

<b>Title:</b> <b>Merchant Shipping (Maritime Labour Convention)(Minimum Age) Regulations (“the Regulations”)</b> <b>IA No:</b> DfT00210  <b>Lead department or agency:</b> Maritime and Coastguard Agency (MCA) <b>Other departments or agencies:</b> Department for Transport	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 03/03/2014		
	<b>Stage:</b> Final		
	<b>Source of intervention:</b> International		
	<b>Type of measure:</b> Secondary legislation		
<b>Contact for enquiries:</b> Rosemary Nelson Tel: 023 8032 9328			
<b>Summary: Intervention and Options</b>			<b>RPC:</b> Not Applicable

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
N/Q	N/Q	N/Q	No	NA

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

It is considered that no person under the age of 16 should work at sea and that young persons under the age of 18 should be protected at work. Employment conditions at sea vary across the world, with some seafarers working under unacceptable conditions and some ship operators which operate substandard ships gaining a competitive advantage. Effective international standards are needed to address these issues. The Maritime Labour Convention 2006 (MLC) aims to provide minimum working conditions for seafarers that are globally applicable and uniformly enforced including on minimum age requirements. This requires the MLC to be ratified by governments, which requires a package of new legislation in the UK. The UK ratified the MLC on 7 August 2013, so UK legislation must be fully compliant.

**What are the policy objectives and the intended effects?**

The purpose of the Regulations is to promote decent living and working conditions for seafarers globally and a more level competitive playing field for shipping by a) bringing UK legislation into line with the minimum global standards for the minimum age of seafarers in the MLC; b) fully complying with MLC standards, under UK international obligations as a ratifying country; and c) enforcing these global minimum standards for minimum age on non-UK registered ships that call at UK ports. Specific objectives for minimum age for seafarers are found in the Evidence base.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Doing nothing is not considered to be an appropriate course of action as the new UK legislation is required to fully comply with the MLC. Failure to ratify the MLC would have limited its effectiveness at addressing the issues on seafarer living and working conditions discussed above and UK ships would not have been able to obtain MLC certification. The preferred policy option is therefore to introduce the Regulations (Policy Option 1) which would make the minimum changes to existing legislation to implement the provisions on MLC on minimum age, taking into account existing European and UK legislation in this field. No further measures have been deemed necessary and so only one policy option has been considered in this impact assessment.

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 03/2019						
Does implementation go beyond minimum EU requirements?			N/A			
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		<b>Micro</b> Yes	<b>&lt; 20</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> NA		<b>Non-traded:</b> NA	

***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) that the benefits justify the costs.***

Signed by the responsible Minister: \_\_\_\_\_ Stephen Hammond \_\_\_\_\_ Date: 24/06/2014 \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** To implement the minimum requirements of the Maritime Labour Convention, 2006 in respect of minimum age

## FULL ECONOMIC ASSESSMENT

Price Base Year N/A	PV Base Year N/A	Time Period Years N/A	Net Benefit (Present Value (PV)) (£m)		
			Low: N/Q	High: N/Q	Best Estimate: N/Q

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/Q	N/A	N/Q	N/Q
High	N/Q		N/Q	N/Q
Best Estimate	N/Q		N/Q	N/Q

### Description and scale of key monetised costs by 'main affected groups'

It has not been possible to monetise any of the costs that have been identified in this impact assessment.

### Other key non-monetised costs by 'main affected groups'

There are potential costs for businesses with self-employed seafarers, where these seafarers currently do work which will be prohibited by the proposals, which would have to pay other workers to do this work. There is no reliable evidence for the number of seafarers affected, but this is expected to be very small.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/Q	N/A	N/Q	N/Q
High	N/Q		N/Q	N/Q
Best Estimate	N/Q		N/Q	N/Q

### Description and scale of key monetised benefits by 'main affected groups':

It has not been possible to monetise any of the benefits that have been identified have been identified in this impact assessment.

### Other key non-monetised benefits by 'main affected groups':

There is the potential for minor safety benefits from the more tightly drawn provisions on hazardous activities and night work, and clearer guidance on exceptions. However, this area is considered to be well-covered in existing legislation and best practice so any benefits are expected to be small.

### Key assumptions/sensitivities/risks

Discount rate (%)

N/A

1. It is assumed that proportion of 16 - 17 year olds working on ships mirrors that in the general population.
2. Given the limitations of the available evidence base, it has not been possible to monetise any of the potential costs and benefits that have been identified in this impact assessment.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: NQ	Benefits: NQ	Net: NQ	No	NA

# EVIDENCE BASE

## Key definitions

ILO = International Labour Organization

MCA = Maritime and Coastguard Agency

MLC = ILO Maritime Labour Convention 2006

## 1. TITLE OF PROPOSAL

The Merchant Shipping (Maritime Labour Convention) (Minimum Age) Regulations 2014 (“the Regulations)

### 1a. CONSULTATION ON THE PROPOSALS

Like all Conventions of the International Labour Organisation, the Maritime Labour Convention, 2006 was drawn up on a tripartite basis in negotiations between shipowner organisations, seafarer organisations and governments, and the UK took a leading role in all three delegations. The MCA has continued to work closely with its social partners on the implementation of the Convention, through tripartite working group – see Annex 4.

The consultation stage impact assessment for these proposals, which was published as part of the public consultation exercise, invited consultees to submit any additional evidence on the costs and benefits of the Regulations. 176 organisations and companies were directly notified of the consultation exercise, including the UK Chamber of Shipping which represents a broad cross section of UK shipping companies in all sectors, and other trade associations, such as the British Marine Federation and International Marine Contractors Association. Five written responses were received from significant players in the industry. In summary, there was no opposition in principle to the implementation of the MLC standards, and no evidence was provided of costs and benefits arising from the requirements which the MCA had not foreseen. In addition, no evidence on the costs and benefits of the Regulations was provided. However, there were some concerns raised on details of the UK implementation which will be addressed through minor change to the Regulations and improved guidance, rather than substantive changes to the requirements.

## 2. PROBLEM UNDER CONSIDERATION

It is considered that no person under the age of 16 should work at sea and that young persons under the age of 18 should be protected at work. However, employment conditions for seafarers vary across the world, with some seafarers working under unacceptable conditions and some shipowners operating substandard ships, thus gaining a competitive advantage. In particular, ILO (2012) suggests that “seafarers often have to work under unacceptable conditions, to the detriment of their well-being, health and safety and the safety of the ships on which they work.” In addition, ILO (2012) suggests that flag States and shipowners which provide seafarers with decent conditions of work “face unfair competition in that they pay the price of being undercut by shipowners which operate substandard ships.”

The IMO reports that 90% of world trade makes use of maritime transport, depending on 1.2 million seafarers<sup>1</sup> to operate ships. Many of these seafarers are working a great distance from their homes on ships operating under a flag different from their country of origin. Seafarers are frequently exposed to difficult working conditions.

The specific problem under consideration which the Regulations would directly address are how to ensure that no persons under the age of 16 are employed on ships and that young people (under the age of 18) are protected at work.

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<sup>1</sup>Source: IMO (2012)

There is no conclusive evidence that there is a higher incidence of accidents involving seafarers who are under 18 years old on UK ships, than for seafarers who are over 18. However, there is very little data on this matter. This is likely to be because there is already UK legislation which requires additional protection for young people at work at sea, and as discussed in Section 6.3.2, this is likely to be applied widely as best practice whether or not it strictly applies to a given situation. Nevertheless, working at sea is a hazardous occupation, and young people (under 18 years) are considered to be at greater risk of harm than their older colleagues as a result of their inexperience and, accordingly, reduced perception of risk. (The European Union has addressed this concern with a directive on the employment of young persons, which requires additional protection measures for those under the age of 18 years.) They are also vulnerable because they are likely to be working away from home for the first time, without the support of family and friends. It is therefore considered necessary to require employers to take particular measures to protect the health and safety of young persons up to the age of 18.

Given that there are costs of providing seafarers with decent conditions of work (e.g. not employing those under the minimum age and providing additional protection for those under the age on 18 years), this means that shipowners' who operate substandard ships can potentially undercut shipowners' who provide seafarers with decent conditions of work, and can consequently potentially gain a competitive advantage. This suggests that, in the absence of government intervention, shipowners' may not ensure that young people are protected from the risks of working at sea. The ILO has therefore considered it necessary to lay down additional requirements designed to protect the health and safety of young persons up to the age of 18 in the MLC.

### **3. RATIONALE FOR INTERVENTION**

Given the international nature of the shipping industry, it is considered that effective international standards are needed to address the issues and risks that have been raised in Section 2, and to provide decent working conditions and a level playing field for ships of different flags. This is why the MLC has been developed in the ILO by government, employer and seafarer representatives as a global instrument to address these issues and risks. The MLC aims to provide minimum rights for all seafarers that are globally applicable and uniformly enforced, including on minimum age and protection for young persons. It was adopted in the ILO by a record vote of 314 in favour and none against (two countries abstained for reasons unrelated to the substance of the MLC). The ratification criteria to bring the Convention into force internationally were met on 20 August 2012, and the MLC therefore came into force internationally on 20 August 2013. It is being widely ratified. The Government's social partners, the shipping industry and the seafarer's Trades Unions, strongly supported ratification of the MLC in the UK which took place on 7 August 2013.

Full compliance with the MLC in the UK requires a package of new legislation to be introduced to implement some of the provisions of the MLC in UK law, including some provisions of the MLC regarding minimum age for all seafarers. Doing nothing is therefore not considered to be an appropriate course of action.

Widespread ratification of the MLC, including the provisions on minimum age and the improved enforcement mechanisms introduced by the Convention could improve the consistency on minimum age standards between ships of different flags, and could help to ensure that young seafarers – including UK nationals – have a reasonable expectation of safe working conditions on ships of any flag where they work.

The Regulations will bring existing legislation for UK registered vessels into line with the minimum global standards for minimum age and protection of young persons provided for in the MLC.

In addition, as the UK has ratified the MLC, the Regulations will allow the UK to enforce these minimum global standards on non-UK registered vessels visiting UK ports on a "no more favourable treatment" basis.

Furthermore, UK ratification of the MLC has avoided the costs of not ratifying the MLC. In particular, regardless of whether the UK ratified the MLC, UK registered vessels would still be subject to the provisions of the MLC on a "no more favourable treatment" basis when operating in foreign ports in countries that have ratified the MLC. If the UK had not ratified the MLC, this could have resulted in UK registered vessels being delayed due to inspections to check their compliance with the MLC. UK

ratification has enabled UK registered vessels to benefit from the system of MLC certification, avoiding or reducing the likelihood of delays related to inspections in foreign ports in countries that have ratified the MLC. As a ratifying country, these regulations are needed to ensure that UK fulfils its international obligations as a ratifying country, by having minimum age legislation which is fully compliant with the MLC.

Although the primary reason for UK ratification of the MLC was the benefits it will bring to UK shipping and to avoid the risks of not ratifying, it should also be noted that there is a European Social Partners Agreement which seeks to implement the MLC. Council Directive 2009/13/EC annexes the Agreement between the European Community Shipowners' Association (ECSA) and European Transport Workers' Federation (ETF) on the MLC and the agreement on amendments to the Agreement on the Organisation of Working Time of Seafarers dated 30 September 1998 (set out at Annex A to the Annex). When it is in force, Member States will be required by virtue of Directive 2009/13/EC to implement the European social partners' agreement on the MLC. The provisions of Regulation 1.1 and Standard A1.1 are transposed in full into the Annex to the agreement. The Directive came into force on the date on which the MLC comes into force, which was 20 August 2013. The UK has a duty to implement the social partners' agreement, which in practice means that the UK is under a European law requirement to implement some (but not all) MLC provisions in UK law. The transposition deadline is 12 months from the coming into force date i.e. 20 August 2014. However, as explained above, to support the UK shipping industry the UK needed to ratify the MLC when it came into force internationally, which was earlier than the transposition deadline for the European Directive. Implementation of the minimum changes required to bring UK legislation fully into line with Title 1.1 of the MLC on minimum age will also implement the provisions on minimum age aspects of Directive 2009/13/EC. The Directive is not therefore considered further in this IA.

Further details of the requirements for and benefits of UK ratification of the MLC are provided in Annex 3.

#### 4. POLICY OBJECTIVES

The purpose of the Regulations is to bring existing UK legislation into line with the requirements of the MLC related to minimum age (Regulation 1.1 and Standard A1.1) in fulfilment of the UK's international obligations as a ratifying country in order to:

- Secure decent working and living conditions for seafarers on ships globally, including on minimum age;
- Promote a more level competitive playing field for shipping by enforcing these standards on non-UK registered vessels that call at UK ports; and
- Comply with the UK's European legislative obligations in relation to the provisions in the MLC covered by Directive 2009/13/EC, thus avoiding the risk of infraction proceedings being taken against the UK.

In particular, the Regulations would:

bring UK legislation into line with Regulation 1.1 and Standard A1.1 of the MLC, and extend UK minimum age legislation for seafarers to the self-employed; the MLC's definition of "seafarer" includes "*every person who is employed or engaged or works in any capacity on board a ship to which this Convention applies* (MLC, 2006 Article II,1(F) which specifically includes self-employed persons.

In order to ensure a level playing field the MLC provides that a country which has ratified the MLC may enforce the same standards for protection of young persons on ships of other flags calling at its ports, since the Convention provides that ships of non-ratifying countries should have "no more favourable treatment" in ports of ratifying countries.

A country which has ratified the MLC is able to issue Maritime Labour Certificates to its ships, which will facilitate inspection in the ports of ratifying countries, so supporting their shipping industry. Ratifying countries are also able to enforce the same standards on minimum age for seafarers on ships of other flags calling at its ports, since the MLC provides that ships of non-ratifying countries

should receive “no-more favourable treatment” in the ports of ratifying countries. The Regulations will give the UK this power. This would remove competitive advantage to shipowners operating into UK ports of flagging with a non-ratifying country.

## 5. DESCRIPTION OF POLICY OPTIONS

### Description of options considered

#### 5.1 Do nothing

Existing UK legislation is not currently in compliance with the MLC 2006 in respect of minimum age. A ‘do nothing’ option would not achieve the policy objectives that are outlined above, and is not therefore considered to be an appropriate course of action in respect of the merchant fleet. The risks if the UK had not ratified the MLC are summarised at the end of Annex 3.

#### 5.2 Policy Option 1

Given the UK has ratified the MLC there is no alternative to regulation to implement it. Therefore, only one policy option is being considered which will implement the minimum mandatory requirements of the MLC in respect of minimum age. To fully implement the MLC these provisions must apply to all commercially operated ships subject to the MLC, and to all young persons working on board, regardless of their employment status.

- (a) The MLC requires that no-one under the minimum age set by the MLC should be allowed to work in any capacity on a ship to which the Convention applies; the minimum age under the MLC is 16 years.

Existing legislation applying in the UK regarding minimum age is as follows:

- Section 55 of the Merchant Shipping Act 1995 prohibits any person under school leaving age from working on a ship. This applies to all ships but does not apply to the self-employed.
- Section 55(1A) of the Merchant Shipping Act 1995 prohibits any person under the age of 16 from working on a seagoing ship. This does not apply to government ships or to self-employed seafarers,

The proposals would replace section 55(1A) for ships subject to the MLC and introduce a new regulation prohibiting those under the age of 16 being employed or working on any ship to which the MLC applies.

- (b) The MLC requires that those under the age of 18 should not be allowed to carry out certain types of work which may jeopardise their health and safety; these types of work should be specified by the competent authorities after the consultation.

The MCA considers that the Merchant Shipping and Fishing Vessel (Health and Safety at Work) (Employment Young Persons) Regulations 1998 (“the 1998 Regulations”) together with Marine Guidance Note (MGN) 88, which gives guidance on types of work considered to be hazardous to young people, largely implement this provision, requiring employers to provide protection for young persons on the basis of a risk assessment. However, the MGN currently has guidance status and would need to become mandatory at least in part. In addition, the 1998 Regulations apply to all ships including government ships but do not apply to the self-employed.

The existing legislation includes a provision prohibiting those under the age of 18 from working on a ship where the work would jeopardise their health and safety, based on the employer’s risk assessment. The new provisions would also be extended to protect self-employed seafarers through the Merchant Shipping (Maritime Labour Convention) (Health and Safety at Work) (Amendment) Regulations, which is subject to a separate impact assessment. The 1998 Regulations which specify the requirement for risk assessment would remain in force for those not subject to the MLC

requirements, since it is contrary to ILO principles to reduce existing standards through implementation of a new Convention.

- (c) The MLC requires that those under the age of 18 should not be required to carry out work at night except where necessary for training as determined by the competent authority.

The Merchant Shipping (Hours of Work) Regulations 2002 (“the 2002 Regulations”) includes a prohibition on night work for those under the age of 18. There is a provision for 16 and 17 year olds to work at night if this forms part of an established programme of training, the effectiveness of which would be impaired by a ban on night work. The 2002 Regulations apply to all commercially operating vessels but not to government ships operating commercially, or to self-employed seafarers. This provision would be repealed and replaced with a provision applying to all ships and seafarers subject to the Convention. However exceptions could still be allowed where required for training or for nature of the work, subject to agreement in consultation with shipowner and seafarer representatives that such work is not detrimental to the health and safety of young seafarers. The circumstances where such exceptions would be allowed will be specified in a merchant shipping notice.

Option 1 is the only option which would fulfil policy objectives and is therefore the preferred option.

## **6. COSTS AND BENEFITS OF THE REGULATIONS (OPTION 1)**

Given the limitations of the available evidence base, it has not been possible to monetise any of the costs and benefits of the Regulations (Option 1) that have been identified in this impact assessment (IA). For example, there is no data available on the types of work carried out by young persons working on board merchant ships, or on the employment status of young persons working on ships. A full qualitative description of each of the costs and benefits that have been identified is therefore provided below.

In the consultation stage impact assessment, consultees were invited to submit additional evidence on the costs and benefits of the Regulations (Option 1.) However, no evidence was provided.

### **6.1 Affected Groups**

Seafarers aged 16-17 are expected to be only a very small proportion of the workforce on UK registered ships.

The UK fleet currently consists of around 1,020 ships on the UK Ship Register (Merchant Ships), and an estimate 5,500 small commercial vessels, a large number of which are not registered. The MCA does not have accurate figures for the number of people working on the UK fleet, but it is estimated that around 89,000 seafarers are working on UK registered ships (merchant ships). According to Labour Market Statistics as at December 2012, around 1.1% of all employed people in the UK are aged 16-17.

The latest DfT statistics for seafarers (December 2012) indicate that no officers or ratings<sup>2</sup> active on UK registered ships are below the age of 18, with the exception of UK officer cadets where data on age is not available. There are 2,160 UK officer cadets. A proportion of these officer cadets may be under the age of 18. These statistics do not cover seafarers working on the estimated 5,500 UK small commercial vessels, where there may also be seafarers under the age of 18.

The MCA’s statistics for seafarer medical examinations carried out between 2005 and 2012 show that, on average, around 1% of the total medical examinations conducted by MCA approved doctors were for those under the age of 18 years, which supports the assumption that the number of seafarers under 18 years as a proportion of the total number of seafarers approximately mirrors the proportion in this age group in the working population as a whole. However, the figures cannot reliably be used for the number of under 18 year olds working on UK ships, because UK approved doctors – who are based mainly in the UK, but with a few based abroad – may carry out UK seafarer medicals for young persons working on ships of any flag.

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<sup>2</sup> UK Officers with a certificate of competency, Non-UK Officers with Certificates of Equivalent Competency, Uncertified officers and Ratings

## 6.2 Comparison with “Do nothing” scenario

The “Do Nothing” scenario represents what would happen if the Government does not take any action.

The MLC came into force internationally in August 2013.

A large number of nations have already ratified and many more are expected to do so. Being a Convention with worldwide application, and given that any UK ships visiting ports in ratifying countries (which are expected to be by most countries within a fairly short timescale) will have to be compliant, its effects will be virtually impossible to escape for ships wishing to trade internationally.

Therefore, MCA expects that a significant proportion of UK ships would comply with the MLC requirements under the “Do Nothing” scenario, and that a proportion of any costs of complying with the minimum requirements of the MLC in respect of minimum age would have been incurred the “Do Nothing” scenario.

As this proportion is uncertain, we do not know the extent to which any costs of complying with the minimum mandatory requirements of the MLC in respect of minimum age are truly additional costs of the Regulations or whether they would have occurred anyway under the “Do Nothing” scenario.

Given these uncertainties, this IA assesses the additional costs to business of complying with the minimum mandatory requirements of the MLC in respect of minimum age, relative to the requirements of existing UK legislation or existing industry practice as applicable. These costs are outlined on the summary sheets, and are considered to be low. However, as discussed above, we do not know the extent to which even these low costs are truly additional costs of the Regulations.

## 6.3 Costs to UK business of meeting the minimum mandatory requirements of the MLC in respect of minimum age

Three groups of businesses would be affected. These are discussed in turn below.

### 6.3.1 Businesses with employees under the age of 18 working on seagoing, commercially operated ships (excluding Government ships)

The Merchant Shipping and Fishing Vessels (Health and Safety)(Employment of Young Person) Regulations 1998 (“the 1998 Regulations”) require employers to carry out risk assessments and not to employ persons under the age of 18 on these ships to do work which could jeopardise their health and safety. The Regulations will prohibit seafarers under the age of 18 from carrying out certain types of work which may jeopardise their health and safety.

The Merchant Shipping (Hours of Work) Regulations 2002 (“the 2002 Regulations”) prohibit seafarers under the age of 18 from working at night on these ships, except if the work forms part of an established programme of training, the effectiveness of which would be impaired by the prohibition. The Regulations will change the criteria for exceptions.

The MCA has discussed the above changes with the social partners in the MLC Tripartite Working Group (TWG) and the National Maritime Occupational Health and Safety Committee (NMOHSC), comprising the UK Chamber of Shipping, Trade Unions and representatives from the Red Ensign Group. It was agreed by the TWG and NMOHSC that the changes would have no impact on business. Therefore, MCA expects that these changes would not have an impact on these businesses.

The Regulations will prohibit any person under the age of 16 from working on these (and other) ships. As Section 55(1A) of the Merchant Shipping Act 1995 already prohibit any person under the age of 16 from being employed on these ships, this will have no impact on these businesses.

In the consultation stage impact assessment, consultees were invited to submit any additional evidence on whether there would be any costs to these businesses in order for them to meet the minimum mandatory requirements of the MLC in respect of minimum age, or to confirm the view of the Committees referred to above. However, no evidence was submitted.



### 6.3.2 Businesses with employees under age of 18 working on seagoing, commercially operated Government ships

The Regulations will apply the same requirements to employees working on seagoing, commercially operated Government ships. The 1998 Regulations apply to these employees, but the current provisions in the Merchant Shipping Act 1995 and the 2002 Regulations do not. However, MCA expects that any company operating government owned ships would comply with existing legislation on a voluntary basis (see the box below for more details). Consequently, MCA expects that the impacts on these businesses would be the same as the impacts on businesses with employees under age of 18 working on other seagoing, commercially operated ships, and that these changes would therefore have no impact on these businesses.

The Royal Fleet Auxiliary (RFA) is the only substantial employer with large government owned ships operating with large crew numbers. There are 12 RFA vessels operating commercially. The RFA has a cadet training scheme and so could employ seafarers under the age of 18 years. For example:

- a. RFA Rating (Deck and Engineering): Trainee Ratings must be at least 16 years of age before they can apply to join.
- b. RFA Officer Cadet (Deck and Engineering): Officer Cadets may apply to join the RFA from the age of 16.
- c. RFA Officer (Deck and Engineering): Deck and Engineering Officers must be at least 16 years of age when they apply to join the RFA. As a result of the duration of the training required for RFA Officer Cadets there will be no RFA officers below the age of 18 years.

However, the RFA already voluntarily applies the Merchant Shipping Health and Safety Standards, MCA expects that there will be no impact on the RFA as a result of these changes.

There may be other government ships which occasionally operate commercially, for example when they charter vessels for commercial use, but the number of seafarers involved is considered small. However, MCA expects that any company operating government owned ships, like the RFA, would comply with existing legislation on minimum age provisions on a voluntary basis.

Therefore, MCA considers it is unlikely that there will be any persons under the age of 16 employed on ships that are government owned and operating commercially, and expects that those few who are under the age of 18 are being protected in accordance with the current regulations and supporting Marine Guidance Note.

In the consultation stage impact assessment, consultees were invited to submit any additional evidence on whether there would be any costs to these businesses in order for them to meet the minimum mandatory requirements of the MLC in respect of minimum age. However, no evidence was submitted.

### 6.3.3 Businesses with self-employed workers under the age of 18 working on seagoing, commercially operated ships

The Regulations will apply the same requirements to self-employed seafarers on these ships. The current provisions in the Merchant Shipping Act 1995, the 1998 Regulations and the 2002 Regulations do not apply to the self-employed. Nonetheless, MCA expects there will be no self-employed persons under the age of 16 working on these ships. In addition, data published by Office of National Statistics indicates that self-employed aged 16 and 17 only accounted for around 0.01-0.03% of the total number of self-employed and employees in the United Kingdom in July 2011 to June 2012<sup>3</sup>. If this ratio was replicated in the shipping industry, this suggests that there could be of the order of 10-30 self-employed seafarers aged 16 and 17 working on UK ships. Therefore, even if all self-employed seafarers under the age of 18 currently carry out the types of work which will be prohibited by the Regulations (i.e. the certain types of work which may jeopardise their health and safety; and night work which is not covered by the exceptions described above), it is considered likely that the costs to these businesses would still be significantly below £1 million.

<sup>3</sup> <http://www.ons.gov.uk/ons/about-ons/what-we-do/publication-scheme/published-ad-hoc-data/labour-market/october-2012/number-of-employees-and-self-employed-by-age-and-sex--2001-2012.xls>

In the consultation stage impact assessment, consultees were invited to submit any additional evidence on whether there would be any costs to these businesses in order for them to meet the minimum mandatory requirements of the MLC in respect of minimum age. However, no evidence was submitted.

The impacts on these businesses are discussed in more detail below.

#### 6.3.3.1 Scope of impact

The MCA does not have any evidence on the employment status of seafarers. From MCA experience, and based on the low percentage of self-employed persons aged 16 or 17 in the UK working population as a whole, it is not expected that there would be self-employed seafarers under the age of 18 working on merchant ships.

However, there may be some under going on the job training or working under the age of 18 on small commercial vessels. The small commercial vessel operator may have a commercially endorsed Certificate of Competency issued by the Royal Yachting Association (RYA). The minimum age for holders of these certificates is either 17 or 18. Some of the certificates which may be held by operators of small commercial vessel are RYA Yachtmaster Offshore, RYA Coastal Skipper, RYA Powerboat Advanced and RYA Yachtmaster Ocean.

#### 6.3.3.2 Potential impacts

The Regulations will prohibit self-employed workers under the age of 18 from carrying out certain types of work which may jeopardise their health and safety. The relevant types of work will be set out in a Merchant Shipping Notice. According to Marine Guidance Note MGN 88 the types of work which may jeopardise health and safety may include working in enclosed spaces, working at height or handling dangerous cargoes, however on small commercial vessels this would be unlikely to occur as a result of the small size of the vessels concerned.

In addition, there would be restrictions on night work for self-employed persons aged 16 or 17.

The MCA does not have any evidence for the number of self-employed young persons who may currently undertake work which may jeopardise their health and safety on small commercial vessels, or how many small commercial vessels may operate at night.

As discussed above, the number of self-employed persons under the age of 18 is likely to be small. In addition, from MCA experience of the sector, it is assumed that a large proportion of small commercial vessels do not regularly operate at night (e.g. many charter yachts, day tripping vessels, etc). However, on a small code boat with a small crew, for example engaged in night angling, the change might have an impact.

On the basis of the information provided by industry representatives for merchant ships discussed in Section 6.3.1 above, the MCA expects that these changes will not introduce changes to current practices. However, since the small commercial vessel sector is not directly represented on the NMOHSC or the MLC TWG, the consultation-stage Impact Assessment flagged up that there was some uncertainty about this assumption in relation to small commercial vessels.

In the consultation stage impact assessment, consultees were invited to provide any additional evidence on the potential impacts of the Regulations on small firms. A meeting was held with representatives of those operating small commercial vessels, which includes many small businesses. No quantified evidence was provided and no particular concerns were raised at the meeting about the impact of the Regulations on small businesses.

The implications if self-employed seafarers aged 16 and 17 working on UK ships were actually affected by the Regulations are discussed in Section 6.3.3.3 below.

### 6.3.3.3 Potential costs if any work could no longer be undertaken by self-employed seafarers aged 16-17 years old

For the purposes of this IA, under the Regulations, if self-employed seafarers aged 16-17 years old could no longer undertake any types of work which they are currently undertaking, it is assumed that workers in an adjacent age group would carry it out instead<sup>4</sup>.

For all employee jobs in the United Kingdom, data published by Office of National Statistics indicates the mean average gross hourly pay for employees aged 16-17 is around 70% of the mean average gross hourly aged for employees aged 18-21<sup>5</sup>.

If it is assumed that those seafarers aged 18-21 receive the mean annual gross pay in the Water Transport Sector (estimated to be around £32,000 per year)<sup>6</sup>, and this is uplifted by 30% to account for overheads in line with the Standard Cost Model<sup>7</sup>, this implies that the difference in costs of employing a seafarer aged 18-21 compared to a seafarer aged 16-17 could be of the order of around £12,000 per year.

Given that the number of self-employed seafarers aged 16 and 17 working on UK ships is expected to be very low (e.g. the information presented above suggests that this could be of the order of 10 to 30), it is therefore considered likely that the costs to any affected businesses would be significantly below £1 million even if all self-employed seafarers aged 16 and 17 working on UK ships were affected by the Regulations.

## **6.4 Familiarisation Costs**

MCA will publish information about the proposed changes as either Merchant Shipping Notices or Marine Guidance Notes. The Agency has consulted with the Tripartite Working Group on the MLC, the Domestic Passenger Ship Steering Group (DPSSG). The MCA has also had a number of events publicising the changes resulting from the MLC as a whole. These actions will minimise the costs for shipowners and seafarers of becoming familiar with the new requirements, which are considered to be too small to quantify for this element alone.

In the consultation-stage impact assessment, consultees were invited to submit any additional evidence on the familiarisation costs associated with the Regulations. However, no evidence was submitted.

## **6.5 Benefits of the Regulations**

There is the potential for minor safety benefits from the more tightly drawn provisions on hazardous activities and night work, and clearer guidance on exceptions. However, this area is considered to be well-covered in existing legislation and best practice. This view is supported by the fact that, on UK ships, there is no evidence to suggest that there is a higher accident rate for those under the age of 18 than for those of eighteen years and older.

Extending the protection in the Regulations to self-employed persons should help to ensure consistent standards of health and safety for young persons on board ships, regardless of the employment status of the seafarers.

The introduction of global minimum standards through the MLC on minimum age and protection of young persons may improve protection for UK seafarers serving on non-UK ships flagged with countries which have ratified the MLC. As a result of the “no more favourable treatment” clause in the MLC, which allows ratifying countries to apply MLC standards to the ships of non-ratifying countries calling at their ports, seafarers working on ships flagged with non-ratifying countries will also benefit.

In the consultation-stage impact assessment, consultees were invited to submit any additional evidence on the benefits of the Regulations. However, no evidence was submitted.

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<sup>4</sup> <http://webarchive.nationalarchives.gov.uk/+/http://www.dti.gov.uk/access/ria/pdf/workingtime.pdf>

<sup>5</sup> <http://www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings/2012-provisional-results/2012-provisional-table-6.zip>

<sup>6</sup> <http://www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings/2012-provisional-results/2012-provisional-table-16.zip>

<sup>7</sup> <http://www.berr.gov.uk/files/file44503.pdf>

## **6.6 Costs to Non-UK registered ships**

As the UK has ratified the MLC, once these regulations are made, the MCA would have the authority to enforce these minimum global standards for minimum age on non-UK registered vessels that call at UK ports under the no more favourable treatment clause. The costs associated with this are discussed in the IA for the 'Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013' (DfT00193).

## **6.7 Benefits of UK Ratification of the MLC**

Section 3 and Annex 2 discuss the overall benefits of UK ratification of the MLC. The Regulations will be necessary in order for these benefits to be realised. However, it is not possible to determine the precise contribution of the Regulations to realising these benefits.

In the consultation-stage impact assessment, consultees were invited to submit any additional evidence on the benefits of UK Ratification of the MLC. However, no evidence was submitted.

## **6.8 Monitoring and Enforcement**

The requirements contained in the Regulations would be monitored and enforced by the Maritime & Coastguard Agency in the UK, and other maritime safety administrations when UK ships visit ports in other countries, as part of their maritime labour inspections. The Survey and Certification costs will apply across all requirements of the MLC and are investigated in the IA for the 'Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013' (DfT00193).

## **7. RATIONALE AND EVIDENCE THAT JUSTIFY THE LEVEL OF ANALYSIS IN THIS IA**

The MLC was developed on a tripartite basis and is strongly supported by UK shipowner and seafarer representative organisations, which also supported the ratification of the MLC. Discussions on the proposals for implementing the MLC provisions on minimum age at the MLC Tripartite Working Group and the National Maritime Occupational Health and Safety Committee have been non-controversial, with both sides of industry stating that they reflect current good practice. Further evidence was sought through the consultation exercise. However, no evidence was submitted by consultees. Further analysis of the impacts at this stage is not therefore considered necessary.

## **8. RISKS**

The Regulations need to be implemented in order that the UK legislation fully complies with the Maritime Labour Convention, 2006 which it has ratified on 7 August 2013.

The risks of ratifying the Convention and of not ratifying the Convention are explored in Annex 3.

## **9. SPECIFIC IMPACT TESTS**

### **9.1. Equalities Assessment**

The Regulations would be applicable to all seafarers working on UK sea-going vessels to which the Regulations apply, irrespective of their age, ethnic origin, gender, nationality, race, sexual orientation or disability. The Maritime Labour Convention, 2006 is based on the fundamental rights and principles of workers (Article III):

- (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.

These proposals are therefore considered to have no adverse impact as regards statutory equality duties.

## **9.2 Competition Assessment**

The Regulations will bring existing UK legislation into line with the requirements of the MLC. The MLC aims to provide a benchmark for the decent employment of seafarers globally, and it is expected that the MLC would be very widely implemented internationally.

By introducing a set of minimum standards that apply internationally, the MLC promotes a more level competitive playing field internationally and reduce the ability of ship operators to gain a competitive advantage through poor treatment of seafarers.

It is likely that this would reduce the competitiveness of ship operators that are currently less compliant with the requirements of the MLC and improve the competitiveness of ship operators are currently more compliant with the requirement of the MLC. However, the magnitude of this impact is uncertain.

By supporting the ratification of the MLC in the UK, it is possible that the Regulations could have an impact on competition. The precise impact would depend on how the Regulations affect relative costs.

Internationally, it is considered that the MLC is more likely to provide a competitive benefit to UK firms. Ratification of the MLC allows the MCA to issue MLC certification, which will ensure that UK flagged vessels are not subject to unnecessary delays when visiting ships in ports of ratifying states. This should ensure that UK flagged vessels do not suffer a competitive disadvantage as a result of the introduction of the MLC globally.

In the consultation stage impact assessment, consultees were invited to offer any additional evidence on the potential for the Regulations to impact on competition. However, no evidence was submitted.

## **9.3. Small Firms Impact Test**

It is appropriate that the working conditions for all workers should be underpinned by common minimum standards regardless of the size of the company for which they work. Any costs arising from these proposals would inevitably have the greatest impact on small firms with a small turnover. As the MLC sets minimum standards for “decent work”, it does not generally make concessions in those standards. The UK is making use of any flexibility in the MLC designed for smaller vessels or likely to apply to small companies.

In the case of regulations on minimum age and protection for young persons, existing legislation already applies to all ships where workers are employed, regardless of size and to all sizes of business. The current proposals broaden the scope of existing legislation to cover the self-employed.

During the public consultation exercise on the draft regulations, consultees included micro, small, medium and large businesses, and in particular, a meeting was held to discuss the implications of these proposals with operators of small commercial vessels.

In the consultation stage impact assessment, consultees were invited to provide any additional evidence on the potential impacts of the Regulations on small firms. No quantified evidence was provided and no concerns were raised at the meeting about the impact of the Regulations on small businesses.

## **9.4 Health Impact Assessment**

The objective of the MLC is to provide all seafarers with decent employment by setting minimum global standards for living and working conditions, providing an effective regime to ensure that those standards are enforced, and a framework for continuous improvement.

Regulation and Standard 1.1 and A1.1 of the MLC are intended to promote the health and well being of young seafarers. We have no data to demonstrate that there is a problem under the existing legislative framework so it will not be possible to assess the impact of the proposals.

## **9.5 Human Rights**

The Regulations implement provisions of the International Labour Organization's Maritime Labour Convention, 2006 which requires respect for the following fundamental rights and principles of workers (Article III):

- (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.

There are no Human Rights compatibility issues arising from these Regulations.

## **9.6 Justice System**

The main enforcement mechanism for these 2014 Regulations will be through the inspection and certification of UK ships under the MLC by MCA surveyors. There is however also offences and penalties laid down in the existing Regulations amended by these proposals. In the current proposals those will remain unaltered. MCA has reviewed these offences and penalties with the Ministry of Justice as part of the Gateway Clearance process to ensure a consistent approach in all sets of regulations implementing the MLC.

## **10. REDUCING REGULATION POLICY**

### **10.1 Direct costs and benefits to business calculations (following OITO methodology)**

As these requirements are international in origin, and the proposals do not gold plate the requirement to business (i.e. not going beyond the minimum necessary), the measure is outside the scope of OITO.

### **10.2 Copy out**

In preparing the regulations, Government policy on "copy out" has been applied as a means of transposing international legal requirements wherever possible. However, the Convention was not always drafted in a manner which facilitates this approach, and further elaboration is required in some cases. Particular difficulties are:

- Requirements which are set by reference to existing "national laws, regulations and other measures", and
- Provisions which require the Member to determine a particular standard in consultation with shipowner and seafarer representative organisations.

In addition, where existing UK legislation is considered to meet Convention standards, changes to adopt the language of the Convention have not always been made to avoid costs to business from dealing with unnecessary changes.

### **10.3 Alternatives to regulations**

Introducing the requirements without recourse to legislation has been considered. However, as one of the key objectives was to support UK ratification of the MLC, UK legislation must be brought fully into line with the MLC, and the Convention explicitly requires ratifying States to take action to deliver the measures. Therefore no satisfactory alternative mechanism has been identified at this stage.

### **10.4 Review clauses**

The Regulations include a clause which requires a Ministerial review five years after they are made, and every five years thereafter, in line with the "review policy" on introducing international obligations.

The basis of this review will be the "Article 22 report" required by the International Labour Organisation (ILO). Parties to the Maritime Labour Convention, 2006 will be required to submit a report to the ILO, under Article 22 of the ILO Constitution, providing evidence of effective implementation of the Convention. Preparing for this review will enable the UK to establish the effectiveness of the policy (enforcement action taken) and identify any necessary amendments to UK or to the Convention.

The review will examine UK MLC inspection reports and of any enforcement action taken under the regulations, and of the port state control record of UK ships in non-UK ports. In addition, complaints from seafarers on UK Ships to the UK as a flag state, and from seafarers in non-UK ships in UK ports, and the results of MCA investigations will be analysed.

A continuously reducing number of serious breaches and deficiencies in UK MLC inspections and Port State inspections, and complaints to MCA would demonstrate that the regulations were improving the standards on ships.

Successful resolution of complaints would also demonstrate that the regulations were having a positive impact.

## **11. SUMMARY AND PREFERRED OPTION**

The Regulations will implement the minimum changes required to ensure that the minimum age requirements for seafarers on UK ships fully comply with Regulation 1.1 and Standard A1.1 of the MLC. They will extend minimum age regulations to cover all seafarers, not just those who are employed.

Although these changes have relatively minor impacts on UK ships, they will contribute to ensuring that UK legislation fully complies with the MLC, fulfilling the UK's international obligations as a country which has ratified the Convention. This in turn will enable the UK to enforce the same minimum age standards on all ships calling at UK ports, whether or not they fly the flag of a country which has ratified the MLC.

## **12. IMPLEMENTATION PLAN**

The Regulations are part of a package of Regulations that are required to allow the UK to ratify the MLC. The MLC came into force internationally on 20 August 2013.

A Merchant Shipping Notice would be published to accompany the Regulations which would explain the provisions and give guidance on their practical interpretation. Information would also be available on the MCA website. MGN88 (M+F) on the Merchant Shipping and Fishing Vessels (Health and Safety)(Employment of Young Persons) Regulations, would also be reviewed and republished as a Merchant Shipping Notice.

The primary enforcement mechanism for these regulations on UK ships will be through Flag State inspections for issue or renewal of a Maritime Labour Certificate. MCA surveyors will check the provisions for minimum age and protection of young persons in the shipowners' declaration of maritime compliance (DMLC) Part II as part of the inspection of UK ships.

Furthermore, shipowners must have published procedures to deal with seafarers' complaints about their working and living conditions and seafarers also have the right to complain to an MCA surveyor in the UK or to any port state control officer in other countries, if they are not receiving their entitlements.

Both the inspection of the DMLC Part II and the requirement for a complaints procedure will be implemented in UK law by the 'Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013' and are therefore not assessed in this impact assessment..

## Annex 1

### References

No.	Legislation or publication
1	Maritime Labour Convention, 2006 <a href="http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_090250/lang--en/index.htm">http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_090250/lang--en/index.htm</a>
2	ILO (2001) The impact of seafarers' living and working conditions of changes in the structure of the shipping industry. Report JMC/29/2001/3 <a href="http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_PUBL_9221122379_EN/lang--en/index.htm">http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_PUBL_9221122379_EN/lang--en/index.htm</a>
3	European Commission (2006) Communication from the Commission under Article 138(2) of the EC Treaty on the strengthening of maritime labour standards. <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0287:FIN:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0287:FIN:EN:PDF</a>
4	ILO (2012) Maritime Labour Convention, 2006: Frequently asked questions. <a href="http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_177371/lang--en/index.htm">http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_177371/lang--en/index.htm</a>
5	ILO (2011) Advantages of the Maritime Labour Convention, 2006. <a href="http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_153450/lang--en/index.htm">http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_153450/lang--en/index.htm</a>
6	Merchant Shipping and Fishing Vessels (Health and Safety)(Employment of Young Persons) Regulations 1998 <a href="http://www.legislation.gov.uk/uksi/1998/2411/contents/made">http://www.legislation.gov.uk/uksi/1998/2411/contents/made</a>
7	Merchant Shipping (Hours of Work) Regulations 2002 <a href="http://www.legislation.gov.uk/uksi/2002/2125/contents/made">http://www.legislation.gov.uk/uksi/2002/2125/contents/made</a>
8	Merchant Shipping Act 1995 <a href="http://www.legislation.gov.uk/ukpga/1995/21/contents">http://www.legislation.gov.uk/ukpga/1995/21/contents</a>
9	Update of mortality for workers in the UK merchant shipping and fishing sectors – Report for the Maritime and Coastguard Agency and the Department for Transport July 2007 <a href="http://www.dft.gov.uk/mca/rp_578_final_report_revsion_2-2.pdf">http://www.dft.gov.uk/mca/rp_578_final_report_revsion_2-2.pdf</a>
10	IMO (2012) International Shipping Facts and Figures – Information Resources on Trade, Safety, Security, Environment <a href="http://www.imo.org/KnowledgeCentre/ShipsAndShippingFactsAndFigures/TheRoleandImportanceofInternationalShipping/Documents/International%20Shipping%20-%20Facts%20and%20Figures.pdf">http://www.imo.org/KnowledgeCentre/ShipsAndShippingFactsAndFigures/TheRoleandImportanceofInternationalShipping/Documents/International%20Shipping%20-%20Facts%20and%20Figures.pdf</a>



## Annex 2: Background on the Maritime Labour Convention (2006)

At its 94th (Maritime) Session in February 2006 the International Labour Conference adopted the Maritime Labour Convention 2006. The Convention will come into force internationally on 20 August 2013.

The ILO's Maritime Labour Convention 2006 (MLC) provides comprehensive rights and protection at work for the world's more than 1.2 million seafarers. The Convention is a major tool in the furtherance of the Better Regulation objective of consolidation of existing legal instruments, as it consolidates and updates more than 65 international labour standards related to seafarers adopted over the last 80 years. The Convention sets out seafarers' rights to decent conditions of work on a wide range of subjects, and aims to be globally applicable, easily understandable, readily updatable and uniformly enforced. It has been designed to become a global instrument known as the "fourth pillar" of the international regulatory regime for quality shipping, complementing the key Conventions of the International Maritime Organization (IMO) (Safety of Life at Sea (SOLAS), prevention of marine pollution (MARPOL), and training and certification (STCW)).

The Convention's 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

There were two criteria to be met before the MLC could come into force internationally. The first was that the Convention should be ratified by countries representing at least 33% of the world's tonnage. The second was that at least 30 countries should ratify the Convention. On 20 August, the Philippines became the 30<sup>th</sup> country to ratify the MLC, which between them represent nearly 60% of the world's fleet. Both criteria have therefore now been met.

In the UK, 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, 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 supported the measures it contains. Command White Paper 7049 indicated the UK's commitment to ratification. Order in Council 2009/1757 declares that the MLC is ancillary to the existing Community Treaties and the MLC is considered itself to be a Community Treaty under section 1(2) of the European Communities Act 1972. The European Union has exhorted member states to ratify the Convention in full. Ratification and implementation of the Convention do not constitute any surrender of sovereignty, and do not extend European Union competence.

The UK government's social partners, the shipping industry and the seafarer's Trades Unions (see Annex 4), support prompt ratification of the Convention, so the policy of UK ratification is non-controversial. The social partners wrote jointly to Mark Prisk, then Minister for Business and Enterprise, in August 2012 pressing for rapid progress on implementation of the MLC.

Resolution 17 of the Maritime Labour Conference in February 2006 provides a two year phase in period after the Convention reaches its ratification criteria. In the first year, high priority ships (passenger ships, tankers and bulk carriers) must be issued with Maritime Labour Certificates. Within two years, all other ships must be compliant and (where appropriate) certificated. The UK will not now be among the first 30 nations to ratify and so will not benefit from this transitional period. However, the MCA has introduced early voluntary inspection of ships against MLC standards, so that both industry and unions can prepare for compliance with the Convention, and the MCA can issue documentation for UK ships in preparation for issuing certificates under the Convention when the necessary UK legislation is in place.

# **Annex 3: Impacts of UK Ratification of the Maritime Labour Convention (2006)**

## **A.3.1. Context**

There would be two sets of impacts from introducing the package of legislation that is necessary to implement the Maritime Labour Convention (MLC) in the UK. Firstly, there would be the costs and benefits which would be directly attributable to each of the Regulations that are necessary to implement the specific requirements of the MLC. Secondly, there would be additional costs and benefits that would arise from UK ratification of the MLC once the entire package of legislation is in place.

The costs and benefits which would be directly attributable to each of the proposed implementing Regulations for UK registered ships are considered in their respective impact assessments. Non-UK registered ships calling at UK ports may also be subjected to the requirements of MLC due to the “no-more-favourable treatment” regime. This means that a port state which has ratified the MLC will apply the same MLC standards to all ships visiting their ports, whether or not the ship’s flag state has ratified the MLC. The overall costs and benefits to the UK that would arise from the package of legislation necessary for UK ratification of the MLC are the sum of the costs and benefits of each of the implementing Regulations, plus the additional costs and benefits that would arise from UK ratification of the MLC.

This annex contains a full qualitative description of the additional benefits of UK ratification of the MLC. However, due to various uncertainties and the limitations of the available evidence base, it has not been possible to monetise any of these benefits. A full qualitative description of each of the additional benefits to the UK has been provided. These additional benefits include:

- The general promotion of decent living and working conditions for seafarers;
- Contributing to the creation of a more level global competitive playing field for the shipping industry, which would reduce the competitive advantages gained by shipowners that operate substandard ships;
- Enabling UK registered ships to benefit from the system of MLC certification when operating internationally; and
- Avoiding the potential costs to UK registered ships of not ratifying the MLC

The key factors that have prevented the monetisation of all of the additional costs and additional benefits of UK ratification of the MLC include the uncertainty and limitations of the available evidence base surrounding the extent that UK ratification of the MLC would contribute to realising these costs and benefits (e.g. several of the impacts would depend upon which other countries ratify the MLC) and the extent that the impacts on UK registered and non-UK registered ships and the seafarers working on them would represent costs and benefits to the UK.

Despite the uncertainty around the scale of potential overall costs and benefits of UK ratification of the MLC, and the limitations of the available evidence base which mean that it has not been possible to monetise any of the additional costs and benefits of UK ratification of the MLC, it should be noted that the Chamber of Shipping and Seafarer’s unions consider the costs of implementing the MLC to be manageable and expect that the overall benefits to the UK of UK ratification of the MLC and the package of legislation necessary to implement the MLC in the UK would significantly outweigh the overall costs to UK shipowners of UK ratification of the MLC and the package of legislation necessary to implement the MLC in the UK.

## **A.3.2. Scope of impacts**

In considering the impacts of the MLC, the international nature of the shipping industry must be considered. Whilst impact assessments should assess all of the impacts of the policy options that are being considered, the focus of the impact assessment process is assessing the impacts of the policy

options that are being considered on the UK, which includes the impacts on the public sector in the UK, the impacts on UK businesses and the third sector in the UK, and the impacts on UK consumers.

The proposed UK implementing Regulations would primarily apply to ships that are registered on the UK flag. However, UK ratification of the MLC would give the UK the right to inspect non-UK registered ships for compliance with the minimum global standards provided for by the MLC when they call at ports in the UK, and each set of regulations would therefore allow the UK to enforce these minimum global standards on non-UK registered ships visiting UK ports on a “no more favourable treatment” basis. It should also be noted that the costs of the MLC Survey and Certification regime would also result from UK ratification of the MLC; these costs are considered in the impact assessment pertaining to the Regulations necessary to implement the MLC Survey & inspection regime in the UK.

Data from the UK Ship Register (UKSR) has been used to assist in monetising some of the impacts of some of the proposed UK implementing Regulations on UK registered ships.

However, the nationality of the registration of a ship does not necessarily relate to the nationality of its owner or operator, the geographical locations that it operates, and the origins and destinations of the goods and passengers that are carried. Therefore, it should be noted that ships registered on the UK flag are not necessarily “UK owned”, and “UK owned” ships are not necessarily registered to the UK flag, and it should be noted that UK imports and exports and passengers are not necessarily transported on UK registered ships. Similarly, when considering the impacts on seafarers, it should be noted that both UK nationals and non-UK nationals work on UK registered ships, and that UK nationals also work on non-UK registered ships.

Therefore, it should be noted that the extent that the impacts on UK registered ships and non-UK registered ships and the seafarers working on them would represent costs and benefits to the UK is uncertain. For example, costs to the owners and operators of UK registered ships would not necessarily represent costs to the UK, and some of the costs to the owners and operators of non-UK registered ships could potentially represent costs to the UK.

Estimating the overall costs and benefits of UK ratification of the MLC is further complicated by the fact that the scale of potential costs and benefits depends upon the number of other countries who ratify the MLC. The main impacts on UK registered ships of UK ratification of the MLC and ratification of the MLC in other countries are illustrated in Table 1. This table also illustrates the impacts on non-UK registered ships. For the purposes of interpreting Table 1, as explained above, it should be noted that:

- UK registered ships may be UK owned or non-UK owned;
- Non-UK registered ships may be UK owned or non-UK owned; and
- Seafarers working on UK registered ships and non-UK registered ships may be UK nationals or non-UK nationals.

**Table 1 – Main impacts of MLC ratification**

<b>Impacts of...</b>	<b>Impacts on...</b>	<b>Type of impact</b>	<b>Direct impact falls on...</b>
UK Ratification of the MLC	UK registered ships	Survey & Certification Costs Compliance Costs Benefits of MLC provisions	Shipowners, MCA Shipowners Seafarers and Shipowners
	Non-UK registered ships	Costs of PSC inspections in UK ports, and potential compliance costs if non-compliant Benefits of PSC inspections	Shipowners, MCA Seafarers and Shipowners
Ratification of the MLC in other countries	UK registered ships	Benefits of MLC certification when calling at ports in these countries	Shipowners
		Cost of delays caused by PSC inspections in ports in these countries if not MLC-certified	Shipowners
		Costs of compliance if non-compliant with MLC standards	Shipowners
	Non-UK registered ships	Survey & Certification Costs Benefits of MLC provisions Compliance Costs	Shipowners Seafarers and Shipowners Shipowners

Whilst it is expected that the MLC will indeed be widely ratified internationally, it is not possible to predict precisely to what extent it will be ratified. Consequently, the scale of the costs and benefits of UK ratification is uncertain. For example, the benefits to UK registered ships of the system of MLC certification would mainly apply to UK registered ships that call at ports in MLC-ratifying states.<sup>8</sup> Monetising this impact would require additional evidence on which to base assumptions regarding the operational patterns of UK registered ships, and the extent of MLC ratification amongst the port states that these ships call at. The associated risks are discussed in section A.3.4 of this annex.

### **A.3.3. Additional benefits of UK ratification of the MLC**

This section outlines the key additional benefits that it is expected would arise as a result of UK ratification of the MLC.

1.) UK ratification of the MLC would promote decent living and working conditions for seafarers globally.

- Employment conditions for seafarers vary across the world, with some seafarers working under unacceptable conditions.
- ILO (2001) discusses some of the problems faced by seafarers globally, including poor standards of crew accommodation, nutritionally inadequate food, and not receiving the same quality of medical care as available to land-based workers.
- By providing minimum rights for all seafarers that are globally applicable and uniformly enforced, the MLC promotes decent working and living conditions for seafarers globally, with the European Commission (2006) suggesting that the MLC “can help to bring about more homogeneous employment conditions for the benefit of seafarers”.
- One of the ILO fundamental rights and principles on which the MLC is based is to eliminate discrimination in respect of employment and occupation (MLC Article III(d)). One of the underlying principles of the MLC is therefore to ensure that seafarers, as far as practicable, are not discriminated against but enjoy the same living and working conditions as employees ashore

<sup>8</sup> The MLC Certification regime, together with the “no more favourable treatment” clause, will bring competitive benefits to all UK ships to the extent that they are competing globally, as explained in A3.3. section 3.

enjoy. This benefit would mainly accrue to seafarers whose current employment conditions fall short of the MLC standard, and would therefore have to be improved as a result of the MLC.

- ILO (2011) discusses the mechanisms that would ensure that the benefits of the MLC for seafarers would be realised, including that the MLC provides improved “enforcement of minimum working and living conditions” and the right “to make complaints both on board and ashore”.
- As UK registered ships already broadly comply with most of the standards required by the MLC, it is expected that seafarers working on non-UK registered ships would benefit to a greater extent. UK nationals working on non-UK ships would be among those to benefit in this way, although no data is available to quantify the magnitude of this potential benefit.
- The MLC requires wide international implementation (which it is expected to get) in order to be fully effective for all seafarers, and hence UK ratification could drive further benefits by providing additional incentives for other countries with ships calling at UK ports to ratify the MLC.

2.) UK ratification of the MLC would enable UK registered ships to benefit from the system of MLC certification.

- ILO (2011) notes that one of the benefits of the MLC is that it protects “against unfair competition from substandard ships through ‘no more favourable treatment’ for ships of non-ratifying countries”.
- Regardless of whether the UK ratifies the MLC, UK registered ships would still be subject to the provisions of the MLC on a ‘no more favourable treatment’ basis when visiting foreign ports in countries that have ratified the MLC. This means that UK registered ships operating internationally would be required to comply with the standards of the MLC when visiting ports in ratifying countries whether the UK has implemented the MLC or not.
- The ILO Guidelines on Port State Control state that possession of a valid Maritime Labour Certificate should be considered as prima facie evidence that the ship complies with the MLC. MLC certification is only available through a vessel’s flag state administration, hence non-ratification of the MLC in the UK would be expected to put UK Registered ships at a disadvantage as they would lack MLC certification which is a deficiency under the MLC even if they are otherwise in compliance with the MLC standards.
- Under the ILO Guidelines on Port State Control, failure to hold such a certificate, and the accompanying documentation, would give the Port State sufficient reason to subject the vessel to a more detailed inspection – although if conditions on board are found to be good then the inspection may not need to be extensive (this would be at the discretion of the PSC officer). Part of the documentation is a record of the national legislation applying to the vessel concerned. Where there is no documentation, the Port State Control inspectors may apply inappropriate standards from their own national interpretation of the MLC standards – particularly where the MLC standards are expressed in general terms.
- Therefore, the absence of an MLC certificate could potentially subject UK registered ships to longer delays in port than they would otherwise face as port states verify compliance with the MLC through port state control procedures. The benefits of UK ratification, in terms of the costs of non-ratification thereby avoided, would only apply when calling at ports of MLC-ratifying states.
- Furthermore, it should be noted that serious or repeated non-compliance with the MLC could also result in UK registered ships being detained in foreign ports in countries that have ratified the MLC.
- When the new EC directive on port state control is fully in force, ships would be considered as high, medium or low risk. UK ships are currently considered as low risk, minimising the frequency of inspection under PSC in Europe. If the UK does not ratify the MLC and so UK ships have no MLC documentation, this may over time affect the ranking of UK ships for PSC purposes, potentially leading to increases in the frequency of inspections.

3.) UK ratification of the MLC would promote a more level competitive playing field for shipping globally.

- At present, ship operators which operate substandard ships can gain a competitive advantage. This is because shipowners operating substandard ships can potentially gain a cost advantage and undercut shipowners which provide seafarers with decent conditions of work.
- UK ships generally have reasonably good employment conditions, and therefore operate with higher operating costs than ships registered on many other flags. UK ratification of the MLC would therefore benefit UK shipowners by ensuring that ships registered on other flags that call in UK ports would need to apply the minimum global standards of MLC and so lose some of their competitive advantage on costs.
- ILO (2011) reports that a benefit of the MLC would be a “more level playing field to help ensure fair competition and to marginalize substandard operations”.
- By enabling countries that ratify the MLC to enforce the minimum global standards provided for in the MLC on foreign registered ships that call at their ports on a “no more favourable treatment” basis, the MLC will help to create a more level competitive playing field and help to ensure fairer competition by limiting the scope for ship operators to gain a competitive advantage through operating substandard ships.
- As a consequence, the European Commission (2006) suggests that the MLC “should help to stabilise the maritime transport sector in the face of global competition and reduce the double gap between, firstly, European and third country operators and, secondly, between the different flags which favours *de facto* those maritime nations and operators with the least stringent social legislation.”
- The impacts of each set of proposed UK implementing Regulations on competition are fully discussed in the competition assessment contained in their respective impact assessments.

#### **A.3.4. Risks of UK ratification of the MLC**

The MLC will come into force in August 2013, after ratification by 30 flag states representing at least 33% of the world fleet tonnage. The benefits arising from ratification of the MLC will depend on how widely the MLC is implemented. Therefore, the main risk associated with ratifying the MLC is that the UK introduces new legislation to implement the MLC, but that subsequently the MLC only achieves a low take-up internationally. This would reduce the potential benefits and could potentially put UK-registered ships at a competitive disadvantage. However, it is likely that the MLC will be widely ratified internationally due to the high level of commitment from all sides.<sup>9</sup>

#### **A.3.5. Risks to the UK of not ratifying the MLC**

There are a number of risks to the UK associated with not ratifying the MLC. These include:

- The risk of EU infraction proceedings;
- The risk of negative impacts on the competitiveness of UK registered ships; and
- The risk of negative impacts on the competitiveness of the UK Ship register.

Failure to implement the Social Partners Agreement on the MLC which is annexed to Council Directive 2009/13/EC within 12 months of the coming into force date of the MLC would leave the UK open to infraction proceedings. This risk would apply to most of the UK implementing Regulations. The Social Partners Agreement covers the MLC provisions on minimum age, medical certification, seafarer employment agreement (SEAs), repatriation, hours of work, annual leave, shipowner liability and

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<sup>9</sup> See Question A18 in ILO (2012).

And : ILO Maritime Labour Convention, 2006 A Guide for the Shipping Industry Page 8, Coverage

seafarer compensation, food and catering, medical care, health and safety, and complaint procedures. However, it should be noted that the Social Partners Agreement does not cover all of the MLC provisions, such as on wages, social security and most of the technical standards relating to crew accommodation.

If the UK does not ratify the MLC, there would be some short term cost savings to shipowners and to government by not having to implement the revised standards in the MLC. However, regardless of whether the UK ratifies the MLC, UK registered vessels would still be subject to the provisions of the MLC on a “no more favourable treatment” basis when operating in foreign ports in countries that have ratified the MLC. Consequently, there could potentially be a risk that UK ships operating in foreign ports would be inspected for MLC compliance as part of Port State Control regime inspections in countries that have ratified the MLC, and would be unable to evidence their compliance with MLC due to the UK not being able to issue MLC Certificates of Compliance.

Since 2006, MLC has been widely recognised in the shipping community as the fourth pillar of quality shipping (alongside the IMO Conventions on Safety of Life at Sea (SOLAS), prevention of marine pollution (MARPOL), and training and certification (STCW)). It is anticipated that MLC certification would become a sign of quality for shipowners in the early years of international implementation. There could be a disincentive to shippers to charter non-MLC certified ships, thus potentially damaging the business won by ships on the UK ship register if the UK does not ratify the MLC.

There would also be an impact on the reputation of the UK’s shipping industry and the UK ship register if the UK does not ratify the MLC, as this could be seen as a rejection of modern standards agreed by the global shipping industry. Since both the UKSR and UK shipping market themselves on grounds of quality, this impact could be severe.

Over time, the UK’s inability to issue statutory MLC documentation may discourage shipowners from registering their ships with the UK, and they may be more likely to choose a flag which can provide them with a certificate of MLC compliance, particularly if their ship already broadly meets the requirements of the MLC. Existing UK shipowners may also transfer to other flags if the UK cannot issue them with the documentation they need to operate efficiently, and to demonstrate that they operate quality ships.

Delay in the UK’s ratification of the MLC continues to reduce the time available to UK shipowners and to the UK and Red Ensign Group administrations to ensure that ships are prepared for and certified in accordance with the MLC before it comes into force internationally.

As the UK is not among the first 30 flag states to ratify the MLC, the transitional period between UK ratification and the MLC coming into force, which is the time available for UK shipowners to bring their ships into compliance with the MLC, is very limited. This also limits the time available for the MCA, as the competent authority, to survey and certify UK flagged ships, putting a strain on limited resources. There is a risk that, if the period between UK ratification and the international coming into force of the MLC is short, the MCA will be unable to complete certification within the time available.

### **A.3.6. Conclusion**

1. Due to various uncertainties and the limitations of the available evidence base, it has not been possible to monetise any of the overall costs and benefits of UK ratification of the MLC.
2. Key additional benefits of UK ratification of the MLC include promoting decent living and working conditions for seafarers globally, enabling UK registered ships to benefit from the system of MLC certification and promoting a more level competitive playing field for shipping globally.
3. Despite the various uncertainties and limitations of the available evidence base, the UK Chamber of Shipping and Seafarer’s unions expect that the benefits to the UK of ratification of the MLC would significantly outweigh the costs to the UK.
4. The key risk to the UK of ratifying the MLC before it comes into force internationally is that the UK introduces new legislation to implement the MLC but that subsequently the MLC only achieves a low take-up internationally. This would reduce the potential benefits and could potentially put UK-registered ships at a competitive disadvantage. However, this is thought to be a low risk.

5. The key risks to the UK of not ratifying the MLC include the risk of EU infraction proceedings, the risk of negative impacts on the competitiveness of UK registered ships and the risk of negative impacts on the competitiveness of the UK Ship register.



## **Annex 4 - Shipowner and seafarer representatives**

As the MLC, 2006 is an ILO Convention, it was negotiated on a tripartite basis between Governments, and representatives of the two sides of industry (shipowner and seafarer representatives).

In implementing the Convention, governments are also required to work in a tripartite manner. In the UK, the MCA has consulted with a Tripartite Working Group (TWG) to develop policy for its regulations and guidance.

The members of the TWG are:

### Government Representatives

Department for Transport (Maritime Employment, Pensions and Training Branch)

The Maritime and Coastguard Agency

A representative of the other administrations of the Red Ensign Group (UK Crown Dependencies and UK Overseas Territories)

### Shipowner representatives

The British Chamber of Shipping

The British Tugowner Association

### Seafarer representatives

Nautilus International

National Union of Rail Maritime and Transport Workers

Unite

Other organisations have been invited to attend on an ad hoc basis.

### **P&I Clubs**

P&I stands for **P**rotection and **I**ndemnity. P&I is insurance in respect of third party liabilities and expenses arising from owning ships or operating ships as principals. An insurance mutual, a Club, provides collective self insurance to its Members. The membership is comprised of a common interest group who wish to pool their risks together in order to obtain "at cost" insurance cover.

## Annex 5 - Glossary of Terms

This glossary defines terms as they are used in this Impact Assessment and may not fully align with any legal definition. Where the definition is an exact legal definition, the source is quoted.

**Ship** includes any description of vessel used in navigation (*Merchant Shipping Act 1995 s.313*) 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.1(i)*) The Convention applies to all ships which are ordinarily engaged in commercial operations (*Article II.4*)

The UK therefore proposes to apply the provisions of the Convention to:

- all UK vessels which operate either on international voyages, or from a foreign port; and
- all UK vessels operating on UK domestic voyages which operate more than 60 miles from a safe haven in the UK;

**UK ship [also UK-registered ship, UK flagged ship]** : a ship on the UK Ship Register or an unregistered ship which is wholly owned by British or British Dependent Territories citizens or British Overseas citizens, or by a body corporate established under the laws of any part of the UK. (*Merchant Shipping Act 1995 s.85(2)*)

**Non-UK [registered, flagged] ship:** a ship registered to or flying the flag of a country other than the United Kingdom.

**Shipowner:** means the owner of a 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 shipowners in accordance with this Convention, regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner (*Maritime Labour Convention Article II .1(j)*)

**UK shipowner** means the shipowner of a UK registered/flagged ship.

**Seafarer** means any person who is employed or engaged or working in any capacity on board a ship.

**UK seafarer** means a seafarer of any nationality working on a UK ship.

**Fishing vessel:** means any ship or boat, of any nature whatsoever, irrespective of the form of ownership, used or intended to be used for the purpose of commercial fishing.

**Fisherman** means every person employment or engaged in any capacity or carrying out an occupation on board any fishing vessel, including persons working on board who are paid on the basis of a share of the catch, but excluding pilots, naval personnel, other persons in the permanent service of a government, shore-based persons carrying out work aboard a fishing vessel and fisheries observers.

**Flag State:** the authority under which a country exercises regulatory control over commercial vessels operating under its flag.

**Port State:** the authority under which a country exercises regulatory control over commercial vessels operating under the flags of other countries which call at ports in its territory.

**The International Labour Organization (ILO):** the tripartite UN agency which brings together governments, employers and workers of its members states in common action to promote decent work. (*From ILO website: [www.ilo.org](http://www.ilo.org) )*

**The Maritime and Coastguard Agency (MCA):** an Executive Agency of the Department for Transport, responsible for implementing throughout the UK the government's maritime safety policy. The MCA is responsible for implementing the legislation required to allow the UK to ratify the MLC, and will have the primary role in enforcing MLC standards on UK ship and on non-UK ships calling at UK ports.

**Gross Tonnage:** a measurement of volume (not weight) relating to a ship's enclosed spaces

**Draught:** the depth of water necessary to float a ship, or the depth a ship sinks in water

**PSC deficiencies :** Where specific aspects of the living and working conditions on board a ship do not conform to the requirements of the MLC and deadlines for their rectification have been set by an inspecting officer.

**PSC ( Flag State) detention :** Where conditions on board a ship are clearly hazardous to the safety, health or security of seafarers or the non-conformity constitutes a serious or repeated breach of the requirements of the MLC, including seafarers' rights.

**ISM :** International Safety Management Code is the SOLAS system for managing the safe operations of ships and for pollution prevention.

**Paris MOU :** A memorandum of understanding signed by 27 participating maritime Administrations who cover the waters of the European coastal States and the North Atlantic basin from North America to Europe. It seeks to eliminate the operation of sub-standard ships through a harmonized system of port State control inspections.

**"sea-going" in relation to a UK ship:**

(a) a ship in respect of which a certificate is required to be in force in accordance with-

- (i) the Merchant Shipping (Load Line) Regulations 1998
- (ii) the Merchant Shipping (Vessels in Commercial Use for Sport or pleasure) Regulations 1998 or
- (iii) the Merchant Shipping (Small Work boats and Pilot Boats) Regulations 1998,

(b) a passenger ship of class I,II,II(A), III, VI or VI(A) in respect of which a certificate is required to be in force in accordance with the Merchant Shipping (Survey and Certification) Regulations 1995, or

(c) a high speed craft in respect of which a permit to operate outside waters of Categories A,B,C or D is required to be in force in accordance with the Merchant Shipping (High Speed Craft) Regulations 2004(5). (*Merchant Shipping (Maritime Labour Convention)( Medical Certification) Regs 2010*)