

An Overview of the Maritime Labour Convention 2006 and its Implications for Modern Shipping

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I Introduction

- The Maritime Labour Convention is an international labour convention which was adopted by the International Labour Organisation (ILO) on 23 February 2006.
- It entered into force on 20 August 2013

I Introduction

The Convention has two basic aims.

- The first is to ensure comprehensive worldwide protection for the right of seafarers to decent working and living conditions.
- The second is to establish a level playing field for countries and ship-owners committed to providing decent working and living conditions for seafarers thereby protecting them from unfair competition from substandard countries and ship-owners.

I Introduction

The Convention is intended to be globally applicable, easily understandable and uniformly enforced.

It was designed as the 'Fourth Pillar' of the international regulatory regime for quality shipping complementing the three other pillars, namely the International Maritime Organisation conventions on *The Safety of Life at Sea (SOLAS)*, *Standards of Training, Certification and Watchkeeping (STCW)* and *Prevention of Pollution from Ships (MARPOL)*.

I Introduction

Article 8(3) of the Convention provided that it would only enter into force 12 months after the date on which it was ratified by at least 30 members of the ILO with a total share of 33% of the world gross tonnage of ships.

The 33% tonnage requirement was met in 2009 and the 30 member requirement was met on 20 August 2012 with ratification by the Russian Federation and the Republic of the Philippines

I Introduction

Ireland has not yet ratified the Convention. In answer to a parliamentary question on 18 July 2013, the Minister for Transport, Tourism and Sport, Leo Varadkar, stated *“Ireland supports the Convention, and my Department is working with the Office of the Parliamentary Counsel on the drafting of a suite of Regulations to enable Ireland to ratify.”*

II Why was the Convention needed?

Shipping is a global industry.

Seafarers spend their working lives outside their home countries and their employers are often based in different jurisdictions.

Many countries have laws and regulations to ensure the health and safety of seafarers' and the ships upon which they work but unfortunately other countries do not. In addition, while there were a large number of maritime conventions, many of them were outdated, and had low levels of ratification thus making it difficult for national governments to ratify and enforce all existing international labour standards.

III Structure of the Convention

The Convention comprises three different but related parts: the Articles, the Regulations and the Code.

The Articles and Regulations set out the core rights and principles and the basic obligations of Members ratifying the Convention. The Code contains the details for the implementation of the Regulations. It comprises Part A (mandatory Standards) and Part B (non-mandatory Guidelines).

III Structure of the Convention

The Regulations and the Code are organized into general areas under 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.

IV An Overview of some of the key Articles

Article 1 sets out the ‘General Obligations’ of Member States:

“1. Each Member which ratifies this Convention undertakes to give complete effect to its provisions in the manner set out in Article VI in order to secure the right of all seafarers to decent employment.

2. Members shall cooperate with each other for the purpose of ensuring the effective implementation and enforcement of this Convention.”

Definitions and Scope of the Convention

Article II(1)(f) defines ‘seafarer’ as

“any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies.”

In the event of a dispute, for example as to whether an entertainer on a cruise ship, is a ‘seafarer’ for the purposes of the Convention, Article II(3) provides:

“In the event of doubt as to whether any categories of persons are to be regarded as seafarers for the purpose of this Convention, the question shall be determined by the competent authority in each Member after consultation with the shipowners’ and seafarers’ organizations concerned with this question.”

Definitions and Scope of the Convention

Article II(1)(i) defines “ship” as

“a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply.”

Article II(4) provides that:

“Except as expressly provided otherwise, this Convention applies to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities, other than ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks. This Convention does not apply to warships or naval auxiliaries.”

Definitions and Scope of the Convention

Article II(1)(j) defines a 'ship-owner' as:

“the owner of the ship or another organization 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 this Convention, regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the ship-owner.”

This comprehensive definition of ship-owner was designed to ensure that there would be a single entity responsible for the living and working conditions of seafarers regardless of the commercial or other agreements that may have been entered into regarding a ship's operations.

Fundamental Rights and Principles

- Article III sets out the fundamental rights of seafarers:

“Each Member shall satisfy itself that the provisions of its law and regulations respect, in the context of this Convention, the fundamental rights to:

- (a) freedom of association and the effective recognition of the right to collective bargaining;*
- (b) the elimination of all forms of forced or compulsory labour;*
- (c) the effective abolition of child labour; and*
- (d) the elimination of discrimination in respect of employment and occupation.”*

Seafarers Employment and Social Rights

Article IV sets out the employment and social rights of seafarers:

- “1. Every seafarer has the right to a safe and secure workplace that complies with safety standards.*
- 2. Every seafarer has a right to fair terms of employment.*
- 3. Every seafarer has a right to decent working and living conditions on board ship.*
- 4. Every seafarer has a right to health protection, medical care, welfare measures and other forms of social protection.*
- 5. Each Member shall ensure, within the limits of its jurisdiction, that the seafarers’ employment and social rights set out in the preceding paragraphs of this Article are fully implemented in accordance with the requirements of this Convention. Unless specified otherwise in the Convention, such implementation may be achieved through national laws or regulations, through applicable collective bargaining agreements or through other measures or in practice.”*

Implementation and Enforcement Responsibilities

Article V(1) imposes an obligation on Member States to “... *implement and enforce laws or regulations or other measures*” in respect of ships and seafarers under its jurisdiction in order to fulfil its commitments under the Convention.

Article V(7) provides that each Member State shall implement its responsibilities under the Convention in such a way as to ensure that the ships that fly the flag of any State that has not ratified the Convention do not receive more favourable treatment than the ships that fly the flag of any State that has ratified it.

V An Overview of the Regulations and the Code

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

Regulation 1.1

Minimum age

Regulation 1.2

Medical certificate

Regulation 1.3

Training and
qualifications

Regulation 1.4

Recruitment and placement

V An Overview of the Regulations and the Code

Title 2. Conditions of employment

Regulation 2.1	Seafarers' employment agreements
Regulation 2.2	Wages
Regulation 2.3	Hours of work and hours of rest
Regulation 2.4	Entitlement to leave
Regulation 2.5	Repatriation
Regulation 2.6	Seafarer compensation for the ship's loss or foundering
Regulation 2.7	Manning levels
Regulation 2.8	Career and skill development and opportunities for seafarers' employment.

V An Overview of the Regulations and the Code

Title 3. Accommodation, recreational
facilities, food and catering

Regulation 3.1 Accommodation and
recreational facilities

Regulation 3.2 Food and catering

V An Overview of the Regulations and the Code

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

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| Regulation 4.1 | Medical care on board ship and ashore |
| Regulation 4.2 | Shipowners' liability |
| Regulation 4.3 | Health and safety protection and accident prevention |
| Regulation 4.4 | Access to shore-based welfare facilities |
| Regulation 4.5 | Social security |

V An Overview of the Regulations and the Code

Regulation 5.1	Flag State responsibilities
Regulation 5.1.1	General principles
Regulation 5.1.2	Authorization of recognized organizations
Regulation 5.1.3	Maritime labour certificate and declaration of maritime labour compliance
Regulation 5.1.4	Inspection and enforcement
Regulation 5.1.5	On-board complaint procedures
Regulation 5.1.6	Marine casualties

V An Overview of the Regulations and the Code

Regulation 5.1 Flag State responsibilities

Regulation 5.2 Port State responsibilities

 Regulation 5.2.1 Inspections in port

 Regulation 5.2.2 Onshore seafarer complaint-handling procedures

Regulation 5.3 Labour-supplying responsibilities

VI An Overview of Title 5 - Compliance and Enforcement

The Regulations in Title 5 set out the responsibilities of Member States to fully implement and enforce the principles and rights set out in the Convention.

It should be noted that the requirements of Title 5 cannot be implemented through substantially equivalent provisions.

VI An Overview of Title 5 - Compliance and Enforcement

Regulation 5.1 deals with the responsibilities of Flag States. Regulation 5.1.1(1) provides that Member States are responsible for ensuring the implementation of the obligations of the Convention on ships that fly its flag.

Regulation 5.1.1(2) provides that Member States must establish an “effective system” for the inspection and certification of maritime labour conditions thus ensuring that the working and living conditions for seafarers on ships that fly its flag meet, and continue to meet, the standards in the Convention. Regulation 5.1.1(3) allows Member States to delegate their responsibilities to public institutions, organisations or even another Member State, subject to the proviso that the Member State remains *“fully responsible for the inspection and certification of the working and living conditions of the seafarers concerned on ships that fly its flag.”*

VI An Overview of Title 5 - Compliance and Enforcement

Regulation 5.1.1(4) provides that a maritime labour certificate, complemented by a declaration of maritime labour compliance, shall constitute prima facie evidence that the ship has been duly inspected by the Member whose flag it flies and that the requirements of this Convention.

Standard A5.1.3(1) provides that the maritime labour certificate shall be issued to a ship by the competent authority, or by a recognized organization duly authorized for this purpose, for a period which shall not exceed five years. A list of matters that must be inspected and found to meet national laws and regulations or other measures implementing the requirements of this Convention regarding the working and living conditions of seafarers is set out in Appendix A5-I.

VI An Overview of Title 5 - Compliance and Enforcement

- Minimum age
- Medical certification
- Qualifications of seafarers
- Seafarers' employment agreements
- Use of any licensed or certified or regulated private recruitment and placement service
- Hours of work or rest
- Manning levels for the ship
- Accommodation
- On-board recreational facilities
- Food and catering
- Health and safety and accident prevention
- On-board medical care
- On-board complaint procedures
- Payment of wages

VI An Overview of Title 5 - Compliance and Enforcement

Standard A5.1.3(10) provides that the declaration of maritime labour compliance shall be attached to the maritime labour certificate. It is composed of two parts:

- Part I shall be drawn up by the competent authority which shall:
 - identify the list of matters to be inspected in accordance with paragraph 1 of this Standard (i.e. the 14 matters referred to above);
 - identify the national requirements embodying the relevant provisions of the Convention by providing a reference to the relevant national legal provisions as well as, to the extent necessary, concise information on the main content of the national requirements;
 - refer to ship-type specific requirements under national legislation;
 - record any substantially equivalent provisions adopted;
 - clearly indicate any exemption granted by the competent authority as provided in Title 3; and

- Part II shall be drawn up by the ship-owner and shall identify the measures adopted to ensure on-going compliance with the national requirements between inspections and the measures proposed to ensure that there is continuous improvement.

VI An Overview of Title 5 - Compliance and Enforcement

Standard A5.1.3(12) provides that a current valid maritime labour certificate and declaration of maritime labour compliance, accompanied by an English-language translation where it is not in English, must be carried on the ship and a copy shall be posted in a conspicuous place on board where it is available to the seafarer.

VI An Overview of Title 5 - Compliance and Enforcement

Standard A5.1.3(14) provides that a maritime labour certificate will cease to be valid:

- if the relevant inspections are not completed;
- if the certificate is not endorsed following an immediate inspection;
- when a ship changes flag;
- when a ship-owner ceases to assume the responsibility for the operation of a ship; and
- when substantial changes have been made to the structure or equipment covered in Title 3.

VI An Overview of Title 5 - Compliance and Enforcement

- Standard A5.1.4(7) provides that inspectors shall be empowered:
 - to board a ship that flies the Member's flag;
 - to carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the standards are being strictly observed; and
 - to require that any deficiency is remedied and, where they have grounds to believe that deficiencies constitute a serious breach of the requirements of this Convention (including seafarers' rights), or represent a significant danger to seafarers' safety, health or security, to prohibit a ship from leaving port until necessary actions are taken

VI An Overview of Title 5 - Compliance and Enforcement

- Regulation 5.2 deals with the responsibilities of Port States. Regulation 5.2.1 provides that:

“Every foreign ship calling, in the normal course of its business or for operational reasons, in the port of a Member may be the subject of inspection ... for the purpose of reviewing compliance with the requirements of this Convention (including seafarers’ rights) relating to the working and living conditions of seafarers on the ship.”

VI An Overview of Title 5 - Compliance and Enforcement

Standard A5.2.1(6) provides that a ship may be detained where:

“the ship is found not to conform to the requirements of this Convention and:

- (a) the conditions on board are clearly hazardous to the safety, health or security of seafarers; or
- (b) the non-conformity constitutes a serious or repeated breach of the requirements of the Convention (including seafarers’ rights)

Since a Port State is entitled to inspect “every foreign ship” calling to the Port and since a foreign ship flying the flag of a State that has not ratified the Convention will not be able to produce a maritime labour certificate and declaration of maritime labour compliance issued under the Convention, such vessels will always be subject to inspection and if necessary detention.

VII The Convention in Action

The first detention of a vessel under the Convention occurred in Denmark on 10 September 2013. A routine inspection of a vessel flying the Liberian Flag by the Danish Maritime Authority revealed that the crew did not have employment contracts. The 24 hour detention ended when the situation was rectified.

Canada became the second country to detain a vessel under the Convention when a Cyprus-flagged vessel was detained after the authorities received complaints from the crew regarding alleged deficiencies which included unpaid wages, a 'collective bargaining agreement' that lacked the vessel name, a date or a wage scale; crew with no money, no shampoo, toothpaste or other items; a crew member who had twice been refused access to a doctor; and crew members having been forced to sign blank contracts.

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Thank You for your attention