

SEAFARER SUBJECT GUIDE

ABANDONMENT IN ENGLAND AND WALES

This Guide deals with the situation where seafarers are abandoned in a port in England or Wales as well as where seafarers are abandoned on a United Kingdom flagged vessel in a port outside England and Wales. This document is not intended to be legal advice, nor does it constitute legal advice. If a seafarer is abandoned, he is strongly advised to consult a lawyer qualified to practise in England and Wales.

*A full text version of this Subject Guide including footnotes will become available for subscription in due course. In the meantime if there is a specific inquiry on any Subject Guide, please contact SRI.

- 1. When is a seafarer considered abandoned according to your national case law or legislation? Is there any special legislation in your country concerning abandoned crew?**
 - 1.1 There is currently no special legislation in England and Wales concerning abandonment. However, the Merchant Shipping Act 1995 and Merchant Shipping (Repatriation) Regulations 1979 contain provisions that deal with United Kingdom ('UK') seafarers or seafarers on UK vessels who have been 'left behind' in any country outside the UK or taken to a foreign country upon being shipwrecked. These together protect seafarers in circumstances related to abandonment, such as where the shipowner fails to cover the cost of seafarer's repatriation, maintenance and support, or pay wages.
 - 1.2 Repatriation is covered by the Merchant Shipping Act, and the Merchant Shipping (Repatriation) Regulations 1979. These apply to three categories of seafarer:
 - (1) seafarers employed in a UK-registered ship who are left behind or shipwrecked outside of the UK;
 - (2) seafarers who entered into agreements outside the UK to work on a UK ship, who are left behind in the UK; and
 - (3) seafarers working on a UK ship who have been left behind in the UK for reasons other than being discharged.
 - 1.3 There is no provision under UK legislation for foreign seafarers working on non-UK vessels, even where they are abandoned in the UK.
 - 1.4 Under both the Act and the Regulations, the obligation for repatriation, relief and maintenance lies with the 'persons who last employed' the seafarer as a seaman.

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- 1.5 The types of relief and maintenance that are to be provided to an abandoned crew are listed in the Regulations. These are: clothing, toilet and other personal necessities, surgical or medical treatment and dental or optical equipment (including the repair or replacement) as cannot be postponed without impairing efficiency, reasonable costs for legal defence in criminal proceedings related to a seafarer's employment, as well as sufficient money to meet any minor ancillary expenses necessarily incurred by the seafarer for relief and maintenance. In addition, the employer is responsible for the expenses related to bringing a shipwrecked seafarer to shore and maintaining him until he is brought ashore, as well as the expenses related to the burial or cremation of a seafarer who dies before he is able to be repatriated.
- 1.6 Further, the Regulations states that employers are obliged to pay wages due to seafarers who have been left behind or shipwrecked from UK ships within 28 days from the day they are repatriated. In the event of non-payment, a seafarer can also consider bringing a claim before the Admiralty Court, asserting a maritime lien by way of an arrest of the vessel.

2. What is the immigration status of abandoned seafarers in your country?

- 2.1 Seafarers would enter the UK either on temporary shore leave, as visitors prior to repatriation, or be granted temporary leave for medical treatment. Seafarers that enter the UK without leave are considered illegal entrants and could be subject to detention and deportation orders. Seafarers who are subject to formal deportation orders will find future employment as seafarers, certainly within the EU, to be very difficult. In practice, immigration officers understand the difficulties faced by abandoned seafarers and will provide necessary assistance to facilitate their orderly departure from the UK. Deportation would be an action of last resort, and would generally arise only where the seafarer had shown a reluctance to co-operate and avail himself of opportunities for voluntary repatriation.

3. Can an abandoned seafarer get shore leave?

- 3.1 An abandoned seafarer may seek leave to enter the UK to be repatriated by their employers. Normal visa requirements are waived if the immigration office is satisfied that the seafarer:
- (1) has a passport or other document satisfactorily establishing identity, nationality or citizenship (for example, a seaman's document);
 - (2) does not intend to seek or take employment in the UK; and
 - (3) has satisfactory travel arrangements for being repatriated.

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- 3.2 Seafarers who are nationals of countries that have signed up to the Seafarer' Identity Documents Convention, International Labour Office Convention, No. 108, and therefore hold the relevant Seafarer's Identity Document, do not require a visa for entry into the UK. The Convention covers joining or transferring to a ship, passing in transit to join a ship in another country or for repatriation and temporary shore leave while the ship is in port. Seafarers from countries which have not joined the ILO Convention are subject to normal visa requirements.
- 3.3 Notwithstanding the above, seafarers may not enter without leave if:
- (1) there is a deportation order in force against him;
 - (2) he has at any time been refused leave to enter and has not since been given leave to enter or remain; or
 - (3) an immigration officer, for any reason, requires him to submit to an examination.
- 3.4 Seafarers who have been discharged from a ship can seek leave to remain in the UK for six months as visitors prior to repatriation or to join another ship. A UK immigration officer at the port of arrival will grant this leave and waive visa requirements if the following requirements are met:
- (1) the seafarer is genuinely seeking entry as a general visitor for a limited period not exceeding six months;
 - (2) the seafarer intends to leave after six months;
 - (3) the seafarer does not intend to take employment in the UK;
 - (4) the seafarer does not intend to produce goods or provide services in the UK;
 - (5) the seafarer does not intend to take a course of study;
 - (6) the seafarer has access to maintenance and accommodation without recourse to public funds or taking employment;
 - (7) the seafarer can meet the cost of a return or onward journey;
 - (8) the seafarer is not under the age of 18;
 - (9) the seafarer does not intend to engage in business, sporting, or entertainment activities;
 - (10) the seafarer does not intend to marry or form a civil partnership during his stay;
 - (11) the seafarer does not intend to receive private medical treatment during the visit; and
 - (12) the seafarer is not in transit outside the common area.

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- 3.5 In addition to the above requirements, the seafarer must:
- (1) possess a passport or other document establishing his identity, and nationality or citizenship (for example, a seafarers identity document);
 - (2) provide an undertaking that he does not to take employment in the UK (unless transferring to another ship due to leave British waters); and
 - (3) show arrangements for repatriation made by his owners/agents.
- 3.6 Extension of stay after 6 months will not normally be granted unless where necessary to fulfil the purpose for which entry was granted (that is, hospital treatment, repatriation or transfer).
- 3.7 Abandoned seafarers whose employer has failed to cover the cost of repatriation would not be able to seek leave to enter as a temporary visitor as the requirement to show that repatriation has been arranged would not be fulfilled. Seafarers aboard ships under arrest may be repatriated by the Admiralty Marshal, but only when the Admiralty Court has ordered the sale of the ship.
- 3.8 Leave to enter the UK for repatriation can be completed by fax between the seafarers' shipping agents and the UK immigration officers. This system is used for vessels that are not normally visited. Abandoned seafarers seeking entry must apply to the immigration officer at their port of arrival.
- 4. Is abandonment of seafarers considered a crime?**
- 4.1 While abandonment of seafarers is not a crime under the criminal law of England and Wales, there are a number of offences related to the situation of abandonment.
- 4.2 Under the Merchant Shipping Act, it is a summary offence to discharge a seafarer from a UK ship in contravention with the procedure set out by the Act; namely, a seafarer must be provided with notice of the discharge, the discharge must be recorded, and a seafarer cannot be discharged outside the UK without consent of the proper officer. This applies to seafarers who are left behind outside of the UK otherwise than being discharged from the UK ship. The offence is punishable with a fine not exceeding level 3 on the standard scale, which is £1,000.
- 4.3 It is also a summary offence to act in contravention of the Merchant Shipping Act, which sets out the responsibility of the seafarer's employer to pay for relief and return of a seafarer left behind or shipwrecked outside the UK from a UK ship, or brought to a UK port from a non-UK ship. This offence is also punishable with a fine not

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exceeding level 3 on the standard scale (£1,000). It also applies in cases where the UK ship ceases to be registered in the UK.

- 4.4 The Merchant Shipping (Repatriation) Regulations further add that it is an offence for an employer of seafarers to act in contravention of their obligations to return a seafarer as soon as practicable after being left behind or brought ashore after shipwreck, and make provisions for relief and maintenance until the seafarer is returned. This is punishable with a summary conviction carrying a fine of £100.

5. What entities and/or persons may be involved with or assist an abandoned crew?

- 5.1 Various entities and/or persons may be involved with or assist an abandoned crew.

5.2 Lawyers

See FIND ASSISTANCE on the SRI app which can be downloaded from the home page of the SRI website at www.seafarersrights.org

- 5.2.1 In addition, reference may be made to the Guide on Using Lawyers and Fact File available on the SRI app and at

https://www.seafarersrights.org/seafarers_subjects/using_lawyers/

5.3 ITF Inspectors and union officials

See FIND ASSISTANCE on the SRI app which can be downloaded from the home page of the SRI website at www.seafarersrights.org

5.4 Welfare agencies

See FIND ASSISTANCE on the SRI app which can be downloaded from the home page of the SRI website at www.seafarersrights.org

5.5 Governments and Embassies

Additionally the seafarer may need to access government official websites, including lists of embassies, to find an appropriate contact.