

**EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (MARITIME LABOUR CONVENTION) (MEDICAL
CERTIFICATION) REGULATIONS 2010**

2010 No. 737

1. This Explanatory Memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments

2. **Purpose of the instrument**

- 2.1 The instrument requires seafarers working on United Kingdom seagoing ships to hold a medical fitness certificate and sets out provisions for the issue, suspension or cancellation of these certificates, their validity and the seafarer's right of review. It also requires that where a medical practitioner has identified health problems which are due to a seafarer working at night, employers must transfer the seafarer to any other suitable work which is available.

- 2.2 The instrument introduces a new duty on the seafarer to report any change in the seafarer's medical condition during the validity of their medical certificate.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 None

4. **Legislative Context**

- 4.1 The Merchant Shipping (Medical Examination) Regulations 2002 implemented the International Labour Organization ("ILO") Convention on Seafarer Medical Examinations, 1946 No. 73. The requirement for a seafarer to hold a medical certificate was also included in Council Directive 1999/63/EC which implemented the Agreement of European Social Partners on the organisation of working time of seafarers.

- 4.2 In 2006 the International Labour Organization adopted the Maritime Labour Convention which will supersede ILO No. 73 and includes more detailed provisions on medical examinations for seafarers. Subsequently, the EC has agreed Council Directive 2009/13/EC which will implement a further European Social Partners' Agreement on the Maritime Labour Convention. In addition, Council Decision 2007/431/EC encourages Member States to ratify the Maritime Labour Convention by the end of 2010

- 4.3 The UK government is fully committed to ratification of the Maritime Labour Convention and amendment of the existing UK provisions on medical

examinations is required in order to ensure compliance with the Convention. The main purpose of the Regulations is to achieve this.

4.4 The Maritime Labour Convention was presented to Parliament in a White Paper Cmd. 7049. It is expected that the Convention will come into force around the end of 2010/early 2011. There is then a transitional period of 12 months before shipowners and seafarers will be subject to its requirements and ships flying the flag of State Parties to the Convention will be required to hold a Maritime Labour Certificate. The UK aims to be ready to ratify at the end of 2010, and an estimated further 13 statutory instruments will be required to achieve this.

4.5 As the additional burdens introduced by the Merchant Shipping (Maritime Labour Convention) (Medical Certification) Regulations 2010 are minimal, and as there are benefits in terms of flexibility for seafarers and shipowners, as well as administrative improvements, it is desired that seafarers should be able to benefit as soon as possible from the revised medical fitness standards that they introduce, it is proposed to bring the Medical Certification Regulations into force on 6 April 2010.

5. Territorial Extent and Application

5.1 This instrument applies to all seafarers on seagoing United Kingdom ships whether in the United Kingdom or anywhere else in the world, irrespective of nationality, ethnic origin, religion, gender etc. Regulation 18, regarding inspection of ships, applies to non-UK sea-going ships when they are in a United Kingdom port or United Kingdom waters.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 The Merchant Shipping (Maritime Labour Convention) (Medical Certification) Regulations 2010 will be one of several sets of Regulations that will be required to give effect to the requirements of the International Labour Organization Maritime Labour Convention 2006 (Cmd. 7049), and thus permit ratification of that Convention by the UK Government. There is a ministerial commitment to UK ratification with a target date of 2010.

7.2 These Regulations replace the Merchant Shipping (Medical Examination) Regulations of 2002 (S.I. 2002/2005 amended by S.I. 2005/1919). The Regulations ensure that UK legislation will be in line with the Convention by introducing a duty (and corresponding sanctions for non-compliance), on seafarers in addition to the existing duty on employers, to ensure that they are appropriately medically certificated. The Regulations also introduce a new provision to allow a seafarer whose

medical certificate has expired to join a ship in urgent cases. There are also minor amendments to the definition of a medical practitioner, to the provision relating to certificates expiring during a voyage, and to the requirements for equivalent medical certificates.

7.3 In addition to bringing UK legislation into line with the Maritime Labour Convention, the UK government is taking the opportunity to tidy up some weaknesses in the current Regulations, in order to further ensure that seafarers are medically fit to perform their duties safely.

- ***Consolidation***

7.4 The regulations completely replace the earlier Merchant Shipping (Medical Examination) Regulations 2002, as amended.

8. Consultation outcome

8.1 The Maritime Labour Convention, like all ILO instruments, was developed on a tripartite basis, and the Maritime and Coastguard Agency (“MCA”) is working closely with seafarer and shipowner representatives on its implementation for the UK. The Regulations have been subject to preliminary discussion with stakeholders and public consultation.

8.2 Industry is generally very supportive of UK ratification of the Convention and, subject to clarification of a few points of detail, public consultation demonstrated support for the relatively minor changes introduced by these Regulations. The review of medical fitness standards has also been well-received by all stakeholders.

9. Guidance

9.1 The MCA publishes three Merchant Shipping Notices in support of these Regulations.

9.1.1 MSN 1815(M), which is unchanged, lists the countries whose medical fitness certificates the MCA accepts as equivalent to the UK medical fitness certificate for the purposes of working a UK ship or obtaining a UK certificate of competency.

9.1.2 MSN 1821(M), which is unchanged, lists the doctors approved by the Secretary of State to carry out seafarer medical examinations.

9.1.3 MSN 1822(M) which was published on 1 January 2010 explains the procedure for medical examination of seafarers and specifies the statutory medical fitness standards which approved doctors must apply.

9.2 In addition, the MCA publishes leaflets for seafarers to explain the purpose of medical examination, the importance of medical fitness for working at sea, and what they can expect when they attend for a medical examination.

10. Impact

10.1 The impact on business, charities or voluntary bodies is small. The most significant new cost is a new provision for the master of a ship to apply to MCA for approval in urgent cases where a seafarer needs to join a ship after their medical

certificate has expired. This and all other identified new costs are demonstrated in the Impact Assessment. The higher cost provisions (in particular the requirement that employers meet the cost of their employees' seafarer medicals) are not new, and have been carried forward largely unchanged from the earlier regulations.

10.2 The impact on the public sector is negligible, but there is some potential for cost savings for medical evacuations where tighter procedures for medical examination could prevent seafarers who are not fully fit continuing to work at sea. There is also a new discretionary provision allowing the MCA to recover the costs of a missed appointment with medical referees, and requirement that MCA approves applications for seafarer to work without a medical certificate in urgent cases.

10.3 An Impact Assessment is attached to this memorandum at Annex B and the Transposition Note is attached as Annex C.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 Since the Regulations primarily implement international provisions which make no concessions for small businesses there is little scope for national measures to minimise the impact of the requirements on firms employing up to 20 people.

11.3 The Regulations do not distinguish between large and small ships or between seafarers employed by large companies or small companies, since the purpose of the regulations is to implement an adequate standard of medical fitness, and an equitable examination system for all seafarers.

11.4 Meeting the cost of medical examinations for their employees inevitably has the greatest impact on small firms with a small turnover, but this requirement has been continued from the existing Regulations rather than being a new requirement in these Regulations. We consider that none of the impacts of the new proposals will have a disproportionate impact on smaller firms.

12. Monitoring & review

12.1 The aim of the Regulations is to ensure that seafarers on UK ships are fit to perform their duties, so the measures that we can use to gauge their success are:

- 12.1.1 statistics of medical radio medical advice to seafarers on UK ships;
- 12.1.2 medical evacuations.

The MCA receives annual reports from the two UK centres for radio medical advice to ships on the calls handled and the outcomes. However the information is only partial, because -

- (a) a UK ship may, if the master's first language is not English, call a radio medical advice centre in another country; and
- (b) the final outcome of any incident is not always fed back to the centre giving the advice.

To assess the success of the revision of standards, the MCA obtains regular feedback through day to day discussions with approved doctors and medical referees on the appropriateness of the standards they are required to apply. Another measure is the

number of cases where the decision of an approved doctor (who is required to apply the medical standards strictly) is overturned by a medical referee (who has more latitude in applying the standards). A large number of reversals to the approved doctors' decisions would indicate that the standards are too strict.

13. Contact

Julie Carlton at the Maritime and Coastguard Agency Tel: 023 8032 9216 or email: Julie.Carlton@mcga.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: Maritime and Coastguard Agency	Title: Impact Assessment of Merchant Shipping (Maritime Labour Convention)(Medical Certification) Regulations 2010	
Stage: Final	Version: Final	Date: 10 December 2009
Related Publications: 'Merchant Shipping (Maritime Labour Convention) (Medical Certification) Regulations 2010'; 'Maritime Labour Convention, 2006 (MLC)'		

Available to view or download at:

<http://www.mcga.gov.uk>

Contact for enquiries: Julie Carlton

Telephone: 023 8032 9216

What is the problem under consideration? Why is government intervention necessary?

The problem under consideration is how to ensure that all seafarers are medically fit to perform their duties at sea. The Maritime Labour Convention, 2006 (MLC) aims to ensure decent working conditions for seafarers globally in a number of areas, including to "ensure that all seafarers are medically fit to perform their duties at sea". It is possible in the absence of government intervention, seafarers and their employers may not ensure that seafarers are certified as medically fit to perform their duties putting seafarers and the ships they work on at risk. Government intervention is therefore necessary to reduce this risk. The MLC will for the first time provide a globally applicable standard on medical certification and a robust

What are the policy objectives and the intended effects?

The Government supported the development of the MLC and is committed to its ratification (Cmd 7049). The first policy objective of these Regulations is therefore to ensure that the UK legislation concerning the medical certification of seafarers is brought in line with the MLC (the current UK legislation on medical fitness examinations for seafarers does not fully comply with the MLC), and fully supports current policy, custom and practice where appropriate. In addition, the second policy objective of these Regulations is to address some weaknesses in current UK legislation to further ensure that seafarers are medically fit to perform their duties safely, and to introduce revised medical fitness standards to reflect improvements in diagnosis and treatment since 2002.

What policy options have been considered? Please justify any preferred option.

Two policy options have been assessed in this impact assessment. As the Government is committed to the ratification of the MLC, "no intervention" is not considered to be a valid policy option. Option 1 covers only the minor amendments required to the existing medical examination regulations in order for this to comply with the MLC (the MLC provisions). Option 2 is the same as Option 1 but includes additional UK-only provisions, the majority of which are intended to provide a legal basis for enforcing existing administrative provisions, and were supported in public consultation. Only Option 2 will achieve both of the policy objectives outlined above. Option 2 is therefore the preferred option, and these Regulations include both

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The MCA will consult stakeholders in 2015 on the impact of the changes as a result of these Regulations. The statutory medical fitness standards are kept under continuous review through statistical data.

Ministerial Sign-off For Final Stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

Paul ClarkDate: 10th March 2010

Summary: Analysis & Evidence

Policy Option: 2	Description: Implement MLC Provisions and Implement UK Only Provisions		
COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' The one-off cost of translating medical certificates is estimated at around £130,000. Total annual costs are estimated at around £4,000; additional medical examinations (£2,080), replacement medical certificates (£1000); reimbursing the cost of missed appointments to the MCA (£825); and costs of seeking approval from MCA (£90).
	One-off (Transition)	Yrs	
	£ 130,000	1	
	Average Annual Cost (excluding one-off)		
	£ 3,995		
		Total Cost (PV)	£ £164,000
Other key non-monetised costs by 'main affected groups'			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' The MCA would recover the cost of missed appeal appointments estimated at £825 per year, and doctors would recover the cost of issuing replacement certificates, estimated at £1000 per year.
	One-off	Yrs	
	£ N/A		
	Average Annual Benefit (excluding one-off)		
	£ 1,825		
		Total Benefit (PV)	£ 16,000
Other key non-monetised benefits by 'main affected groups' 1. The Regulations are expected to help to ensure that seafarers are medically fit to perform their duties at sea, which is expected to reduce the risk to seafarers and the ships they work on. 2. The MCA considers that it is reasonable to assume this could potentially reduce the number of medical evacuations by 1 per year (a medical evacuation by helicopter is estimated to cost £6,000 to 40,000). 3. The Regulations will also assist in moving the UK towards ratification of the MLC and ensuring that UK shipping will be able to continue to operate legally once the MLC has come into force. 4. Other non-monetised benefits are discussed in the evidence base below.			

Key Assumptions/Sensitivities/Risks 1. The monetised costs and benefits reflect a number of assumptions, and are therefore very uncertain. 2. These Regulations could potentially have significant non-monetised benefits. 3. The Net Benefit of these Regulations will depend on the extent of the non-monetised benefits. However, the Net Benefit below only includes the

Price Base	Time Period	Net Benefit Range (NPV) £ -148,000	NET BENEFIT (NPV Best estimate) £ -148,000		
What is the geographic coverage of the policy/option?			UK ships worldwide		
On what date will the policy be implemented?			18 January 2010		
Which organisation(s) will enforce the policy?			MCA		
What is the total annual cost of enforcement for these organisations?			£ None		
Does enforcement comply with Hampton principles?			Yes		
Will implementation go beyond minimum EU requirements?			Yes		
What is the value of the proposed offsetting measure per year?			£ N/A		
What is the value of changes in greenhouse gas emissions?			£ N/A		
Will the proposal have a significant impact on competition?			No		
Annual cost (£-£) per organisation (excluding one-off)		Micro None	Small None	Medium	Large
Are any of these organisations exempt?		No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)
Increase £ 0 **Decrease** £ 0 **Net Impact** £ 0

Key:	Annual costs and benefits: Constant Prices	(Net) Present Value
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1. Title of the Regulations

The Merchant Shipping (Maritime Labour Convention)(Medical Certification) Regulations 2010 (“the Regulations”).

2. Purpose and intended objectives of the Regulations

The new regulations will implement necessary changes to bring existing regulations into line with Regulation 1.2 of the Maritime Labour Convention, 2006 (MLC) and introduce other measures to formalise existing administrative practices.

3. Objective

To enable the UK to ratify the MLC, and to strengthen the scope for enforcement of existing administrative arrangements for seafarers’ reporting a change in their medical condition, and accepting alternative acceptable certificates for certain operations.

4. Background

At its 94th (Maritime) Session in February 2006 the International Labour Conference adopted the Maritime Labour Convention, 2006. The new Convention consolidates and updates over 60 maritime labour instruments adopted by the International Labour Organization since 1920. Its provisions are arranged in 5 Titles, as follows:

- **Title 1:** Minimum requirements for seafarers to work on a ship (minimum age; medical certification; training; recruitment and placement).
- **Title 2 :** Conditions of employment (employment agreements; wages; hours of work; annual leave; repatriation; compensation for ship's loss; manning; career development).
- **Title 3:** Accommodation, recreational facilities, food and catering.
- **Title 4:** Health protection, medical care, welfare and social provision (medical care on board and ashore; shipowners' liability; health and safety; welfare facilities; social security).
- **Title 5 :** Compliance and enforcement

These Regulations implement Regulation 1.2 of Title 1.of the MLC. The purpose of Regulation 1.2 is to ensure that seafarers are medically fit to perform their duties.

UK policy is to ratify a Convention only when it is satisfied that its national law and practice is fully in line with all of the requirements of that Convention (even though in many cases existing UK legislation may be providing a similar or higher level of protection than required under the Convention).

Decisions on whether or not legislative changes are desirable and should be introduced in order to comply with a particular Convention will depend on a number of factors, including their costs and benefits, their impact on other government policies, the commitment of resources and whether ratification would lead to an improvement in the level of protection for the workers concerned.

In this case, the UK played an active role in developing the Convention and fully supports the measures it contains. The Government has agreed that the UK should be ready to ratify the Convention if possible when it comes into force. The MLC will come into force 12 months after it has been ratified by at least 30 Member countries with a total share in the world gross tonnage of ships of 33%. The expected timetable for coming into force is 2010 or 2011.

5. Rationale for government intervention

The problem under consideration is how to ensure that all seafarers are medically fit to perform their duties at sea. The Maritime Labour Convention, 2006 (MLC) aims to ensure decent working conditions for seafarers globally in a number of areas, including to “ensure that all seafarers are medically fit to perform their duties at sea”. It is possible that in the absence of government intervention, seafarers and their employers may not ensure that seafarers are certified as medically fit to perform their duties, putting seafarers and the ships they work on at risk. Government intervention is therefore necessary to reduce this risk. The MLC will for the first time provide a globally applicable standard on medical certification, and a robust enforcement mechanism to facilitate compliance.

The Government supported the development of the MLC and is committed to its ratification (Cmd 7049). The first policy objective of these Regulations is therefore to ensure that the UK legislation concerning the medical certification of seafarers is brought in line with the MLC (the current UK legislation on medical fitness examinations for seafarers does not fully comply with the MLC), and fully supports current policy, custom and practice where appropriate. In addition, the second policy objective of these Regulations is to address some weaknesses in current UK legislation to further ensure that seafarers are medically fit to perform their duties safely, and to introduce revised medical fitness standards to reflect improvements in diagnosis and treatment since 2002.

6. Options

Doing nothing would not allow the UK to ratify the MLC. As the Government is committed to the ratification of the MLC, the MCA do not consider that “No Intervention” is a valid policy option. In addition, the MCA expect that UK shipping would be unable to operate legally without MLC certification issued by the MCA once the MLC has come into force (expected to be in 2011).

The MCA consider that administrative provisions would not adequately implement the MLC provisions and that amending UK legislation is the only option. For the UK only provisions, administrative measures have been tried to ensure that seafarers report changes in their medical condition. However, cases continue to come to light which have “slipped through the net”. Additionally, the MCA cannot recover the cost of missed appointments from seafarers without amending UK legislation.

Therefore, only policy options that involve amending UK legislation are considered further in this impact assessment. As there are two distinct parts to these Regulations, two policy options have been assessed in this impact assessment. These are as follows:

Option 1: Implement MLC provisions only

Option 2: Implement MLC provisions and the additional UK-only provisions.

Option 1. Implement MLC provisions only

Option 1 involves implementing only the MLC provisions. The public consultation document made clear which proposals were required to implement the Convention and which were UK-only amendments to the Regulations.

Option 2 Implement MLC provisions plus UK only provisions

Option 2 involves implementing both the MLC provisions and the UK-only provisions. The additional UK-only provisions are intended to address some weaknesses in current UK legislation to further ensure that seafarers are medically fit to perform their duties safely, and introduce revised medical fitness standards to reflect improvements in diagnosis and treatment since 2002.

Option 2 is the preferred option as the MCA consider that the additional provisions have little cost impact, but bring benefits in terms of the transparency and accountability of the medical examination system (i.e. specifying the UK alternatives to the ENG1 for small vessels operating around the UK, introducing a new requirement for seafarers to report changes in their medical condition, clarifying the provisions in relation to replacement certificates). In addition, all proposals had broad support through public consultation.

7. Costs and Benefits

Annex 1 describes all of the provisions in the Regulations which correspond to Option 2 above, and includes both the MLC provisions and the additional UK-only provisions. The provisions of the Regulations that will result in costs and benefits are discussed below.

7.1 MLC provisions (These provisions apply under both Option 1 and Option 2)

7.1.1 Permission to work without a valid medical certificate in urgent cases (Regulations 7(2) and 7(3))

The current UK regulations, based on ILO Convention 73, allow a seafarer who is working on a ship when their medical certificate expires, to continue working without a medical certificate for up to three months. These Regulations allow a seafarer to be employed at the start of a voyage in urgent cases

without a valid medical certificate, provided that certain criteria are met which maximise the chances that they are medically fit, and subject to MCA approval.

These Regulations also introduce a new requirement to obtain MCA agreement (the MCA could produce a short proforma to support such applications if industry felt this would be helpful, but this has not been requested through consultation responses). However, the MCA consider that the overall effect would be to increase flexibility, as it is currently illegal to join a ship as a seafarer without a medical certificate in any circumstances. An example would be where a crew member for a particular voyage falls ill the day before the ship sails; their replacement's medical certificate has expired recently and it is not possible for them to obtain a new certificate at 24 hours notice.

Costs

Based on the number of enquiries received from seafarers and employers, the MCA estimates that there are about 1 in 10,000 cases of seafarers who are either

(a) required to join a ship and have no valid medical fitness certificate; or

(b) whose certificate expires mid-voyage, when they are in an area where it is not possible to obtain a replacement.

There are an estimated 25,200 UK nationals working as seafarers (*UK Seafarer Statistics 2008* London Metropolitan University).

Therefore, the MCA assumes that there will be no more than 3 cases per year where the master would need to apply for MCA approval for the seafarer to work for up to 3 months without a medical fitness certificate.

The MCA estimate that the cost to industry would be £30 per case, assuming that this takes about one hour of the master's time and that their value of working time is £30 per hour (based on advertised salaries).

On the assumption that there will be 3 cases per year, the MCA therefore estimates that the total administrative cost would be £90 per year.

Benefits

The MCA estimates that this would provide greater operational flexibility in exceptional circumstances, and considers that this is especially beneficial given the global shortage of qualified officers and the costs of delaying vessels and their cargoes.

7.1.2 Medical certificates for international voyages to be in English (Regulation 11(3)) and Medical certificates for all UK ships to be in English (Regulation 11(2))

The requirement for medical certificates for international voyages to be in English was introduced in the MLC. English is the international language of shipping, and many countries already show key information on the certificate in English as well as their own language for this reason.

The Regulations make this a statutory requirement for all UK ships. The MCA considers that this provides clarity as to UK requirements and will have benefits for employers as well as for MCA enforcement officers, with the increasing use of crews from developing and East European countries even on domestic vessels. During the transitional period before the Convention is fully ratified, there may be occasions where seafarers are required to provide a translation of a medical certificate issued before the Convention fully takes effect, but the MCA does not expect there to be large numbers of these.

Costs

Nearly 17000 seafarers on UK ships are nationals of other EEA countries or from outside the EEA, and we estimate that about 650 of those are from countries which do not already issue medical fitness certificates with an English translation (the MCA believes this applies only to Italy and Spain out of the EC countries¹).

¹ MCA public consultation document on the *Merchant Shipping (Training and Certification)(Amendment) Regulations 2008*, Annex A

Since this is becoming an international requirement, and all EC countries at least are committed to ratifying the Convention, by the time that the Convention comes into force, it is expected that this requirement will be met internationally.

On the assumption that 650 seafarers will require their medical certificate to be translated into English at a cost of £200 (based on translation work carried out commercially for the MCA), the MCA have estimated that total cost at £130,000. This is a one-off cost.

The alternative to having translation made of such a certificate would be to obtain a new UK ENG1 medical certificate, or another equivalent certificate which showed information in English. This would generally require the seafarer to travel to visit an approved doctor, in addition to the fee for the medical examination (currently £80 for an ENG1).

Benefits

The MCA considers that the use of a common language on such certificates can reduce the risk of seafarers being required to do work for which they are not medically fit, and therefore the consequences of an incident, bringing benefits to the individual seafarer and potentially to the safe operation of the vessel. The MCA also considers this brings benefits for enforcing the MLC provision and the Regulations, as the use of English ensures that Port State Control officers will be able to accurately check all medical certificates, regardless of nationality (knowledge of English is one of the qualifying criteria for inspectors specified in the Convention Guideline B5.1.4.5).

7.2 UK-Only Provisions (These provisions apply under Option 2 only)

7.2.1 Recognition of alternative certificates for small vessels (Regulation 10)

The UK has an alternative medical certification system for those working on small commercial vessels (under 24m and carrying no more than twelve passengers) known as the ML5 report. This was developed initially for small passenger ship in the early 1990s, and is based on the “tick-box” report used for commercial drivers. As such it can be completed by the seafarer’s own GP without reference to an approved doctor (often saving travel costs to the seafarer). The ML5 report is now well established but has previously had no legal standing, being implemented by administrative provisions. This provision of the Regulations formalises the position.

Costs

The MCA expects that there will be no costs to industry or the MCA because the ML5 report and certificate are already in use, and stipulated as an acceptable alternative to the seafarer medical certificate (ENG1), for example, in the Codes of Safety for Small Commercial Vessels, and in MGN 264 (M).

Benefits

The Regulation formalises the use of the alternative ML5 certificate for certain small vessels operating around the UK. This improves transparency regarding the use of the certificate for seafarers and employers, and ensures that non-compliance can be dealt with effectively.

7.2.2 Reporting medical conditions and reporting absences from work of 30 days or more (Regulation 12)

Both of these provisions of the Regulations are intended to strengthen existing instructions to seafarers by creating a legal duty. This balances the duties on employers to ensure that the seafarers they employ hold valid medical certificates.

Since 2002, there have been warning notes on the reverse of the ENG1 medical certificate, requiring a seafarer to notify the approved doctor if their medical condition changes. Approved Doctors are required to draw the seafarer’s attention to the notes, and the seafarer’s declaration states that he/she has read them. However, there continue to be a small number cases reported to MCA each year where employers have found that a seafarer (in one specific case, one in a senior position on board ship) has developed a new medical condition or changed their treatment regime without presenting themselves for review of their medical certificate, or where an approved doctor examines someone whose medical condition has changed at some point in the two years since their last medical examination. While there is a general

duty on seafarers to ensure the health and safety of themselves and others, they do not always make the link between their medical condition (which they may see simply as something that they have to live with, and cope with well) and the health and safety of colleagues. By imposing an explicit duty, the MCA hopes to highlight the importance of this issue, and also provide a sanction where a seafarer does not comply – ie their certificate becomes invalid.

Similar issues and evidence apply in respect of the provision relating to 30 days absences – this is laid down in the ILO Guidelines.

Cost

The MCA estimates that about 6.0% of seafarers generally fail their medical or be issued with a restricted certificate or temporarily unfit certificate in any given year (i.e. around 1625 seafarers).²

Based on the number of queries on fitness of seafarers that are raised with the MCA, the MCA estimates that around 80 seafarers (about 5% of that figure) would currently fail to report a change in medical condition, and that 33% of these seafarers would be required to revisit their Approved Doctor for reassessment, rather than being cleared by telephone / correspondence. The current cost of a seafarer medical examination is £80.

On the basis of 26 seafarers requiring a medical examination at a cost of £80 each, the MCA estimates that the cost for employers could potentially total £2080 per year in medical examination fees.

This estimate assumes that creating a specific legal duty to report has the desired effect of persuading seafarers to report any change in medical condition.

Benefits

The MCA considers that strengthening the requirement to report changes in medical condition should bring benefits to seafarer health and potentially the health and safety of the vessel, other crew and cargo.

The MCA considers that this could potentially reduce the number of medical evacuations. Because of the international nature of seafaring, and poor data collection and feedback on medical evacuations internationally, there is no evidence of the impact of a robust medical examination system on medical evacuations of seafarers. However, the MCA considers that it is reasonable to assume that the requirement to report a change in medical condition could potentially result in one fewer medical evacuation of a UK seafarer per year. The extent that this will be realised in practice is very uncertain. It is therefore included only in the non-monetised benefits in this impact assessment.

To provide an indication of the potential magnitude of this non-monetised benefit, the MCA estimates that the cost of evacuating a seafarer for medical treatment (based on MCA's nominal hourly rate for helicopter deployment) is between £6000 and £40,000 for a helicopter evacuation, depending on location of seafarer and the medical treatment facilities.

7.2.3 Recovery of MCA's costs for cancelled appointments with medical referees (Regulation 14(8))

Between 3 and 5 times a year, a seafarer who has made an appeal appointment with a medical referee contacts MCA to cancel at short notice, or fails to attend. MCA is obliged to pay the referee for the wasted appointment as well as any re-arranged appointment.

The MCA has changed our procedures in the last 18 months so that seafarers are now given only one second chance to rearrange an appointment, before they forfeit their right to appeal. This provision would enable the MCA to recover the costs of any future cancellations.

The power to recover costs from the seafarer is made discretionary, as there is sometimes a valid reason why the seafarer is unable to attend their appointment.

Costs

The MCA estimates that there are up to 5 cases per year where a seafarer cancels their appointment with a medical referee at short notice, or fails to attend. The MCA is obliged to pay the referee for the wasted appointment at a cost of £165 per appointment. On this basis, the MCA estimates the cost to seafarers at up to £825 per year.

² Source: Extrapolated by the MCA from Annual Statistics produced from returns by UK approved doctors for 2007 and 2008.

Benefit

The MCA would recoup the costs of these appointments. This is equal to the costs and has been estimated at up to £825 per year. The MCA estimates that the deterrence effect of the new power to recover cancellation costs will reduce incidence of wasted appointments.

7.2.4 Issue of replacement certificates (Regulation 17)

This is current practice, but there is no statutory provision authorising Approved Doctors to issue replacement certificates, as there is in relation to certificates of competency in the Merchant Shipping (Training and Certification) Regulations, or to charge an administrative fee for doing so.

This is a relatively small problem, but there is currently an administrative burden on the approved doctor who has to recall previous records, complete the certificate, create a record for audit purposes and notify MCA.

This provision makes clear that they may charge for this work, but also that they should not charge the full fee for a seafarer medical examination.

Costs

Based on inquiries and information from approved doctors, the MCA estimates that about 40 replacement certificates are issued each year by Approved Doctors (compared to over 40,000 medical examinations).

The MCA estimates the cost of a replacement certificate at £25 (based on MCA charges for a replacement Certificate of Competency) and therefore estimates the cost to industry at up to £1000 per year.

Benefits

Doctors would cover costs of issuing replacement certificates. This is equal to the costs and has been estimated at up to £1000 per year.

7.3 Other benefits of the Regulations

Overall, the MCA expects that the Regulations will help to ensure that seafarers are medically fit to perform their duties at sea. The MCA expects that this will reduce the risk to seafarers and the ships they work on.

The MCA expects that UK shipping would be unable to operate legally without MLC certification issued by the MCA once the MLC has come into force (expected to be in 2011). Therefore the MCA expects that a benefit of implementing the MLC provisions in the Regulations would be that they assist in moving the UK towards ratification of the MLC, and therefore to be able to issue Maritime Labour Certificates to UK ships. This will ensure that UK shipping will be able to continue to operate legally.

It has not been possible to monetise these benefits in this impact assessment.

7.4 Overall assessment of the costs and benefits of these Regulations

Considering only the monetised costs and benefits that are identified in this impact assessment, the Net Benefit of these Regulations has been estimated at around £ - 148,000 (NPV). This estimate is included on the summary sheets above.

However, it is noted that the non-monetised benefits that are identified in this impact assessment could potentially be significant. The overall Net Benefit that is expected from these Regulations is therefore very sensitive to the weight that is placed on these non-monetised benefits.

8. Enforcement

Enforcement of seafarer medical certification requirements takes place at several levels. The use of secure documentation, checking of the seafarer's identity and recall of the previous ENG1 by the approved doctor all help to ensure that the system is not abused and that each seafarer has a valid and appropriate certificate. The employer generally checks medical documentation as part of the recruiting

process and the master will also check it when the seafarer joins the ship. MCA surveyors and inspectors may check crew documentation as part of a General Inspection, ILO 178 Labour Inspection, ISM ship audit or a Port State Control Inspection. Once the MLC is in force, each flag state will be required to issue a maritime labour certificate and declaration of maritime labour compliance to its ships, and medical certification is one aspect of the inspection for issue of that certificate. Enforcement will be covered in separate regulations.

9. Specific impact tests

9.1 Competition

The proposed regulations consolidate amendments to the 2002 regulations which are based on ILO Convention No. 73 and the supporting ILO/WHO Guidelines for the Conduct of Pre-Sea and Periodic Medical Fitness Examinations for Seafarers. The 2002 regulations are well established and supported by UK industry.

The proposed amendments primarily bring the UK regulations into line with the Maritime Labour Convention, 2006 (MLC). The Convention aims to provide a benchmark for decent employment of seafarers globally, and will be implemented internationally. In that respect the changes have no detrimental effect on the competitiveness of the UK flag or UK shipping.

As set out above, the UK-only amendments are estimated to have only minimal cost implications for the shipping industry. The MCA therefore considers that the Regulations are unlikely to have a significant impact on competitiveness.

9.2 Small Firms Impact Test

The MLC provides scope for the competent authority to put in place national provisions as an alternative to the requirements of the Convention for ships under 200gt, where full compliance with the Convention requirements would be unreasonable.

The Medical Examination Regulations do not distinguish between large and small ships or between seafarers employed by large companies or small companies, since the purpose of the regulations is to implement an adequate standard of medical fitness, and an equitable examination system for all seafarers.

Meeting the cost of medical examinations for their employees inevitably will have the greatest impact on small firms with a small turnover, but this is not a new requirement in these regulations. The MCA considers that none of the amendments proposed will have a disproportionate impact on smaller firms.

9.3 Health Impact Assessment

Title 1.2 relates to the medical certification of seafarers. While the prime function of the seafarer medical examination is to determine current fitness, it also provides an opportunity to advise seafarers on risks which may impair their health in future and thus prematurely terminate their career at sea. The approved doctor does not have clinical responsibility for the seafarer, but will advise on the need to consult on any significant problems and on occasions a referral letter to a GP may be provided.

MCA publishes a number of leaflets promoting health issues (.e.g. health risks from exposure to direct sunlight, fatigue, and stress) and approved doctors make use of these to advise seafarer who attend for examination.

Regulation 12, which further enforces the seafarer's duty to report changes in their medical condition, should reduce the risk of seafarers returning to work or continuing to work when they are not medically fit to do so. As well as the obvious safety benefits for the vessel, this should have health benefits for the seafarer concerned. In a small number of cases, the additional medical examination required may allow underlying health conditions to be identified at an early stage, though the number of instances is likely to be too small to quantify.

Other changes to the regulations have no significant impact on health.

9.4 Race Equality

The MLC applies equally to all seafarers of whatever race and seeks to promote decent employment conditions globally.

Similarly, the UK seafarer medical examination system is race-blind, as anyone who applies to an approved doctor for a seafarer medical examination and pays the appropriate fee is entitled to an examination, and the MCA will meet the costs (other than travel costs) if they appeal against the approved doctor's decision.

9.5 Disability Equality

While the MLC does not make any specific mention of preventing disability discrimination, it is intended to ensure that seafarers have the same fundamental rights and freedoms that apply to other people.

In respect of medical certification, it is internationally recognised that there is a need to ensure that seafarers are medically fit to perform their duties, and in particular -

(a) that the hearing, sight and colour vision of any person to be employed in the deck department....are satisfactory; and

(b) that [any seafarer] is not suffering from any disease likely to be aggravated by, or render him/her unfit for, service at sea or likely to endanger the health of other persons on board ships.

[Medical Examination (Seafarers) Convention 1946 (No.73) Article 4]

The reasons for this are set out in the Guidelines for pre-sea and periodic medical examination for seafarers (ILO/WHO/D.2/1997) Section VIII:

- *As ships often operate far offshore or in inaccessible areas, it is often difficult to replace seafarers who become injured or ill. Many ships have only the minimal numbers of persons on board necessary to operate the ship, thus the incapacitation of even one seafarer may place a substantial additional burden on his or her shipmates.*
- *Ship's officers generally receive basic first-aid and other medical training, and ships are usually equipped with basic medical supplies. Nevertheless, it is often quite difficult to transport sick or injured seafarers ashore where they can be treated by certified physicians. In some geographical areas, the closest medical care ashore may be well below the standard of the seafarer's home country. It is therefore inadvisable and often unsafe to allow persons with certain medical conditions to become seafarer or to return to seagoing employment.*
- *Seafarers live close to each other at sea, often for long periods. Contagious diseases therefore may be a serious threat, endangering not only the health of other seafarers but also the safety of the ship and, where carried, passengers. It is particularly important that seafarers concerned with the preparation of food do not suffer from conditions which may be transmitted to others through their work.*
- *Seafarers should be medically fit to perform their normal duties correctly and to be able to respond to emergency situations (e.g. fighting fires, lowering lifeboats, assisting passengers, etc.)*
- *Although efforts are, and should be, continuously made to improved the living and working conditions on board ships, seafarers should be able to adjust to the often violent motions of the ship, to be able to live and work in sometimes cramped spaces, to be able to climb ladders and to lift heavy weights and to be able to withstand exposure to harsh weather conditions on deck or excessive heat in the machinery spaces. As they often travel by air to reach and return from their ships, they should not suffer from conditions which are exacerbated by air travel.*
- *In view of the physical demands of work at sea and the relative isolation from shore-based medical facilities, the medical standards should specify the conditions under which seafarers suffering from potentially life-threatening conditions controlled by medication may be allowed to continue to work at sea.*
- *.....*
- *Seafarers should be able to live and work closely with the same people for weeks and perhaps months on end and under occasionally stressful conditions. They should be capable of dealing effectively with isolation from family and friends and, in some cases, from persons of their own cultural background.*

.....”

Against this background, in setting the standards for medical examinations for seafarers, the UK seeks to ensure that any fitness decision based on a disability is justified and proportionate.

The MCA receives an estimated 12 to 15 phone calls a year from people with disabilities (in particular those with diabetes treated with insulin, or with epilepsy) who make informal allegations that the standards are discriminatory. There has been only one formal appeal to an employment tribunal and that was withdrawn before it was heard.

9.6 Gender Equality

The MLC and the proposed UK regulations apply equally to all seafarers of whatever gender. There are no gender equality issues.

9.7 Human Rights

The MLC respects and promotes fundamental rights and there are no Human Rights issues in the proposed UK regulations.

Specific Impact Tests: Checklist

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	No	No

Annexes

Regulation	Effects
Definition of medical practitioner (Regulation 2)	Amend definition to reflect MLC definition: specifies that AD must be “duly qualified”. No substantive change in practice, as MCA already specify criteria for applications to become an approved doctor.
Prohibition on working on a seagoing ship without a medical certificate (Regulation 6)	There is no practical effect for those who comply with the medical certification regime. However this changes the legal position in that, in the event of a seafarer failing to comply, they would be liable for sanction as well as the employer.
Expiry of certificate during a voyage (Regulation 7(2))	Limits approval for working with an expired certificate to next port where certificate can be obtained, in addition to limiting exception to 3 months validity.
Permission to work without a valid medical certificate in urgent cases (Regulation 7(3))	Adds a further reason for temporary exemption from requirement to have a valid medical certificate when working on a ship. Provides slightly more flexibility for employer
Medical certificates for international voyages to be in English (Regulation 11(2))	Primary burden on non-UK administration to amend their certificates comes from the Convention.
Medical certificates for all UK ships to be in English (Regulation 11(2))	Ensures that seafarers on UK ships on domestic routes have medical certificates in English.
Recognition of alternative certificates for small vessels e.g. ML5. (Regulation 10)	Provides statutory basis for current administrative arrangements for Class IV to VI(A) ships and Code vessels
Provision for conditions on issue of medical certificate (Regulation 8(2)(b))	Formalises and standardises current practice.
Reporting of medical conditions (Regulation 12)	Gives legal basis to current administrative requirement (previously enforceable only under general duty of care)
Reporting absences from work of 30 days or more (Regulation 12)	Gives legal basis to current administrative requirement (previously enforceable only under general duty of care)
Recovery of MCA's costs for cancelled appointments with medical referees (Regulation 14(8))	Allows MCA to recover costs for missed appointments
Issue of replacement certificates (Regulation 17)	Legal basis for issue of replacement certificates (previously administrative arrangement)

TRANSPOSITION NOTE

Relating to the implementation of Article 2.4 of Council Directive 2009/13/EC (O.J. No. L124, 20.05.2009, p.30), which amends Council Directive 1999/63/EC (O.J No. L 167, 02.07.1999, p.33). Article 2.4 of Directive 2009/13/EC replaces Clause 13 of the European Agreement on the Organisation of Working Time of Seafarers, which forms the Annex to Council Directive 1999/63/EC.

The Merchant Shipping (Maritime Labour Convention) (Medical Certification) Regulations 2010 (in this note referred to as “Medical Certification Regulations”) implement Article 2.4 of Council Directive 2009/13/EC , alongside UK-only provisions relating to the medical certification of seafarers. The Regulations apply to all seagoing vessels other than fishing vessels, pleasure vessels and offshore installations whilst on their working stations. They replace and amend the Merchant Shipping (Medical Examination) Regulations 2002 (S.I. 2002/2055, amended by S.I. 2005/1919) (in this note referred to as the 2002 Regulations).

The responsibility for implementation of Council Directive 2009/13/EC rests with the Secretary of State for Transport, through the making of Regulations under the Merchant Shipping Act 1995 and the European Communities Act 1972.

Maritime and Coastguard Agency
Department for Transport

February 2010

**TABLE RELATING TO IMPLEMENTATION OF DIRECTIVE COUNCIL
DIRECTIVE 2009/13/EC**

SECTION 1 GENERAL PROVISIONS		
Article 1 Aim and scope		
Paragraph of Annex to Directive 1999/63 as amended	Purpose of Paragraph in Annex	Implemented in the UK by the Merchant Shipping (Maritime Labour Convention) (Medical Certification) Regulations 2010 as follows:
Clause 13.1	Requirement for seafarers to be certified medically fit to perform their duties.	Regulation 6(1), 7(1), 10 and 11.
Clause 13.2	Requirement for exceptions to be limited to circumstances specified in the agreement	Regulations 6(3) and (4), 7(2) and (3) and 10.
Clause 13.3	Requirement for seafarers to hold a valid medical certificate prior to beginning work on a ship.	Regulations 6(1), 7(1), 10 and 11.
Clause 13.4	Requirement for competent authority, after consultation with shipowners' and seafarers' organizations, to specify the nature of the medical examination and certificate.	Regulation 8 and Merchant Shipping Notice 1822(M). A consultation was carried out as required by section 86(4) Merchant Shipping Act 1995.
Clause 13.5	Provision for acceptance of medical certificates issued in accordance with STCW.	Regulation 11 provides for the acceptance of medical certificates from the countries specified in Merchant Shipping Notice 1815(M). These include all EEA members and other countries which the UK has vetted for compliance with the ILO Guidelines for conducting pre-sea and periodic medical fitness examinations for seafarers 1997 (referred to in the STCW Convention).
Clause 13.6	Requirement for medical certificates to be issued by duly qualified medical practitioner, or – as appropriate - by a person qualified to issue an eyesight certificate.	Regulation 2 (definition for “medical practitioner”) and 8(1).
Clause 13.7	Requirement for provision to be made for a right of appeal against a failure or restriction.	Regulation 14.

Clause 13.8	Requirements for the content of the medical certificate	Regulation 8(1) and Merchant Shipping Notice 1822(M).
Clause 13.9	Validity of (a) a medical certificate; and (b) a colour vision certificate.	Regulation 9. The UK does not set a separate validity for colour vision certificates, as colour vision is included on the medical certificate.
Clause 13.10	Provision for a seafarer to work without a valid medical certificate in urgent cases	Regulation 6(4) and 7(3)
Clause 13.11	Provision for a seafarer's medical certificate which expires during a voyage to continue in force until the next port of call.	Regulation 6(3) and 7(2).
Clause 13.12	Requirement for equivalent medical certificates to be in English	Regulation 11(2)
Clause 13.13	Requirement for competent authority to specify the nature of the medical assessment and the certificate after consultation	Regulation 8 and Merchant Shipping Notice 1822(M). A consultation was carried out as required by section 86(4) Merchant Shipping Act 1995.
Clause 13.14	Provision for those suffering health problems as a result of performing night work.	Regulation 15
Clause 13.14 and 13.15	Requirement for regular health assessment of seafarers which is (a) free and (b) complies with medical confidentiality	A regular health assessment is required consequent to regulation 9. (a) Transposed by regulation 8(3). (b) Transposed by medical confidentiality and clinical practice rules in the UK.