



Gibraltar Maritime Administration

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Maritime Labour Notice (MLN) – 011(a) (Supersedes MLN 11)

To: Ship Owners, Operators, Masters, Officers and Classification Societies

This MLN provides guidance on compliance with Gibraltar regulations which give effect to MLC 2006 Title 2.5. Implementation of these guidelines will be taken as evidence of compliance with the Gibraltar regulations.

The guidelines do not preclude the ship-owner 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 (as amended);

Gibraltar Merchant Shipping (Maritime Labour Convention) Regulations 2012. Reg. 19

ILO Repatriation of Seamen Convention, 1926 (No.23);

Repatriation of Seafarers Convention (revised), 1987 (No.166); and

Seafarer’s Employment Agreements.

Most regulations and notices are available on the website: www.gibraltarship.com

Repatriation

1. The International Labour Organisation’s (ILO) Maritime Labour Convention 2006 (MLC) replaces the ILO Repatriation of Seamen Convention, 1926 (No.23) and the Repatriation of Seafarers Convention (revised), 1987 (No.166) which required ratifying countries to set out in national laws or regulations the particulars to be provided for the repatriation of seafarers.
2. The MLC Regulation 2.5 and Standard A2.5 – Repatriation replaces ILO No.23 and No.166, and requires ratifying countries to set out in national laws and regulations or other measures or in collective agreements the circumstances and entitlements to be provided for the repatriation of seafarers.
3. The Gibraltar MLC regulations make the ship-owner responsible for the repatriation of only the seafarers they employ i.e. seafarers required to have a seafarer’s employment agreement.

4. MLC uses the term “ship-owner” 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 ship-owners in accordance with MLC, regardless of whether any other organisation or persons fulfil certain of the duties or responsibilities on behalf of the ship-owner. For the vast majority of ships over 500 gross tonnes this will be the ISM Company.

Repatriation provisions in collective agreements (CAs)

5. Where MLC 2006, Title 2.5 – Repatriation, allows collective agreements to prescribe the terms and conditions of the repatriation of seafarers, this will be reflected in Gibraltar MLC regulations.

For example: MLC Standard A2.5.2 and A2.5.3 - Repatriation

*”2. Each Member shall ensure that there are appropriate provisions in its laws and regulations or other measures or in **collective agreements**, prescribing:*

(a) the circumstances in which seafarers are entitled to repatriation in accordance with paragraph 1(b) and (c) of this Standard;

(b) the maximum duration of service periods on board following which a seafarer is entitled to repatriation – such periods to be less than 12 months; and

(c) the precise entitlements to be accorded by ship-owners for repatriation, including those relating to the destinations of repatriation, the mode of transport, the items of expense to be covered and other arrangements to be made by ship-owners.

3. Each Member shall prohibit ship-owners from requiring that seafarers make an advance payment towards the cost of repatriation at the beginning of their employment, and also from recovering the cost of repatriation from the seafarers’ wages or other entitlements except where the seafarer has been found, in accordance with national laws or regulations or other measures or applicable collective agreements, to be in serious default of the seafarer’s employment obligations”.

6. This will mean that where a seafarer’s conditions of employment incorporates a CA and the CA includes provisions relating to repatriation as set out in MLC Standard A2.5.2 (a) to (c) and A2.5.3 then those provisions will apply to the seafarer’s repatriation.

7. However if a seafarer’s conditions of employment does not incorporate a CA, then the Gibraltar provisions for repatriation as prescribed in Gibraltar MLC regulations and below in this MLN will apply to that seafarer.

Gibraltar Provisions for repatriation

Seafarer’s entitlement to repatriation

8. Seafarers will be entitled to be repatriated when:

- a. their SEA expires when they are anywhere other than their repatriation destination;
- b. the period of notice required to be given to terminate an SEA by the ship-owner or by the seafarer expires;
- c. the seafarer terminates their SEA because they are no longer able to carry out their duties under their SEA or cannot be expected to carry them out in the following circumstances:
 - i. the seafarer’s SEA is terminated by the ship-owner;
 - ii. in the event of illness or injury or other medical condition which requires their repatriation when found medically fit to travel;
 - iii. in the event of shipwreck;

- iv. in the event of the ship-owner not being able to continue to fulfil their legal or contractual obligations as an employer of the seafarer by reason of insolvency, sale of ship, change of ship's registration or any other similar reason;
- v. in the event of a ship being bound for a war zone as defined by the United Kingdom Warlike Operations Committee or the seafarer's SEA, to which the seafarer does not consent to go;
- vi. in the event of termination or interruption of employment in accordance with an industrial award or collective agreement, or termination of employment for any other similar reason; and
- vii. compassionate or other urgent reasons (as described in MLN 2.1 SEAs).

d. The entitlement to repatriation may lapse if the seafarers concerned do not claim it within a reasonable period of time as determined by the Maritime Administrator or collective agreements, except where they are held captive on or off the ship as a result of acts of piracy or armed robbery against ships.

- i. *piracy* shall have the same meaning as in the United Nations Convention on the Law of the Sea, 1982
- ii. *armed robbery against ships* means any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State's internal waters, archipelagic waters and territorial sea, or any act of inciting or of intentionally facilitating an act described above.

Maximum duration of service periods on board

9. The maximum duration of service periods on board following which a seafarer is entitled to repatriation must be less than 12 months.

Repatriation arrangements

10. The ship-owner is responsible under Gibraltar MLC regulations for making the following arrangements for repatriation:

- a. the mode of transport shall be by the most appropriate and expeditious means and the normal mode of transport shall be by air; and
- b. seafarers must be repatriated to one of the following destinations:
 - i. the place at which the seafarer agreed to enter into the engagement;
 - ii. the place stipulated by a collective agreement;
 - iii. the seafarer's country of residence; or
 - iv. such other place as may be mutually agreed at the time of engagement.

Repatriation costs

9. The Gibraltar MLC regulations make the ship-owner responsible for covering the costs of repatriation until the seafarer has reached the repatriation destination as stated in their SEA (destination must be from the list in 10.b. above)

10. The costs of repatriation must include at least the following:

- a. passage to the repatriation destination;
- b. accommodation and food from the moment the seafarer leaves the ship until they reach the repatriation destination;
- c. pay from the moment the seafarer leaves the ship until they reach the repatriation destination;
- d. sufficient money to meet minor ancillary costs likely to be incurred by the seafarer for their relief and maintenance from the moment they leave the ship until they reach the repatriation destination;
- e. transportation of 30kg of the seafarer's personal luggage to the repatriation destination; and
- f. medical treatment when necessary until the seafarer is medically fit to travel to the repatriation destination.

Prohibition on advanced payments or recovering costs of repatriation

11. The Gibraltar MLC regulations will not allow the ship-owner to:

- a. require that seafarers make an advance payment towards the cost of repatriation at the beginning of their employment; or
- b. recover the cost of repatriation from the seafarer's wages or other entitlements except where the seafarer has been found, in accordance with applicable collective agreements, to be in serious default of the seafarer's employment obligations.

Repatriation of young seafarers

12. If during their first foreign-going voyage it becomes apparent that a seafarer under the age of 18 years is unsuited to life at sea they should be given the opportunity of being repatriated from the first suitable port of call at no expense to themselves.

13. Where a young seafarer has been repatriated due to them being unsuited to life at sea, notification of repatriation including reasons must be provided to the authority which issued the papers enabling the young seafarers to take up sea-going employment.

Lapse of repatriation entitlement

14. A seafarer's entitlement to repatriation will lapse if the seafarer does not claim it within 90 days.

Third-party contractual arrangements

15. The Gibraltar MLC regulations will not prejudice any right of the shipowner to recover the cost of repatriation under third-party contractual arrangements.

Repatriation regulations must be carried on board

16. A copy of the Gibraltar MLC regulations must be carried on board all Gibraltar MLC ships and must be available to all seafarers

Financial Security

17. The shipowner is responsible for providing financial security for the repatriation of seafarers in accordance with the Gibraltar MLC regulations as described in this MLN.

18. Evidence of financial security must be available for inspection on all Gibraltar MLC ships in the English language.

Dylan Cocklan
Maritime Administrator (Ag)

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All notices are available through www.gibraltarship.com

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