

Update

Landmark Maritime Labour Convention will come into force in 2013

The Maritime Labour Convention 2006 (MLC) is a single, consolidated convention that sets out seafarers' rights to decent working conditions and helps to create fair conditions of competition for shipowners. The MLC brings together international standards, updates all the existing maritime labour instruments and, for the first time, creates a system of certification and inspection to enforce those standards.

The MLC required 30 countries representing 33% of world tonnage to achieve the necessary ratification. Both thresholds have now been met and the MLC will come into force in August 2013. The 30 countries that have currently ratified the MLC represent nearly 60 percent of the world's shipping tonnage. This figure will grow as more countries are expected to ratify the MLC in the coming months. The UK expect to be in a position to ratify the MLC in early 2013.

Aims of the MLC

The MLC will provide a globally applicable standard setting out working conditions for seafarers operating under any national flag outside inland waters. It is intended to be easily understandable, to avoid previous problems of excessive detail in earlier ILO conventions that

made ratification difficult. It is also intended that the MLC be easy to update, to keep pace with changing industry conditions and to ensure that, unlike previous conventions, it continues to reflect contemporary working conditions on ships. Finally, the MLC contains greater powers of enforcement and a compliance system to eliminate substandard working terms and conditions.

The MLC will ensure that seafarers are guaranteed equal and acceptable conditions no matter which flag they sail under. It aims to create a level playing field and contains a number of principles such as non discrimination on the basis of a seafarer's race, colour, sex, religion, political opinion, national extraction, or social origin. It also seeks to provide new rights to seafarers with respect to employment benefits, health and safety and accommodation.

The MLC contains a “no more favourable treatment” clause, which means that, once the MLC is in force, no advantage will be gained by registering with a non-ratifying state. Indeed it is highly likely that such ships will, given the fact they will not possess authenticated documentation required by the MLC, face greater scrutiny from Port State Control inspectors who will police MLC compliance. The MLC will therefore seek to eliminate the current situation in which seafarers on ships flying the flags of countries that do not exercise effective control over them are often subject to conditions which are unjust and which jeopardise their health and safety and the safety of the ships. The current situation means that shipowners and flag states that do provide decent conditions on board are subject to unfair competition from less scrupulous shipowners who are able to undercut them as a result of operating substandard ships. The MLC aims to eradicate circumstances which allow substandard ships to operate in this way.

The MLC itself is divided into five Titles:

Title 1: Minimum requirements for seafarers to work on a ship.

Title 2: Conditions of employment.

Title 3: Accommodation, recreational facilities, food and catering.

Title 4: Health protection, medical care, welfare and social security protection.

Title 5: Compliance and enforcement.

Each title is divided into two sections as follows: (i) the first section sets out articles containing broad principles and obligations, compliance with which is mandatory; and (ii) the second section is then divided into two parts: A and B, with A setting out mandatory regulations and standards each signatory state must implement; and B setting out non-mandatory guidelines on how Part A should be interpreted and implemented. Although the guidelines in part B are not mandatory they cannot be disregarded because failure to follow the guidelines will result in the signatory state being required to justify itself to the ILO’s monitoring committee.

Protection for seafarers

Of the estimated 1.2 million people who work on ships around the world, many have, until now, not been clearly classified as “seafarers”. Those who work on board ships, but who are not involved with navigation or operation of the ship, such as personnel on board passenger ships, have generally been excluded from the definition of “seafarer”. This will change under the MLC.

Under the MLC, seafarers are defined as any persons who are employed or engaged or work in any capacity on board ships covered by the MLC. These ships include all ships ordinarily engaged in commercial activities (including yachts), other than ships which navigate exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply, and ships engaged in fishing or similar pursuits or ships of traditional build such as dhows or junks.

In terms of the actual protections afforded to seafarers, the MLC contains a number of key provisions relating to working conditions and pay:

- A requirement for an employment contract guaranteeing decent on-board conditions, to be signed by the shipowner
- On board complaints procedure
- Wages to be paid monthly, in full, and in accordance with the employment contract
- A 14 hour work limit in any 24 hours to be imposed, with a maximum 72 hour limit in any seven day period
- Leave entitlement
- The shipowner must pay to repatriate seafarers in case of injury, illness, shipwreck, insolvency or the sale of the ship
- There are specific requirements for on-board conditions, including minimum room sizes, sanitary facilities, hospital accommodation and adequate ventilation, lighting and heating. The majority of these provisions apply to new builds once the MLC comes into force
- The seafarer must have access to prompt medical care on board and in port

The MLC will potentially have a huge impact on market practice. Article III of Title 1 lays down a fundamental aim of the MLC as being “the elimination of discrimination in respect of employment and occupation.’ The article sets out to address the issue of equal pay for equal work. Part B Guideline B2.2.2.4 (a) states that ‘national law and regulations adopted after consulting the representative ship-owners’ and seafarers’ organisations or as appropriate.....should take into account the following principles: (a) equal remuneration for work of equal value should apply to all seafarers employed on the same ship without discrimination based on race, colour, sex, religion, political opinion, national extraction, or social origin.’ A common market practice is to apply pay scales dependant on an individual’s country of recruitment or origin. Such a practice would be in breach of the MLC which obliges signatory states to introduce national laws prohibiting such practices.

Further information

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Inspection and Detention

Once the MLC is in force, ships of all countries, whether their flag state has ratified the MLC or not, will be subject to inspection in any country that has ratified. On inspection by Port State Control, shipowners will have to produce a "Maritime Labour Certificate" and a "Declaration of Maritime Labour Compliance" authorised by their flag state. The Declaration must show the shipowners' plans for ensuring that the provisions of the MLC will be met during the voyage, meaning that masters will have to keep records demonstrating that they are complying with the MLC on an ongoing basis.

In addition to routine inspections, Port State Control will be obliged to carry out detailed inspections where a breach of the convention is identified or where a complaint is made by a crew member. This can lead to notification to seafarers organisations ashore and in cases of a serious breach of the convention, detention of the vessel.

To avoid such disruption, it will be vitally important that seafarers' issues are dealt with on board the vessel and do not give cause to raise complaints ashore. The effectiveness of the complaints procedure on board the vessel will be critical in achieving this.

Comment

The MLC represents a revolutionary change to the regulation of employment terms and working conditions for seafarers and shipowners should start taking steps now to ensure that they are not taken by surprise when the MLC comes into force. Managers, Owners and Charterers and their Insurers are also potentially affected, particularly if the inspection or detention of a vessel gives rise to claims for delay or damage to cargo.

Initial documentary reviews should include:

- Amending charterparties to ensure compliance by owners and redress in the event of failure
- Drafting on-board complaint and other procedures
- Drafting new, compliant employment contracts
- Amending Crew Management Agreements

In addition to document reviews, Masters and senior officers will need to be trained in ensuring that the vessel is compliant with the MLC including dealing with crew complaints and monitoring working-time limits.