

5.5 Regulation 7 of the Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations 2014 requires EAs and EBs (as defined in those Regulations) to keep records to demonstrate they are operating in compliance with those Regulations.

5.6 Such records must be kept for at least one year from the date of their creation, and in the case of applications from seafarers and shipowners (see Regulation 7(1)(a) and (b)) one year from the date on which the RPS last provides services to the seafarer or shipowner in question.

6 Non-mandatory audit scheme for Recruitment and Placement Services

6.1 Sections 6 to 9 of this Marine Guidance Note (MGN) sets out the standards with which the RPS needs to comply for this non-mandatory certification. Although the UK government is not requiring RPSs supplying seafarer work seekers to be certificated under MLC implementing legislation, some UK based RPS involved in the maritime sector requested the opportunity to become certified against UK MLC standards. Some third party organisations have already been carrying out audits against generic MLC standards, but the MCA has not approved any third party organisations to carry out this type of audit against UK standards.

6.2 The MCA therefore introduced a non-mandatory certification scheme for RPSs to help them to demonstrate MLC compliance.

7 Standards for the non-mandatory certification scheme

7.1 The RPS obligations under MLC Title 1.4 are set out in the Table below. Some of these are already in UK law, the remainder are introduced via the Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations 2014. The issue of a MCA certificate is therefore subject to the RPS showing satisfactory evidence that it does comply, and/or has the appropriate mechanisms in place to comply, with the standards set out in the following legislation and, as regards the SoP, section 5 of this MGN.

Obligation	MLC Standard	UK legislation and Remarks
RPS must not use means, mechanisms or lists intended to prevent or deter seafarers from gaining employment for which they are qualified.	A1.4.5(a)	Objective achieved by regulation 3 of the Employment Relations Act 1999 (Blacklists) Regulations 2010 and Employment Relations (Northern Ireland) Order 1999 (Blacklists) Regulations



<p>RPS must ensure no fees or other charges for seafarer recruitment or placement or for providing employment to seafarers are borne directly or indirectly, in whole or in part, by the seafarer, other than the cost of the seafarer obtaining a national statutory medical certificate, the national seafarer's book and a passport or other similar personal travel documents, not including, however, the cost of visas, which shall be borne by the shipowner.</p>	<p>A1.4.5(b)</p>	<p>(Northern Ireland) 2014.</p> <p>Objective achieved by:</p> <ol style="list-style-type: none"> 1. Employment Agencies Act 1973 and Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended) in Great Britain; and 2. Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981 and Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 (as amended). <p>NB: there are relaxations in legislation for certain professions where this is normal practice, and it is not intended to change this.</p>
<p>RPS must maintain an up-to-date register of all seafarers recruited or placed through them, to be available for inspection by the competent authority.</p>	<p>A1.4.5(c)(i)</p>	<p>Objective achieved by:</p> <ol style="list-style-type: none"> 1. Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended) in Great Britain; and 2. Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 (as amended).
<p>RPS must 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.</p>	<p>A1.4.5(c)(ii)</p>	<p>Objective achieved by:</p> <ol style="list-style-type: none"> 1. Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended) in Great Britain; and 2. Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 (as amended) <p>for Employment Businesses, but was withdrawn in 2010 for Employment Agencies. The latter will need to achieve MLC compliance if not already doing so. This obligation is contained in the Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations 2014.</p>



RPS must verify the identity of seafarers recruited or placed by them and that they have the experience, training qualifications and any authorisation which the hirer considers necessary which are required by law or a professional body, to work in the position the hirer is seeking to fill.	A1.4.5(c)(iii)	Objective achieved by: 1. Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended) in Great Britain; and 2. Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 (as amended) for Employment Businesses, but was withdrawn in 2010 for Employment Agencies. The latter will need to achieve MLC compliance in this area, if not already doing so. This obligation is contained in the Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations 2014.
RPS must make sure, as far as practicable, that the shipowner has the means to protect seafarers from being stranded in a foreign port.	A1.4.5(c)(iv)	This obligation is contained in the Merchant Shipping (Maritime Labour Convention) (Repatriation) Regulations 2014.
RPS must examine and respond to any complaint concerning their activities and advise the competent authority of any unresolved complaint.	A1.4.5(c)(v)	Regulation 13 of the Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013 place an obligation on the shipowner to have onboard and onshore complaints procedure and follow them.
RPS must 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.	A1.4.5(c)(vi)	This obligation is contained in the draft Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations 2014. (See below for details of System of Protection required for certification under the non-mandatory scheme.)
The non-mandatory audit also checks	MLC Guideline	UK legislation and Remarks
Data protection arrangements	B1.4.1(d)	Not applicable.
Staff training and knowledge	B1.4.1(f)	Not applicable.



8 Details of financial System of Protection

8.1 Normally the MCA would expect the financial SoP to be in the form of a commercial policy of insurance. However, if a seafarer RPS wishes to propose any arrangement which they believe meets the description of "equivalent appropriate measure", they may propose this to the MCA. Acceptance is subject to MCA agreement and any alternative approach would be expected to meet the criteria specified.

Time requirements:

The SoP will apply to Employment Agencies (EA) in the following way:

8.2 It will cover any of the relevant liabilities which arise within **two months** of the seafarer being placed with the shipowner; and

8.3 If any relevant liability/arrears arises within those **two months** the SoP will cover them from the point at which they arise and accrue over a **two month** period from that date (even if that period extends beyond the two months from placement).

Example

On the 1st March 2013 a seafarer is introduced to a shipowner whom the latter engages on that date. The seafarer is paid monthly and payment is duly made on the 31st March. On the 30th April the seafarer realises that he has not been paid for that month. The 2 month period from placement finishes on the 30th April. The arrears arise from the 1st April (within the first 2 months of placement) and therefore the SoP should cover 2 months pay from the 1st April onwards (even though they were not contractually due until the 30th April). By the 31st May the seafarer has still not been paid. The SoP should cover 2 months from the 1st April to the 31st May.

The SoP will apply to an Employment Businesses (EB) in the following way:

8.4 As an EB will have an on-going contractual relationship with the seafarer then (unlike the case with an EA) it will apply **on an on-going basis** because relevant liabilities could arise at any point during the engagement whether this be near the beginning of employment, within a few months of starting or even several years down the line.

8.5 Should a relevant liability arise (for instance wages or any other relevant monetary loss) the SoP would cover those liabilities from the point at which they arise and accruing over an **2 month** period from that date.

Example

An EB engages a seafarer on the 1st March 2013 and supplies the seafarer to a shipowner. Things go well to start with, and the seafarer is paid month after month. However the seafarer is not paid for the month of April or May 2014. The SoP should cover his wages from the 1st April 2014 for a period of 2 months which extends until the 31st May 2014.

Relevant liabilities:

8.6 The SoP is to cover the relevant Recruitment and Placement Service's liabilities, and failure of the shipowner to meet their liabilities. This includes:



- a) any matters included in a company Seafarer Employment Agreement (SEA) including those in excess of the minimum required by the MLC;
- b) any Collective Bargaining Agreement (CBA) that formed all or part of the SEA, provided it is incorporated expressly or impliedly;
- c) MLC requirements that can be implied into the SEA eg., the right to be provided with food free of charge;
- d) obligations which arise under Standard A and Guideline B of title 1.4 of the MLC and also under the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended).

8.7 It should be noted that the definition of Employment Agencies and Employment Businesses for MLC purposes, i.e., those used in the Merchant Shipping (Recruitment and Placement) Regulations, may differ from the definition of those bodies in other regulation, including the Conduct of Employment Agencies and Employment Businesses Regulations 2003 and the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005.

9 Further information about the non-mandatory certification scheme

9.1 Further detail for Recruitment and Placement Services wishing to achieve non-mandatory certification may be obtained from the Maritime and Coastguard Agency Inspection Branch on 023 8083 9628.

More Information

Seafarer Safety and Health Branch
 Maritime and Coastguard Agency
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DEFINITIONS OF EMPLOYMENT AGENCY AND EMPLOYMENT BUSINESS

The definitions of Employment Agency and Employment Business in the new Regulations differ slightly from the definitions which appear in the Employment Agencies Act 1973 and Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981.

Employment Agency

The definition of Employment Agency in the new Regulations is as follows:

“employment agency” means a business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services for the purpose of finding persons employment with employers or of supplying employers with persons for employment by them, which business is carried on in the United Kingdom, but does not include a business where the services provided are limited exclusively to the provision of information; and “employment agency” includes a person carrying on such an employment agency, and in the case of a person who carries on both an employment agency and an employment business means such a person in their capacity in carrying on the employment agency;’

This differs from the definition which appears in the Employment Agencies Act 1973 and Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981, which is as follows:

‘For the purposes of this Act [‘Part’ in NI order] “employment agency” means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them.’

The main effect of this is that the definition in the new Regulations excludes organisations which only supply information and do not influence the selection process. However, this new definition only covers those elements of the RPS obligations which are contained in the new Regulations – those which are contained in the old Regulations continue to apply to the same entities as they did before.

The new definition also seeks to make it clearer that the definition applies to any operation or part of operation which is conducted on UK soil.

Employment Business

The definition of Employment Business in the new Regulations is as follows:

“employment business” means a business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of supplying persons in the employment of the person carrying on the business, to act for, and under the control of, other persons in any capacity, which business is carried on in the United Kingdom; and “employment business” includes a person carrying on such an employment business, and in the case of a person who carries on both an employment business and an employment agency means such a person in their capacity in carrying on the employment business;’



This differs from the definition which appears in the Employment Agencies Act 1973 and Employment (Miscellaneous Provisions) (Northern Ireland) Order 1981, which is as follows:

'For the purposes of this Act [Part in NI Order] "employment business" means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of supplying persons in the employment of the person carrying on the business, to act for, and under the control of, other persons in any capacity'

However, the effect of this variation is not fundamentally different as it simply seeks to make it clearer that the definition applies to any operation or part of operation which is conducted on UK soil, and is not intended to change the scope of the definition.

