

ENERGY & OFFSHORE

MARITIME LABOUR CONVENTION (MLC) AND THE OFFSHORE WIND FARM INDUSTRY

The Maritime Labour Convention (MLC) will enter into force internationally on 20 August 2013.

This is a new international convention which will be the 'fourth pillar' of the international regulatory regime for quality shipping, sitting alongside the MARPOL, STCW and SOLAS conventions.

The aim of the MLC is to ensure that all seafarers globally (of which there are estimated to be 1.2 million) benefit from minimum standards of employment, better information about their employment rights and an enhanced enforcement regime.

At the time of writing 37 countries have ratified the MLC. These flag states represent around 70% of the world's gross shipping tonnage and include flags under which ships servicing wind farms often operate, such as Denmark and the Netherlands. The UK is expected to ratify the MLC by 20 August 2013. Each country that ratifies the MLC must as a minimum enact its standards in its domestic law.

Enforcement of the MLC will be through a combination of flag and port state control and in the worst cases of non-compliance a ship can be delayed or detained in port. The basic position is that a ratifying flag state must inspect its ships for MLC compliance and if the ship is of over 500 gross tonnes and will be engaged in international voyages it is required to be issued with certificates issued by the flag state as evidence of compliance. These are the Maritime Labour Certificate and the Declaration of Maritime Labour Compliance.

Ports of ratifying countries will be required to inspect all ships for MLC compliance, even those flying the flags of non-ratifying states.

Obligations under the MLC are wide-ranging and the shipowner (or the person who has assumed responsibility for the ship's operation, such as the ship's manager, agent or bareboat charterer) owes most of them and is in many ways treated as the 'employer' of all seafarers on board. For example, the shipowner is required to provide seafarers with medical care, sick pay, and repatriation at the shipowner's cost and for the first time must issue each seafarer onboard with a seafarer employment agreement. These are akin to employment contracts and will replace crew agreements.

Will the MLC apply to the offshore wind farm industry?

Looking at the UK position, the answer to this appears to be "yes, in part". The Maritime & Coastguard Agency (MCA) is the government authority responsible for the form of the UK's domestic legislation enacting the MLC and related guidance. These are currently in draft form and we await the outcome of public consultation. As such, we do not yet know precisely what form the new rules and guidance will take.

The MCA has indicated that it will examine the application of the MLC to particular ships servicing the offshore wind farm industry on a case-by-case basis. The current position appears to be that some provisions of the MLC will apply but others will not.

For example, it may be the case that the requirement for a ship of over 500 gross tonnes to be issued with the MLC certificates is relaxed where a ship is operating exclusively within 60 miles from a UK safe haven and does not operate to or from, or call at, a non-UK port. Therefore, some ships that exclusively travel to and from the UK mainland to certain wind farms in UK territorial waters or the EEZ may not be caught by the certification requirements.

On the other hand, some MLC requirements may be applied to all UK ships across the board regardless of their area of operation. For example, the shipowner's obligation to issue each seafarer with a seafarer employment agreement.

The MLC definition of "seafarer" is deliberately wide, and includes anyone employed or engaged or who works in any capacity on board the ship. There are some grey areas as to who this covers but in principle it includes not only the shipowner's actual employees, but also the self-employed (such as consultants and independent contractors) and those employed by a third party. For example, it may well include a wind turbine manufacturer's personnel who spend a period of their employment onboard a jack-up installation vessel whilst transporting and installing turbines at an offshore wind farm.

"Shipowners" under the MLC are therefore well advised to check how the MLC might apply to their operations and to prepare for compliance.

Ince & Co regularly advises clients on the MLC. Our team has contributed to the development and implementation of the MLC.

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