



Gibraltar Maritime Administration

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Maritime Labour Notice (MLN) – 007(b)

(This MLN supersedes MLN 007(a))

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

MLC Title 2.1 Seafarers' Employment Agreements

This MLN provides guidance on compliance with Gibraltar regulations which give effect to MLC 2006 Title 2.1. Implementation of these guidelines will be taken as evidence of compliance with the Gibraltar regulations.

The guidelines do not preclude the shipowner 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;

Gibraltar Merchant Shipping (Maritime Labour Convention) Regulations 2012 Reg. 11 to 20

ILO Seamen's Articles of Agreement Convention 1926 (No.22); and
Collective Agreements.

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

1. Seafarer Employment Agreement

- 1.1. The International Labour Organisation's (ILO) Maritime Labour Convention 2006 (MLC) replaces the ILO Seamen's Articles of Agreement Convention 1926 (No.22) which required ratifying countries to set out in national laws or regulations the particulars to be included in agreements relating to the employment of seamen on board ships.
- 1.2. The MLC Regulation 2.1 and Standard A2.1 Seafarers' Employment Agreements (SEA), require that every seafarer employed by the shipowner on a ship to which MLC applies shall have a SEA. The SEA is a contractual agreement between an individual seafarer and the shipowner or shipowner's representative and replaces ILO No.22.
- 1.3. MLC requires that when a seafarer is serving on a vessel to which MLC applies but is not employed by the shipowner, they do not require an SEA but must have documentary evidence of contractual or similar arrangements which provide them with decent working and living conditions on board the ship. (Further information can be found in paragraphs 16 & 17)

- 1.4. MLC uses the term “shipowner” 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 shipowners in accordance with MLC, regardless of whether any other organisation or persons fulfil certain of the duties or responsibilities on behalf of the shipowner.
- 1.5. The SEA sets out principal terms and conditions of the seafarer's employment. It must be in writing and both the seafarer and the shipowner must have an original SEA, signed by the seafarer and by the shipowner or a representative of the shipowner.
- 1.6. It is the responsibility of the shipowner to ensure that each seafarer has an opportunity to examine the SEA and seek advice before signing it, in order to ensure that all seafarers signing employment agreements do so of their own volition and with a sufficient understanding of their rights and responsibilities under the agreement. It is important that seafarers are not coerced into signing an SEA and that no undue pressure is placed on any seafarer to sign.
- 1.7. Shipowners must explain to seafarers to whom they offer employment their right to review their SEA and seek advice on it before signing, and should allow seafarers a reasonable time frame in which to do this. The seafarer's trade union, a friend or an independent advisor are potential sources of advice on SEAs.
- 1.8. It is the responsibility of the shipowner to inform seafarers of their rights and duties under their employment agreement prior to or in the process of engagement.
- 1.9. It is the shipowner's responsibility to ensure that clear information concerning the conditions of their employment can be easily obtained on board by seafarers, including the ship's master, and that such information, including a copy of the seafarer's employment agreement, is also accessible for review by officers of a competent authority, including those in ports to be visited.
- 1.10. The shipowner is responsible for ensuring there is a copy of each seafarer's original signed SEA on board the ship in the English language.

2. Trainees

- 2.1. There may also be instances where “trainees”, whose sole purpose in working on a ship is to receive training, are present on a ship under the terms of a written agreement (a “training agreement”) with a training provider. Such “trainees” are nonetheless regarded as seafarers for the purposes of the MLC minimum requirements regulations.
- 2.2. If the shipowner is not a party to the training agreement between the trainee and the training provider, that training agreement may nonetheless be considered to be substantially equivalent to an SEA for the purposes of the MLC minimum requirements regulations, provided it meets the “minimum requirements for a training agreement” set out in Annex 2. Further information on “trainees” and “training agreements” is also contained in Annex 2.

3. Collective Agreements (CAs)

- 3.1. CAs may be incorporated into an SEA.
- 3.2. In effect, where MLC 2006, Title 2 - Conditions of Employment allows collective agreements to prescribe the terms and conditions of employment of seafarers, this will be reflected in Gibraltar MLC regulations.
- 3.3. This will mean that where a seafarer's SEA incorporates a CA and the CA includes terms and conditions of employment, for example on repatriation, as set out in MLC Standard A2.5.2 (a) to (c) and A2.5.3 then those terms and conditions will apply to their employment.
- 3.4. However if a seafarer's SEA does not incorporate a CA, then the Gibraltar terms and conditions for repatriation as prescribed in Gibraltar MLC regulations will apply to that seafarer.
- 3.5. The shipowner is responsible for ensuring that the CAs on board the ship are available in the English language.

4. Content of Seafarers' Employment Agreement

4.1. The SEA is required to contain, as a minimum, the following information relating to the individual seafarer, the shipowner, and the terms and conditions under which the seafarer is to be employed:

- 4.1.1. the seafarer's full name, date of birth or age, and birthplace;
- 4.1.2. the shipowner's name and address;
- 4.1.3. the place where and date when the seafarer's employment agreement is entered into;
- 4.1.4. the capacity in which the seafarer is to be employed;
- 4.1.5. the amount of the seafarer's wages or, where applicable, the formula used for calculating them;
- 4.1.6. the amount of paid annual leave or, where applicable, the formula used for calculating it;
- 4.1.7. the termination of the agreement and the conditions thereof, including:
- 4.1.8. if the agreement has been made for an indefinite period, the conditions entitling either party to terminate it, as well as the required notice period, which shall not be less for the shipowner than for the seafarer;
- 4.1.9. if the agreement has been made for a definite period, the date fixed for its expiry; and
- 4.1.10. if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the seafarer should be discharged.
- 4.1.11. the health and social security protection benefits to be provided to the seafarer by the shipowner;
- 4.1.12. the seafarer's entitlement to repatriation, including repatriation destination;
- 4.1.13. and reference to the collective agreement, if applicable.

4.2. Seafarer's employment agreements shall continue to have effect while a seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships, regardless of whether the date fixed for its expiry has passed or either party has given notice to suspend or terminate it.

5. Early termination of Seafarers Employment Agreement

5.1. The minimum notice period for termination of an SEA is 7 days and must not be less for the shipowner than for the seafarer.

5.2. An SEA may be terminated at shorter notice or without notice under circumstances agreed in an applicable CA or:

- 5.2.1. if the seafarer, shipowner or shipowners representative agree that a shorter or no notice period is acceptable;
- 5.2.2. in the case of misconduct of the seafarer;
- 5.2.3. if the seafarer has need to terminate the agreement for compassionate or other urgent reasons without penalty to the seafarer.

6. Shorter notice period or without notice

6.1. For those seafarers not covered by a CA who wish to terminate their SEA at shorter notice or without notice then the shipowner or shipowner's representative must have a policy or procedure which allows both parties to the SEA to come to an agreement on the termination.

6.2. *Evidence of compliance*: Where termination at shorter notice or without notice has been agreed between the seafarer and shipowner or shipowner's representative then any costs to be borne by the seafarer must be agreed in writing and signed by both the seafarer and shipowner or shipowner's representative.

7. Misconduct of the Seafarer

7.1. For those seafarers not covered by a CA the shipowner or shipowner's representative must inform the seafarer of any disciplinary rules or procedures applicable to the seafarer's employment.

7.2. Evidence of compliance: The shipowner or shipowner's representative should have disciplinary rules and procedures in place which substantially meet the provisions contained in the "The Code of Conduct for the Merchant Navy".

8. Compassionate and other urgent reasons

8.1. For those seafarers not covered by a CA the need to terminate their SEA for compassionate and other urgent reasons without penalty must be addressed by the shipowner or shipowner's representative.

8.2. Evidence of compliance: Termination of employment on compassionate grounds without penalty to the seafarer should include the death of next of kin or nominated beneficiary, spouse, child and/or in the case of a single person a parent. Compassionate grounds should also take account of the same people becoming seriously or dangerously ill.

8.3. Termination of employment for other urgent reasons without penalty to the seafarer should include emergency situations which would not be expediently resolved without the seafarer's attendance.

9. Language(s) to be used

9.1. SEAs and any incorporated CAs must be in a language understood by the seafarer who is signing the agreement. Where such a language is not English, an English translation of the SEA and CA must be maintained on board.

10. Availability of information

10.1. Shipowners must ensure that seafarers are able to obtain clear information on board concerning the conditions of their employment, including a copy of the seafarer's signed employment agreement. This information must also be made available to Gibraltar surveyors, recognised organisations and port state officials.

11. Seafarers who do not require an SEA

11.1. Where a seafarer is serving on a vessel to which MLC applies but is not employed by the shipowner, they must be in possession of documentary evidence of contractual or similar arrangements which provide them with decent working and living conditions on board the ship.

11.2. The shipowner is responsible for ensuring that the contractual or similar arrangement provides decent working and living conditions on board the ship, complies with Gibraltar MLC regulations and includes particulars relating to:

11.2.1. seafarer's name, date of birth or age, and birthplace;

11.2.2. seafarer employer's name and address;

11.2.3. leave and maximum periods of service on board;

11.2.4. repatriation;

11.2.5. wages;

11.2.6. food and catering;

11.2.7. health and safety and accident prevention;

11.2.8. on board medical care; and

11.2.9. on board complaint procedure.

12. Seafarer's record of employment

12.1. All seafarers must be given a record of their employment on board the ship; a seafarer's discharge book may be used for this purpose. The record of employment must be provided in English and contain the following minimum particulars:

- 12.1.1. seafarer's full name, date of birth or age and birth place;
- 12.1.2. name, port of registry, gross tonnage and IMO number of the ship;
- 12.1.3. description of voyage;
- 12.1.4. capacity in which the seafarer was employed;
- 12.1.5. date of employment; and
- 12.1.6. date of discharge.

12.2. The record of employment must not contain any statement as to the quality of a seafarer's work or their wages.

13. Model format of an SEA

13.1. Annex 1 - Is a model format of an SEA, its use is not compulsory but it would be deemed to be *Evidence of Compliance* with Gibraltar MLC regulations.

14. Elimination of workplace harassment and bullying

14.1. The maritime Trade Unions and Shipowners globally have developed the ITF/ICS publication "guidance on eliminating shipboard harassment and bullying". This contains advice on how to identify and eliminate harassment and bullying in the maritime sector. Included in these guidelines are a suggested text for leaflets to be provided to all seafarers explaining what constitutes harassment and bullying by individuals and how individuals, who feel they have been bullied or harassed can raise a complaint with the company via named persons on board or ashore.

14.2. Although not required by the Maritime Labour Convention, the Gibraltar Maritime Administration would nevertheless recommend all shipowners, who have not already done so, to obtain copies of this guidance and put in place appropriate procedures to deal with bullying and harassment on their vessels.

Dylan Cocklan
Maritime Administrator

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All notices are available through www.gibraltarship.com

This copy of the Administrative Instruction has been sent electronically and does not carry a signature or official stamp. A sign and stamped copy will be available upon request

Annex 1 – 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 or shipowners representative's name]

.....

of [Shipowner's or shipowners representative's address]

.....

2. Capacity in which seafarer is to be employed

The capacity in which the seafarer is employed

[insert details of rank/position].

3. Period of employment

#The seafarer will be employed for a voyage from.....[insert place]

to.....[insert place]

OR

The seafarer will be employed for a period of.....weeks/months# commencing on

.....[insert date] and ending on.....[insert date]

OR

The seafarer 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

The seafarer's place of work will be on[ship name]#

or [any vessel owned, managed, bareboat chartered or operated by]#:

[Shipowner's name]

.....

[Shipowner's address]

.....

(#delete whichever is inapplicable)

5. Wages and account of wages

The seafarer's 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, will be paid at a rate of..... [rate per hour]

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

Where a seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships, wages and other entitlements under the seafarers' employment agreement, relevant collective bargaining agreement or applicable national laws, including the remittance of any allotments as provided in paragraph 4 of this Standard, shall continue to be paid during the entire period of captivity and until the seafarer is released and duly repatriated, or, where the seafarer dies while in captivity, until the date of death as determined in accordance with applicable national laws or regulations.

For the purpose of this paragraph:

- a) *piracy* shall have the same meaning as in the United Nations Convention on the Law of the Sea, 1982;
- b) *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.

6. Paid annual leave

The seafarer is entitled to take..... [insert number] days paid annual leave (a minimum of 30 days) in each year of employment. The seafarer will be paid normal basic remuneration during such leave. The seafarer will also be entitled to 10 days public holidays in each year of employment. If the seafarer's employment commenced or terminates part way through the year, entitlement to paid annual leave and public holidays during that year will be assessed on a pro rata basis.

7. Notice of termination of employment – indefinite period agreement #

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

The length of notice the seafarer is entitled to receive from the shipowner to terminate 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 #

The seafarer's employment is for the period of[insert length of period in months/weeks] commencing on..... [date] and terminating on [date]. The length of notice which the seafarer is obliged to give to terminate employment is[insert period which shall be not less than seven days].

The length of notice which the seafarer is entitled to receive from the shipowner to terminate 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 - voyage agreement #

The seafarer's 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.

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

The length of notice which the seafarer is entitled to receive from the shipowner to terminate 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)

Seafarer's employment agreements shall continue to have effect while a seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships, regardless of whether the date fixed for its expiry has passed or either party has given notice to suspend or terminate it.

For the purpose of this paragraph:

- c) *piracy* shall have the same meaning as in the United Nations Convention on the Law of the Sea, 1982;
- d) *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.

8. Termination of Employment at shorter notice periods or without notice.

This agreement may be terminated at shorter notice or without notice under circumstances agreed in an applicable collective agreement or:

- a. if the seafarer, the shipowner or shipowner's representative agrees that a shorter or no notice period is acceptable;
- b. in the case of the seafarer's misconduct; and
- c. when the seafarer needs to terminate the agreement for compassionate or other urgent reasons, this shall be without penalty.

On termination of this agreement all remuneration due to the seafarer will be paid without undue delay. This includes any accrued and untaken annual leave with pay.

9. Health and Social Security Benefits

If the seafarer is on a voyage and becomes sick or injured, the seafarer will be paid normal basic remuneration as stated or calculated within this agreement until the seafarer has been repatriated in accordance with section 10 below.

After the seafarer has been repatriated, the seafarer will be paid normal basic remuneration up to a minimum of[16 or above] weeks or until recovery, if earlier.

The seafarer 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, the seafarer 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, the seafarer 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 recovery or until the sickness or incapacity has been declared of a permanent character, subject to a minimum period of..... [16 or above] weeks.

In addition the shipowner will meet the cost of the return of property left on board to the seafarer or the seafarer's next of kin or nominated beneficiary.

In the event of the seafarer's death or long-term disability due to an occupational injury, illness or hazard occurring from the date on which the seafarer leaves home to join the vessel to the date on which the seafarer is duly repatriated, the seafarer will be entitled to compensation, the levels of which will be attached as an annex to this agreement.

In the event of the seafarer's death the shipowner will also meet the cost of burial expenses or cremation and the return of property left on board to the seafarer's next of kin or nominated beneficiary.

10. Repatriation

The seafarer will be entitled to repatriation at the shipowner's expense:

- a. when this agreement expires;
- b. when this agreement is terminated;
- c. in the event of illness, injury or other medical condition the seafarer requires repatriation, (when medically fit to do so);
- d. the ship is proceeding to a Warlike Operations Area/war zone and the seafarer does not consent to go;
- e. in the event of termination or interruption of employment in accordance with an industrial award or collective agreement;
- f. in the event of shipwreck;
- g. in the event of the shipowner not being able to continue to fulfil their legal or contractual obligations as an employer of seafarers by reason of insolvency, sale of the ship or change in ship's registration; and
- h. the maximum period of service on board following which the seafarer is entitled to repatriation will always be less than 12 months.

The entitlement to repatriation includes transport to the place where the seafarer signed this agreement, the seafarer's country of residence, place stipulated by a collective agreement, or such other place as mutually agreed with the shipowner when signing this agreement.

The agreed repatriation destination is.....

The Regulation 19 of the Gibraltar Merchant Shipping (Maritime Labour Convention) Regulations 2012 on repatriation shall be made available to the seafarer on board the ship.

11. Applicable Collective agreement(s) (delete if not applicable)

The seafarer's employment will also be subject to the Collective agreement(s) entered into on.....(insert date(s)) between the shipowner and(insert details of the other parties to the collective agreement(s))

12. Shipowner's Complaint Procedure

If the seafarer has a complaint regarding employment, the seafarer should follow the shipowner's on board complaint procedure. The procedure will be made available to the seafarer, if requested, before signing this agreement. The shipowner's complaint procedure will also be provided to the seafarer on board the ship.

13. Disciplinary Rules and Procedure

The disciplinary rules applicable to the seafarer shall meet the standards set out in the Code of Conduct for the Merchant Navy or, if the seafarer's employment is covered by an applicable collective agreement, the disciplinary rules contained therein. The disciplinary rules which are applicable to the seafarer's employment will be made available, if requested, before signing this agreement.

14. Shipowner's Additional Provisions (if applicable)(delete if not applicable)

The seafarer's employment will be subject to the following additional provisions except where any such provision conflicts with Gibraltar MLC regulations, that provision shall not apply to employment under this Agreement.

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 this Agreement is entered into].....

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

Annex 2 - Seafarer Employment Agreements - Application to Trainees

1. Introduction

- 1.1. Cadets and other trainees are “seafarers” for the purposes of the MLC. All seafarers are required to have a seafarer employment agreement (SEA) between themselves and the shipowner (or their employer, if they are employed and the shipowner signs the agreement as guarantor). However, certain of the provisions relating to SEAs are not easily applied to the engagement of cadets and other trainees on board ship. In particular, most trainees will have a training agreement with their training provider or sponsor, rather than an employment agreement with a shipowner.
- 1.2. A training agreement may cover both the cadet’s shipboard experience and their time at a training establishment. Where a training provider places cadets on a ship, there may be no formal agreement between the cadet and the shipowner. Indeed the cadet may be engaged on several different ships, with different shipowners, during their period of training.
- 1.3. Gibraltar Maritime Administration recognises that, in order to maintain opportunities for cadets or trainees, it is important not to create any unnecessary barriers to shipowners agreeing to provide training berths.
- 1.4. This Guidance therefore sets out the conditions under which a training agreement will be accepted as a “substantial equivalent” to a seafarer employment agreement (SEA). Hereafter in this notice, “seafarer” is used to cover any cadet or trainee. Apprentices who are employed will have a Seafarer Employment Agreement.
- 1.5. For the purposes of the MLC Requirements, “approved training provider” means a person who provides or secures the provision of seafarer training courses.

2. Minimum requirements for a training agreement

- 2.1. A training agreement between an approved training provider and a seafarer will be accepted as substantially equivalent to an SEA for the purposes of compliance with tMLC provided that:
 - 2.1.1. either through the training agreement itself; or
 - 2.1.2. through a combination of the training agreement and another agreement between the approved training provider and the shipowner,

there are contractual arrangements in place to ensure that a seafarer has the equivalent information and protection in respect of employment conditions as they would have under an SEA, with the exceptions set out in paragraph 3.
- 2.2. If any of the details listed below are covered in a separate agreement between the approved training provider and the shipowner, the seafarer must be informed, and as soon as practicable, must be given a copy of any relevant arrangements.

2.3. The minimum contents are:

- 2.3.1. the seafarer's full name, date of birth or age, and birthplace
- 2.3.2. the training provider's name and address
- 2.3.3. the place where and date when the training agreement was entered into
- 2.3.4. the capacity in which the seafarer is to be engaged on the ship
- 2.3.5. the amount and arrangements for payment of the training bursary, including information about charges for transfer of funds, and exchange rates if applicable
- 2.3.6. the termination of the agreement and the conditions thereof, including the date fixed for its expiry and the conditions entitling either party to terminate it, as well as the required notice period, which shall not be less for the shipowner than for the seafarer
- 2.3.7. the health and social security protection benefits to be provided to the seafarer
- 2.3.8. the seafarer's entitlement to repatriation
- 2.3.9. reference to any collective bargaining agreement that may be applicable
- 2.3.10. information about hours of work
- 2.3.11. information about the disciplinary and grievance procedures available to the Seafarer
- 2.3.12. information about any pension arrangements in place

2.4. It must also be clear how responsibilities for the seafarer's entitlements (including social protection) are allocated between the approved training provider and the shipowner.

2.5. The seafarer must be provided with a clear and accessible point of contact for any queries or concerns related to their training agreement.

2.6. Where a training agreement includes an exit clause, including reimbursement of costs, to take effect if the seafarer fails to complete their training, this must be equitable and transparent. The nature of the costs which may be recovered must be specified in the training agreement, and may not include costs for accommodation or for food and catering on the ship (to which every seafarer has a statutory entitlement). Similarly, costs for repatriation or medical care may only be recovered where the exceptions in MLC Standard A2.5.3 or Standard A4.2.5 apply.

3. Exceptions

3.1. Some trainee seafarers are not paid wages, but receive instead a training bursary. The agreement must include information about frequency and method of payment, including information about any charges made for transfer of funds, and exchange rates if applicable. It is permissible for the amount paid when the seafarer is at sea, and the amount paid when the seafarer is at college (when their living expenses will be greater), to be different, provided that this is made clear in the agreement.