

SECTION 5

TITLE 4.1 MEDICAL CARE

6.1 This section seeks your views on the Maritime and Coastguard Agency's (MCA's) proposals for new Regulations to give effect to the provisions of Regulation 4.1 and Standard A4.1 of the International Labour Organisation (ILO) Maritime Labour Convention, 2006 (the "MLC") which relate to medical care for seafarers on UK sea-going ships.

6.2 Regulation 4.1 and Standard A4.1 of the Maritime Labour Convention, 2006 (the "MLC") carry forward and update provisions from an earlier ILO Convention and recommendations¹. They set down requirements as to the provision of medical care to seafarers on ships subject to the Convention.

Main provisions

6.3 Standard A4.2.1(a) and (c) require the shipowner to bear the costs for medical care for sickness or injury arising during or from their period of employment, including the cost of treatment, supply of medicines or therapeutic appliances, and board and lodging away from home until the seafarer is repatriated, or for a period of up to 16 expenses, whichever is the longer. The liability ends when the seafarer is recovered or the illness or injury is declared of a permanent nature.

6.4 Standard A4.2.1(b) provides for financial security for compensation for death or long-term disability as a result of an occupational injury or illness, and this will be included in separate regulations on shipowner liability and compensation under Title 2.6 and Title 4.2 (see separate consultation exercise).

Current legislation

6.5 The current main provisions relating to medical care on UK ships are set out in

- section 45 of the Merchant Shipping Act 1995;
- the Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995 (SI No. 1995/1802) (as amended) and supporting MSN 1768; and
- the Merchant Shipping (Ships' Doctors) Regulations 1995 (SI No. 1995/1803).

6.6 The following non-statutory guidance is also relevant:

- MGN 225 Radio Medical Advice for Ships at Sea.

¹ Health Protection and Medical Care (Seafarers) Convention No. 164; Ship's Medicine Chests Recommendation (No. 105); and Medical Advice at Sea Recommendation (No. 106). The UK has not ratified those Conventions, but has provisions in place which implement a large proportion of their requirements.

- MGN 296 on Medication at Sea
- MGN 256 on Carriage of Defibrillators on Ships
- MGN 399 on Prophylaxis and Malaria Prevention on Ships

6.7 These provisions between them to a greater or lesser extent cover a substantial proportion of the provisions in Title 4.1 of the MLC. The remainder of the document explains the changes required to bring UK legislation and supporting documentation into full compliance.

6.8 New provisions giving effect to the above changes are set out in the attached draft Merchant Shipping (Maritime Labour Convention)(Medical Care) Regulations 20XX. A supporting draft Marine Guidance Note is also attached which provides guidance on the requirements of the new Regulations.

Application

6.9 The existing UK legislation on medical care has a broad scope, and applies to fishing vessels as well as merchant ships. Regulation 5 inserts a new subsection (1A) into section 45 of the Merchant Shipping Act 1995. As a result, medical care for ships covered by the MLC will be governed by regulation 8 and not section 45(1), but section 45(1) will continue to apply to ships which are not covered by the MLC.

6.10 The provisions set out in the draft Regulations are primarily addressed to UK ships. They also apply to non-UK ships in UK waters. In view of Article V.7 of the MLC (no “more favourable treatment” to ships from States which have not ratified the Convention) the provisions are expressed to apply to ships which do not have MLC certification (whether or not they are from States which have ratified the Convention).

6.11 For ships carrying foreign MLC certification, only regulations 13 and 14 apply. These provide MCA with a limited power of inspection unless there are clear grounds for a more thorough inspection, and a power to detain if any serious deficiencies are identified.

Regulation 4.1. and Standard A4.1.1 : Measures for the protection of seafarers health, and access to prompt and adequate medical care

See draft regulation 8

6.12 Regulation 4.1.2 requires that health protection of seafarers on UK ships and their medical care shall, in principle, be at no cost to the seafarers. Within the UK medical treatment is generally free of charge to seafarers (as to any resident) at the point of delivery but the same is not necessarily the case in other countries. Also, even where treatment is free of charge at the point of delivery, some systems (such as the NHS) provide for the costs of treatment to be recoverable in certain circumstances. In this context section 45(1) of the Merchant Shipping Act 1995 provides that:-

“If a person, while employed in a United Kingdom ship, receives outside the United Kingdom any surgical or medical treatment or such dental or optical treatment (including the repair or replacement of any appliance) as cannot be postponed without impairing efficiency, the reasonable expenses thereof shall be borne by the persons employing him.”

6.13 Issues to be addressed for compliance

i. Section 45(1) currently limits the employer’s responsibility to paying for medical treatment received outside the UK. These days, many UK ships operate in and around the UK which are crewed by seafarers who are not resident in the UK or the European Economic Area, who are not automatically entitled to medical care from the National Health Service.

Within the UK, there is, in the NHS (Charges for Overseas Visitors) Regulations 1989, as amended, an exemption from charges for seamen and women working on a UK registered ship. A person working on any other ship is exempt if he is ordinarily a resident in the UK; or if he is from an EEA country or Switzerland or a non-EEA bilateral healthcare agreement country and his need for treatment arose in the UK (See Chapter 7) or on a voyage to the UK; or if he is a former resident and the five to ten year exemptions apply.

Whilst the NHS would always treat a seafarer on a non-UK ship requiring emergency treatment free at the point of delivery, the NHS has power to recover those costs from the shipowner retrospectively. This is in line with the shipowner liability provisions of the MLC, which will be subject to a separate consultation.

There may also be circumstances where a seafarer requires treatment or attention in order to be able to continue to perform their duties but there is no medical emergency (eg replacement of damaged glasses). The Dreadnought Unit provides such a service as part of the NHS, but where relevant services could not be made available there in the timescale required, it is possible that qualifying costs may be incurred within the UK.

MCA does therefore not consider that there will be any additional costs to shipowners as a result of the proposals.

It is proposed that the new provisions in regulation 8 will cover the costs of medical care for seafarers on board ships, wherever in the world they are incurred.

ii. Section 45(1) only applies to “treatment which cannot be postponed without impairing efficiency”. There is no such limitation in the MLC.

It is proposed that the new provisions in regulation 8 will not have such a limitation.

iii. Section 45(1) places responsibility for bearing the costs of medical care on the employer. The responsible person under the MLC is the shipowner, who must have arrangements in place to ensure that the living and working conditions of seafarers on their ships comply with the Convention. Where the shipowner is not the immediate employer of the seafarer, they may put contractual arrangements in place to recover those costs from the employer, but the ultimate responsibility rests with the shipowner.

iv. The MLC applies to all seafarers, which means any person who is employed or engaged or works in any capacity on board a ship. Section 45(1) currently only covers employees.

It is proposed that the new provisions will refer to “shipowner” and “seafarer” in accordance with the provisions of the Convention.

In addition, Standard A4.2 contains provisions relating to medical care for seafarers, and it appears to be sensible to deal with these in the same instrument. Regulation 8 therefore also provides that the shipowner will be responsible for medical care expenses which relate to periods after a seafarer has left the ship, and in circumstances where the relevant sickness or injury did not occur during the seafarer’s period on board but is attributable to that period of service. The limits on liability provided for by Standard A4.2.2 are applied by regulation 9(5) and (6). Regulation 9(4) is designed to avoid any duplication between this liability and the liability to be imposed by the regulations implementing Title 2.5 of the MLC as regards repatriation (which will be consulted on separately).

Under standard A4.2.1 (c) the liability extends “until the sick or injured seafarer has recovered or until the sickness or incapacity has been declared of a permanent character.” In the UK, the sickness or incapacity would generally be declared of a permanent character by an approved doctor, who would issue an ENG3 notifying the seafarer that they were found permanently unfit (Category 4).

Standard A4.1.2 allows national laws to limit liability to no less than 16 weeks. It is proposed to include that limitation in the UK regulations, but with the proviso that, if the seafarer has not been repatriated within that 16 week period, then the shipowner’s liability continues until the seafarer is duly repatriated.

Where the cost of medical care is met by public authorities under national law, the shipowner is exempt from such liabilities.

Views are invited on this proposal as a means of meeting the requirements of Regulation 4.1 and Standards A4.1.1 and A4.2. Does it go far enough, does it go too far, is it sufficiently clear and certain and are there any improvements we might make? Please give reasons and evidence in support of your views.

MLC Regulation 4.1.3 and Standard A4.1.1(c): Access ashore for medical attention

See draft regulation 10

6.14 Regulation 4.1.3 requires the authorities in each port state to allow seafarers access to medical facilities ashore when required. Standard A4.1.1(c) gives seafarers the right to visit a doctor or dentist without delay in ports of call, “where practicable”. In the UK, seafarers are permitted onshore for medical attention which is free at the point of delivery.

6.15 However, it is recognised that, for the purposes of standard A4.1.1(c), there may be circumstances in which shipowners do not allow seafarers to seek medical attention when in port, whether in the UK or elsewhere.

It is proposed to introduce a new duty on the shipowner to allow a seafarer to seek medical attention in ports of call (draft regulation 10)

6.16 A sanction for non-compliance will be required to allow the duty to be enforced.

Views are invited on whether the normal penalty of a fine is sufficient to ensure compliance. Since the primary objective would be to obtain the appropriate medical attention for the seafarer, are there more appropriate means of enforcing the provision? For example should MCA consider making provision for an improvement notice to be served where a shipowner does not ensure that medical care is provided for a seafarer? How would that work in practice?

6.17 Draft Regulation 10 places a duty on the shipowner to permit a seafarer to seek medical attention ashore when the ship is in port “where reasonably practicable”.

6.18 There is no definition in the Convention of “practicable”, but the term “reasonably practicable” is well established in health and safety legislation in the UK. We do not propose to define this further in regulations, but consider that it may be useful to include some guidance on interpretation in a supporting MSN or MGN. We propose that such guidance would say that “reasonably practicable” requires a proportionate judgement to be made. In these circumstances we would expect this to be based primarily on the urgency of treatment (in terms of the seafarer’s welfare as well as their ability to carry out their duties, and the treatment available on board), but also to take into account issues of fact such as the security situation ashore, the availability and suitability of medical facilities ashore. Operational demands may also have a bearing where there is no immediate urgency for treatment (such as obtaining a replacement spare pair of glasses where the seafarer has one good pair, or repair of a loose filling.) All of the above would also have to be considered in the context of the particular operational circumstances – if

the next port of call was three weeks away a different judgement would be required than if it was the next day.

Would such guidance be useful? Does the wording proposed above strike the appropriate balance?

Standard A4.1.1(e) Health promotion and health education programmes

No implementing provisions in the draft Regulations

6.19 Standard A4.1.1(e) specifies that the measures in place for medical care should not be purely reactive, but should include preventative measures.

6.20 In the UK, medical practitioners approved to conduct statutory seafarer medical examinations are given guidance and provided with material to assist them in giving appropriate health advice to the seafarers they examine.

6.21 The MCA also publishes a series of leaflets “Your Health at Sea” on relevant health issues. Many shipowners also have their own programmes of health measures.

Do you have any suggestions for further assistance which MCA or others could provide to shipowners to help them develop and implement such education and promotion for their seafarers on their ships?

Standard A4.1.2 Medical report form

No implementing provisions in the draft Regulations

6.22 The Convention requires the competent authority to adopt a medical report form for use by the ships’ master and relevant onshore and on-board medical personnel. The form and its contents must be kept confidentially once completed, and must only be used for the treatment of seafarers.

6.23 Paragraph B4.1.2 explains that the form “should be designed to facilitate the exchange of medical and related information concerning individual seafarers between ship and shore in cases of illness or injury.”

6.24 Chapter 13 of the Ship Captain’s Medical Guide 22nd edition (SCMG) contains a section on communicating with doctors, including a report form which the master or their deputy should complete when a seafarer is sent ashore for medical attention, and which the treating doctor should complete and send with the seafarer when they return to the ship.

6.25 The Convention does not mandate the use of the form – it only requires the Member to provide one. We therefore consider that the UK complies with the minimum requirements of the Convention. We will consult separately on use of the form and improvements that could be made as part of a review of

medical stores and the Ship Captain's Medical Guide expected to get underway later this year.

Standard A4.1.3 On board hospital and medical care facilities

No implementing provisions in the draft Regulations

6.26 This standard requires national requirements to be established for on-board hospital and medical care facilities, equipment and training. Further detail is given in the MLC provisions on crew accommodation at Standard A3.1.12, and indeed the current UK requirements for ship's hospitals – or alternative provision for the care of sick persons – and the medical cabinet are contained in regulations 32 and 33 of the Merchant Shipping (Crew Accommodation) Regulations 1997.

6.27 This is considered in more detail in the Crew Accommodation consultation section.

Standard A4.1.4: Medical treatment on board ship

See draft regulation 9

6.28 Standard 4.1.4 includes the following requirements –

(a) a medical chest, medical equipment and medical guide:

The Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995 and MSN 1768(M+F) cover the requirements of this provision. UK requirements implement EC Directive 92/29/EC on minimum health and safety requirements for improved medical treatment on board vessels. The category of stores to be carried is determined by the area of operation of the ship.

The UK regulations also require carriage of the Ship Captain's Medical Guide (for ships carrying Category A or B stores) and a suitable first aid guide for other vessels.

Guideline B4.1.1 says that medical stores should be subject to annual inspection by responsible persons designated by the competent authority. The stores and the guide should follow the International Medical Guide for Ships.

The UK Medical Stores regulations and MSN 1768 (M+F) include a requirement for annual checking of the medical stores on board ship, though the UK does not designate competent persons to carry out this check. Many companies engage a shipping chemist, but if medical stores have been supplied in the EC, and are correctly labelled and packaged in accordance with the Directive, it is not necessary for a pharmacist to carry out the check that all statutory items are present, and within their expiry date.

Do you agree that the UK requirements comply with the provisions of the Convention on medical stores?

A separate review of the medical stores carried on UK ships, not directly connected to implementation of the MLC, is due to begin this year, and consultation will be carried out separately on any proposals emerging from that review.

(b) ships carrying 100 or more persons and ordinarily engaged on international voyages of more than three days' duration shall carry a qualified medical doctor who is responsible for providing medical care.

There are some minor differences on the wording of the criteria for carriage of a Ship's Doctor between the provisions in the Convention and the Merchant Shipping (Ships' Doctors) Regulations 1995.

It is proposed to amend the regulation 3 of the UK regulations in line with the MLC provisions

- i.e. Amend "more than 100 persons" to "100 or more persons";
- Amend "3 days" to "72 hours";
- Amend "one and a half days" to "36 hours".

In addition there is a typographical error in the existing regulations which will be corrected.

It is possible that a small number of ships will, as a result of the slightly different wording in the Convention regarding the number of persons on board, for the first time fall into the category of vessels requiring a ship's doctor.

If this applies to your operation, please provide details of the impact this change will have so that we can reflect in the impact assessment the number of ships affected, the measures likely to be taken to comply, and any accompanying costs. If there are commercial sensitivities as to the information you propose to include in your response please note the text concerning the Freedom of Information Act at the start of this document which may be relevant to your decision whether to include it.

It was noted during the Red Tape Challenge exercise that neither the MLC Title 4.1, nor the EC Directive 92/29/EC includes the second part of the requirement (draft reg 9(2)(3)(ii)

- (i) a voyage during which the ship is more than 36 hours' sailing time from a port with adequate medical equipment.

This is therefore a domestic requirement, carried forward from earlier regulations, which constitutes a UK interpretation of the provision in the MLC A4.1.4(b) for national regulations to "specify which other ships shall be required to carry a medical doctor, taking into account, inter alia, such factors as the duration, nature and conditions of the voyage and the number of seafarers on board".

You are invited to comment on this provision, and whether it is considered to place an undue burden on UK shipowners, in comparison with competitors under other flags.

(c) ships which do not carry a medical doctor shall be required to have at least one seafarer on board who is in charge of medical care and administering medicine as part of their regular duties or at least one seafarer on board who is competent to provide first aid.

In accordance with STCW 78 as amended in 1995 (Regulations II/1, II/2 and II/3) every deck officer is required to be trained in to the level of Proficiency in Medical First Aid (Table A-VI/4-1) and masters and chief mates are required to hold a certificate in Proficiency in Medical Care (Table A-VI/4/2). The person in charge of medical care, if not the master must also hold a certificate for the appropriate level of training, which must be revalidated every 5 years. These provisions are implemented for UK ships under the Merchant Shipping (Training and Certification) Regulations 1997 regulation 7 and Marine Guidance Note 96(M).

For those not subject to STCW certification, there are equivalent provisions – currently set out in MGN 147.

Guideline B4.1.1.3 recommends that those in charge of first aid and medical care on board should have their training revalidated at least every 5 years. Although there is no requirement under STCW to revalidate first aid or medical care training, EC Directive 92/29/EC requires the master and any other person in charge of medical care on board to keep their medical care or first aid certificate up to date – which requires revalidation at least every five years

(d) the competent authority by a prearranged system shall ensure that medical advice by radio or satellite to ships at sea, including specialist advice, is available 24 hours a day.

Guideline B4.1.1.6 says that ships should carry an up to date list of radio stations where radio medical advice may be obtained, and seafarers should be trained to use it.

MGN 225 sets out the arrangements for Radio Medical Advice in the UK, including how to contact the two contracted providers.

We consider that this meets Convention requirements. The SCMG Chapter 13 includes a checklist of information required where radio medical advice is sought.

The syllabus for both the Medical First Aid and Proficiency in Medical Care includes procedures for obtaining Radio Medical Advice.

Do you agree that UK provision for radio medical advice complies with Standard A4.1.4(d) of the Convention?