

Title: Merchant Shipping (Maritime Labour Convention) (Recruitment & Placement) Regulations 2014 IA No: DfT 00194 Lead department or agency: Maritime & Coastguard Agency (MCA) Other departments or agencies:	Impact Assessment (IA)			
	Date: 25/02/2014			
	Stage: Final			
	Source of intervention: International			
	Type of measure: Secondary legislation			
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Summary: Intervention and Options	RPC: GREEN
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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, One-Out?	Measure qualifies as
-£5.6m	-£5.6m	£0.6m	No	NA

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

Arrangements for recruitment are inconsistent across the shipping industry. Recruitment standards for seafarers vary globally, with some seafarers recruited through unacceptable operations, such as being subject to overcharging and incorrect information on levels of commission. Recruiters which run and shipowners which use such operations can gain a competitive advantage, incentivising these unacceptable operations. Effective international standards are therefore needed to address this. The Maritime Labour Convention 2006 (MLC) aims to provide minimum standards for seafarers that are globally applicable and uniformly enforced, including on recruitment and placement. Achieving this requires a package of new legislation to fulfil the UK's obligations under the MLC, which the UK ratified on 7 August 2013.

What are the policy objectives and the intended effects?

The purpose of the proposed Regulations is to promote acceptable recruitment standards for seafarers globally and a more level competitive playing field for shipping by a) bringing existing legislation for UK seafarer recruiters into line with the minimum global standards provided for in the MLC; and b) (once the entire MLC package is in place) enable the UK to fulfil its obligations as an MLC ratifying country, and enforce these minimum global standards for recruitment on non-UK registered ships that call at UK ports. Specific objectives for recruitment and placement can be 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)

Do nothing: The MLC came into force internationally on 20 August 2013, and would have done regardless of the UK position. The British Chamber of Shipping and the seafarers' Trades Unions supported prompt ratification. The UK must now produce legislation to fulfil its obligations under the MLC. Doing nothing is thus not considered appropriate.

Option 1 (preferred option): Introduce proposed Regulations to ensure that UK-based Employment Agencies (EAs) and Employment Businesses (EBs) supplying personnel to ships comply with the MLC, un-enhanced, and that UK shipowners are obliged to recruit only through compliant recruitment and placement services. Option 2, requiring enforcement via shipowners, was also considered. It was established that it is not a viable option as this would achieve the necessary EA/EB compliance (Section 5.3).

Will the policy be reviewed? It will be reviewed. If applicable, set review date: March 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.		Micro Yes	< 20 Yes	Small Yes	Medium Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: 0		Non-traded: 0	

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: Introduce the proposed Regulations

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£11.7m	High: -£1.5m	Best Estimate: -£5.6m

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0	N/A	£0.2m	£1.5m
High	0		£1.4m	£11.7m
Best Estimate	0		£0.7m	£5.6m

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

The costs to UK Recruitment and Placement Services (RPS) of putting in place a System of Protection (SOP) to protect the seafarer from either the RPS or the shipowner defaulting on their liabilities are estimated at around £0.2 to £1.4 million per year, with a best estimate of around £0.7 million per year. These estimated costs are shown on the summary sheets. However, they are expected to represent an overestimate of the additional costs to UK RPS compared to the Do Nothing scenario.

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

1. Costs to UK ships to use MLC compliant recruiters, and evidencing that they have recruited seafarers in a compliant manner. 2. For Employment Agencies, there may also be some small administrative tasks which, up until 2010, they were required to perform anyway under BIS regulations, which will be restored. The costs are expected to be negligible as it will mainly involve a few minutes of staff time. 3. Costs to insurance companies of providing SOP insurance are expected to be incorporated in the price of SOP insurance.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0	N/A	0	0
High	0		0	0
Best Estimate	0		0	0

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

Due to the limitations of the available evidence base (e.g. the extent that the revenues to insurance companies due to UK RPS taking out SOP insurance would be paid out in claims to UK seafarers is uncertain), none of the benefits identified in this impact assessment have been monetised.

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

1. Certainty for seafarers regarding the standards to be applied by UK RPS. 2. It should ensure that UK RPS would not suffer a loss of business due to the introduction of the MLC. 3. It is expected that UK insurers and UK seafarers would both benefit from the SOP requirement. 4. It would be easier and cheaper for shipowners to evidence that they have recruited seafarers in a compliant manner compared to the Do Nothing scenario. 5. Section 3 and Annex 3 discuss the overall benefits of UK ratification of the MLC.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5%

1. There has been widespread ratification of the MLC, and is expected to continue. 2. It is assumed that UK insurers will enter the market for the SOP type of insurance, by offering suitable products. 3. It is expected that a significant proportion of UK RPS and UK ships would comply with the MLC requirements under the Do Nothing scenario. Therefore, a proportion of the costs and benefits of complying with MLC requirements would have occurred under the Do Nothing scenario. As this proportion is uncertain, we do not know the extent to which these costs and benefits are truly additional or whether they would have occurred anyway under the Do Nothing scenario.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0.6m	Benefits: 0	Net: -£0.6m		

1. TITLE OF PROPOSAL

The draft Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations (“the proposed 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 worked closely with its social partners on the implementation of the Convention, through a tripartite working group – see Annex 4.

The impact assessment for these proposals, issued as part of the public consultation package, invited consultees to submit additional evidence on the costs and benefits of the proposed 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, the Recruitment and Employment Confederation (REC), the Association of British Insurers (ABI), the Department for Business, Innovation and Skills (BIS), the Department for Employment and Learning (Northern Ireland), a large number of individual seafarer recruitment and placement services across the UK and other trade associations such as the British Marine Federation and International Marine Contractors Association, and well as the Nautilus and RMT Unions. This built on informal contact with a number of these organisations (including REC and ABI, BIS and DEL(NI)) over a prolonged period of time leading up to the public consultation. In addition, a meeting was held during the consultation period with the REC, ABI, some seafarer recruitment and placement services, and a leading insurer, to consider the method of implementation of MLC Title 1.4, the overcoming of any practical challenges which it might present, and the impact on all businesses, including smaller ones. A variety of views were expressed in responses to the written consultation on how these new requirements might work in practice, and challenges which were anticipated. The responses on specific aspects of the proposals are included in the costs section below, but in summary, there was no opposition in principle to implementation of the MLC standards, and no evidence was provided of costs or benefits arising from the requirements which MCA had not foreseen. There were some concerns raised on details of the practical aspects of UK implementation which are being kept under review. No quantified evidence of costs or benefits was provided. However, after further consideration of the practical effects of the definition of Employment Agencies originally envisaged, and in conjunction with feedback from the informal contact, the meetings and the consultation mentioned above, the UK Tripartite Working Group (TWG) on MLC implementation agreed that the scope of the definition of Employment Agencies from the Employment Agencies Act 1973 should be narrowed to ensure that organisations which provide information to shipowners, but are not involved in the actual process of the sifting or selection of candidates, are not disproportionately targeted by the MLC provisions. Nonetheless, as no additional quantified evidence has been provided, it has not been possible to make any changes to the quantitative analysis in this impact assessment to take this into account. So, the estimates presented in the impact assessment remain the same as in the impact assessment issued as part of the public consultation package.

2. PROBLEM UNDER CONSIDERATION

2.1 Definitions

2.1.1 Seafarers

Many seafarers recruited are specialists in maritime disciplines, and they would, as a matter of routine, be considered by the lay person to be seafarers, as often their functions can only be performed onboard ship, or are at least patently connected with seafaring. However, the Convention includes as seafarers personnel of a number of different disciplines which would not normally be considered seafarers, but which, under the Convention, are considered seafarers because their normal place of employment is onboard ship. Examples include entertainers and beauticians working in salons on cruise ships.

2.1.2 Recruitment and Placement Services

The scope of recruitment and placement legislation in the UK is much wider than just the maritime sector, and is devolved in Northern Ireland. Existing legislation covering recruitment and placement in Great Britain is owned by the Department for Business, Innovation and Skills (BIS) and in Northern Ireland by the Department for Employment and Learning (DEL(NI)). The Maritime Labour Convention, 2006 (MLC) Title 1.4 only affects the recruitment and placement of seafarers - not other recruitment and placement. Other aspects of the recruitment and placement sector are therefore unaffected. Authorities in Northern Ireland have indicated they have no knowledge of any seafarer recruitment and placement services operating in Northern Ireland. This means that at the present time, it is uncertain whether there is any effect on recruitment and placement operations in Northern Ireland. However, it is important that any MLC implementation extends to Northern Ireland both to avoid creating a loophole in the law, thus future-proofing the government's approach, and also to achieve full transposition and implementation for the UK.

Recruitment and Placement Services comprises both Employment Agencies and Employment Businesses. Sections 13(2) & (3) of the Employment Agencies Act 1973 (EAA 1973) define Employment Agencies and Employment Businesses respectively, as follows:

“(2) For the purposes of this Act “employment agency” means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them.”

“(3) For the purposes of this Act “employment business” means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of supplying persons in the employment of the person carrying on the business, to act for, and under the control of, other persons in any capacity.”

Although formal data does not exist on the matter, there are estimated to be around 30 UK based Recruitment and Placement Services (RPS) which deal entirely with seafarers, and another 50 which deal partially with seafarers and partially with non-seafarers. The split between EAs and EBs is not known but is estimated to be about 10:1 in favour of EAs.

Given that it is recognised that not all Employment Agencies (EA) as defined in the EAA 1973 definition are actively involved in the sifting and selection of candidates for jobs (some are little more than internet Notice Boards), a distinction will be made for the purposes of these regulations between the EA operations which do this and those which do not. This will have the effect of narrowing the definition of EA which appears in EAA 1973 for the purposes of these regulations, targeting the regulations more effectively. However, no quantitative evidence is available on how this change would affect the estimates presented in this impact assessment. Therefore, in the absence of any other evidence, the above estimates continue to be quoted where relevant in this impact assessment.

2.2 Problem

It is considered that all seafarers should have acceptable employment conditions, including in the subject area of Recruitment and Placement. However, employment conditions for seafarers vary across the world, with some seafarers being recruited and placed by substandard companies which use exploitative practices.

Given that there are some costs involved in not using exploitative practices, most of which are already prohibited by UK law, there can be an incentive for a shipowner to source personnel from offshore recruiters who do use these exploitative practices. In this way competitive advantage can be derived by those companies and shipowners willing to entertain substandard practices. ILO (2012) suggests that flag States (the country of registry of seagoing vessels) 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.”

Examples of exploitative practices include seafarers not being paid for long periods of time, not being paid in accordance with their contracts, being abandoned without support in remote places and not being afforded access to necessary medical treatment in foreign ports. These examples are relevant to several areas of the MLC, including Recruitment and Placement, but there are other examples which are more specific to

Recruitment and Placement. These include seafarers being charged fees for Recruitment and Placement Services to find them work, being charged for Personal Protective Equipment (PPE) (which are both already illegal in the UK, although the former has a few exceptions for some professions) and failure on the part of the Recruitment and Placement Service to provide full details to the seafarer of a post before they enter into a contractual relationship.

As the Convention standards are increasingly being applied worldwide, this will create a more level playing field for recruiters which already meet acceptable standards, reducing the commercial advantage gained by sub-standard recruiters.

As well as levelling the competitive playing field, another problem under consideration which the proposed Regulations would directly address is how to ensure that all seafarers recruited to work on ships are recruited fairly. Not only that there are consistent standards but that those standards are at an acceptable level.

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.”

Although the MCA does not hold statistics on the recruitment of seafarers, evidence (in the form of contracts sighted) and complaints from seafarers in the service sector indicate that seafarers are charged extortionate fees by some recruiting organisations based outside the UK to find them jobs. Complaints indicate they are also charged for training and other items like personal protective equipment (PPE) which many struggle to cover from their earnings. Complaints indicate that sometimes these earnings are reliant mainly on sums derived from commission, which work seekers are lead to believe will be much greater than they turn out to be. This is evidenced by the nature of complaints received by Unions, a sample of which are passed on to the MCA.

In many cases, charges for (i) PPE and most (ii) fees for finding work would not be legal if the recruitment organisation were based in the UK and therefore fell within the jurisdiction of regulation 6(3) of the Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations, and (ii) section 6(1)(a) of the Employment Agencies Act 1973 (EAA 1973) and regulation 26 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended) (CEAEBR 2003), or Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 (as amended) (CEAEBR(NI) 2005) as appropriate. The proposed regulations will play their part in enabling the UK to fulfil its obligations as an MLC ratifying country, and will enable the UK to ensure that non-UK based recruiters supplying seafarers will have to meet the same standards as the UK based ones by means of checks onboard vessels to establish any non-UK based RPSs used are compliant. MCA considers that this will serve to level the playing field which MCA considers is currently so often slanted against UK based recruitment and placement operations, which the MCA considers are overwhelmingly reputable; although it should be noted that MCA does not have access to any specific evidence on these issues.

Many of the provisions of the Convention on the subject of recruitment and placement are already mandatory in law for UK based Employment Agencies and Employment Businesses by virtue of the existing UK legislation referenced above, although a few requirements have recently been relaxed in UK legislation for UK based Employment Agencies and this reduces their proximity to Convention compliance. Legislation is needed to bridge the gaps between the MLC provisions already enshrined in UK legislation, and those which will need to be added into UK law to comply with the Convention. A gap analysis was carried out and the gaps between existing UK standards for UK based Employment Agencies and Employment Businesses and full Convention compliance were identified, as demonstrated in Table 1, Gap Analysis.

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 of this impact assessment. This is why the International Labour Organization (ILO) Maritime Labour Convention 2006 (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 recruitment and placement.

The MLC 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). However, in order for the MLC to enter into force and address the issues and risks that have been raised in section 2 of this impact assessment, the MLC needs to be widely ratified by national governments. The Government's social partners, the shipping industry and the seafarers' Trades Unions, support prompt ratification of the MLC in the UK.

UK obligations as an MLC ratifying country include putting in place a package of new legislation to implement some of the provisions of the MLC in UK law, including the provisions of the MLC regarding recruitment and placement. UK recruitment organisations will be disadvantaged if they are not demonstrably compliant with the Convention, because, as the Convention came into force on August 2013, regardless of the UK position on it, the MCA expects they will be able to do little or no business supplying seafarer personnel unless they can convince their clients they are compliant, as shipowners will need to demonstrate they have recruited from compliant recruiters in order to do business in other ratifying countries. Doing nothing is therefore not considered to be an appropriate course of action.

Failure to introduce these Regulations would limit the UK's effectiveness at addressing the issues and risks raised in section 2 of this impact assessment. The proposed Regulations would ensure that the requirements of Regulation 1.4 and Standard A1.4 of the MLC are met by UK based recruiters which supply seafarers, including protecting the seafarer from being unfairly charged for recruitment and other services, and having the rights and information to which they are entitled, withheld.

Further details of the requirements for, and benefits of, UK ratification of the MLC, and the costs to the UK of not ratifying the MLC are discussed in Annex 3 of this impact assessment.

4. POLICY OBJECTIVES

MLC Standard A1.4.2 requires member states to have a "system of licensing, or certification or other form of regulation" to regulate recruitment and placement services which recruit and place a significant number of seafarers. MLC Standard A1.4.6 requires the competent authority to closely supervise and control all seafarer recruitment and placement services operating in the territory of the member."

MLC Standard A1.4.9 requires "Each Member which has ratified this Convention shall require that shipowners of ships that fly its flag, who use seafarer recruitment and placement services based in countries or territories in which this Convention does not apply, ensure, as far as practicable, that those services meet the requirements of this Standard." A requirement will therefore be placed on the shipowner to ensure that they recruit only from MLC compliant recruiters.

The purpose of the proposed Regulations is not only to fulfil the above requirements, but also to bridge the legislative gaps between existing UK legislation and the MLC identified in Table 1, in order to:

- ensure that UK based seafarer recruitment and placement services meet the Convention standards, thus fulfilling the UK's obligations under the MLC;
- together with the other MLC legislation, secure decent working and living conditions for seafarers on UK registered ships and globally;
- together with the other MLC legislation, promote a more level competitive playing field for international shipping by enabling the UK to enforce these standards on non-UK registered vessels which call at UK ports; and
- together with the other MLC legislation, enable the MCA to issue MLC certification to UK registered vessels, removing the potential for UK flagged vessels to experience delays in foreign ports in countries which have ratified the MLC.

In particular, the proposed Regulations would ensure that seafarers recruited through UK based recruitment and placement services are recruited in accordance with Regulation 1.4 and Standard A1.4 of the Convention, and that recruitment and placement services are operated in accordance with the Convention.

UK-based Employment Businesses should already be broadly compliant with MLC Standard A1.4.5(c)(ii) & (iii) (see Table 1 below) in that, for them, an obligation to inform the job seeker of their rights and duties, and to check that a work seeker holds the necessary qualifications for the position to which they are being recruited are already required under:

- the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (CEAEBR 2003)(as amended); or
- Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 (as amended) (CEAEBR(NI) 2005); as applicable.

UK based Employment Agencies would also be required to comply with Standard A1.4.5(c) (ii) & (iii) (further detail is provided in Table 1).

It is believed that many Employment Agencies will have already been compliant in this respect as prior to 1 October 2010, by virtue of regulations 19 and 21 of the CEAEBR 2003 (as originally enacted), they were substantially required to be so. In 2010 these requirements were relaxed in the following amending legislation:

- the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2010 (CEAEB(A)R 2010);
- and the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations (Northern Ireland) 2010 (CEAEB(A)R(NI) 2010).

This legislation will broadly reverse this amendment, but only to the extent that it applies to individuals seeking work as seafarers, which the Department for Business, Innovation and Skills (BIS) has confirmed will affect only a very small percentage of the overall number of recruitment and placement services based in the UK.

A gap analysis between Convention requirements to which RPSs are subject which already exist in UK law and those which do not, has been carried out and identified the gaps which need to be filled. These are shown in Table 1 below.

Table 1 – Gap analysis between existing legal obligations in Recruitment and Placement Services, and obligations needed for full MLC compliance

MLC Provision	Obligation	Relevant existing UK legislation	Comment
A1.4.5(c)(ii)	RPS to ensure seafarer informed of rights and duties under employment agreement prior to or in the process of engagement	r21(b) of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (CEAEBR 2003)* and Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 (CEAEBR(NI) 2005) as originally enacted broadly required Employment Agencies and Employment Businesses to do this but, since the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2010 (CEAEB(A)R 2010) and the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations (Northern Ireland) 2010 (CAEBR(NI) 2010), which came into force on 1 Oct 2010, this requirement has been	Will be substantially covered by MLC Seafarer Employment Agreements (SEA) Regs implementing A2.1.1(b) which will require seafarer to have opportunity to take advice on SEA. However, the A2.1.1(b) requirement is not quite the same. A1.4.5(c)(ii) requires RPS to be pro-active but A2.1.1(b) just requires that time is provided. These Regulations would clarify this requirement by removing any grey areas in respect of A1.4.5(c)(ii).

		removed for Employment Agencies (but retained for EBs).	
A1.4.5(c)(iii)	RPS to check seafarer is qualified, holds necessary documents, etc.	r19 of the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (CEAEBR 2003)* Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 (CEAEBR(NI) 2005) as originally enacted broadly required Employment Agencies and Employment Businesses to do this but, since the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2010 (CEAEB(A)R 2010) and the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations (Northern Ireland) 2010 (CAEBR(NI) 2010), which came into force on 1 Oct 2010, has not required Employment Agencies to do this.	These Regulations would plug this gap between existing UK regulation and Convention requirements.
A1.4.5(c)(vi)	System of protection/ insurance for liabilities.	No direct equivalent in current UK legislation, as this is a new requirement.	ILO response to MCA enquiry indicates that RPS and shipowner should have at least some period of joint and several liability for obligations. Standard A1.4.5(c)(vi) seeks to address the additional potential for job seekers in the maritime sector to be exploited (compared with shore-based workers) and is also designed to encourage RPSs to deal with reputable shipowners. These Regulations would plug this gap between existing UK regulation, which has no such provision, and Convention requirements.

A flag State which has ratified the MLC will be able to inspect ships from non-ratifying flag States calling at its ports for Convention standards on recruitment and placement, since the MLC provides that ships of non-ratifying countries should have "no more favourable treatment" in the ports of ratifying countries. The proposed Regulations, together with UK MLC ratification, would facilitate the UK being able to do this. This would remove the competitive advantage derived by owners of visiting non-UK ships which do not meet Convention standards, or possibly even existing UK standards.

5. DESCRIPTION OF POLICY OPTIONS

5.1. Do nothing

The Do Nothing scenario represents what would happen if the Government does not take any action. Under the Do Nothing scenario, the MLC would still have come into force internationally on 20 August 2013, regardless of whether the UK had ratified or not.

This Option is the baseline to which Option 1 and Option 2 are compared against.

Existing UK legislation is not currently in compliance with the MLC in respect of Recruitment and Placement. A 'Do nothing' Option would therefore not achieve the policy objectives that are outlined above, and is not considered to be an appropriate course of action as the UK government's social partners, the shipping industry and the seafarers' trade unions, supported prompt ratification of the MLC. The risks of not ratifying the MLC are summarised at the end of Annex 3 of this impact assessment.

Only legislative options fulfil the MLC's requirement that each Member shall "adopt laws or regulations requiring that ships that fly its flag" comply with the requirements of the standard. Some other parts of the Convention provide for "laws or regulations or other measures", but that is not an option in respect of the requirements of the MLC on Recruitment and Placement.

MLC Standard A1.4.2 requires a system of licensing, or certification or other form of regulation to regulate recruitment and placement services which recruit and place a significant number of seafarers. The proposed statutory instrument falls under the last category of 'other form of regulation'. Furthermore it represents the minimum requirement. This is because other options would cause an added administrative burden to government due to the need to operate and enforce a system of licensing and certification. This additional cost would either be absorbed by government or passed on through charges to UK RPS. In either case an additional cost would be incurred above Option 1, which represents the minimum requirement.

5.2. Option 1 (preferred option): Introduce proposed Regulations to ensure that UK-based Employment Agencies supplying personnel to ships comply with the Convention, with no enhancements, and that UK shipowners are obliged to recruit only through compliant agencies.

Existing relevant UK legislation already imposes most of the Convention obligations on UK based Employment Agencies and Employment Businesses. The main relevant instruments are:

- the Employment Agencies Act 1973 (EAA 1973);
- the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (CEAEBR 2003);
- the Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005;
- the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2010 (CEAEB(A)R 2010);
- the Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations (Northern Ireland) 2010 (CEAEBR 2010); and
- the Employment Relations Act 1999 (Blacklists) Regulations 2010.

In addition, at the time of writing this Impact Assessment, the Northern Ireland equivalent legislation to the Great Britain Employment Relations Act 1999 (Blacklists) Regulations 2010 is approaching enactment in Northern Ireland. The provisions will be broadly the same as the Great Britain legislation and will therefore, among other things, fulfil Northern Ireland's obligations relating to MLC Standard A1.4.5(a) on Blacklisting, in Northern Ireland.

The proposed Regulations would fill the relatively small, but important, gaps between existing UK domestic requirements for UK based Employment Agencies and Employment Businesses, and the Convention, identified in Table 1 above. This involves making some adjustments to the obligations placed on UK based Employment Agencies and Employment Businesses to the extent that their activities relate to the supply of seafarers. Article II of the Convention defines a "seafarer" as "any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies". This means that not all those personnel who are considered seafarers for the purposes of these regulations – and other MLC implementing regulations – perform what might be considered traditional seafaring functions, but in most cases, for example, will also include personnel in vocations like entertainers (but not celebrity guest entertainers who are only onboard for a short period) and beauticians who perform functions on cruise liners on the business of the ship as their daily jobs, and many of whom also have emergency safety functions onboard.

Firstly, the proposed Regulations would broadly restore the pre-CEAEB(A)R 2010 obligation of CEAEBR 2003 on Employment Agencies to inform the work seeker of rights and duties under the employment agreement prior to or during engagement, in compliance with Convention Standard A1.4.5(c)(ii), and check qualifications of work-seekers, thus ensuring compliance with Convention Standard A1.4.5(c)(iii). But these changes would only apply to the recruitment of those seeking work as seafarers - the relaxation provided by the 2010 Regulations to the recruitment of all other work seekers would remain unchanged.

The 2010 Amendment Regulations had, among other things, been intended to avoid the duplication involved when both a recruiter and an employer were required to carry out the same checks. It was also designed to remove some of the recruiter's document checking responsibilities to make the operation of internet "job boards", which fall into the category of Employment Agencies in existing legislation, easier, given that most of them have no formal office presence. However, in the maritime sphere, the shipowner is frequently not in a position to carry out such checks until the job seeker has arrived at their new place of work, which could be a ship on the opposite side of the world, so the Convention seeks to ensure the recruitment and placement services carry out these checks prior to allowing the job seeker to travel to a ship.

Secondly, the proposed Regulations would also implement A1.4.5(c)(vi) which requires that the Employment Agency or Employment Business put in place a system of protection to compensate seafarers for money loss incurred due to the shipowner or the recruitment and placement service defaulting on its obligations under the Seafarer Employment Agreement (SEA). This is a new requirement.

This seeks to address the additional potential for job seekers in the maritime sector to be exploited (compared with shore-based workers) and to encourage recruitment and placement services to do business with reputable shipowners. It is not intended that the proposed Regulations would be any more prescriptive or descriptive than the Convention itself. This will allow flexibility of interpretation which may develop over time, in the light of the following:

- a) further clarification from the ILO about what constitutes compliance with this Standard, either by means of informal advice, or in the form of an amendment to the Convention in due course;
- b) consideration by the Department for Transport alongside other MLC, international and European liability issues about what constitutes compliance with this Standard; and
- c) any relevant international court decisions.

Thirdly, in making the proposed Regulations, the opportunity would also be taken to clarify the position regarding the obligation in MLC Standard A1.4.5(c)(ii) for the recruitment and placement service to ensure seafarer informed of rights and duties under employment agreement prior to or in the process of engagement. This obligation is expected to be largely covered by the proposed Merchant Shipping (Maritime Labour Convention) (Seafarer Employment Agreement) Regulations 2014, which will implement a parallel MLC Standard A2.1.1(b) requiring the seafarer to have the opportunity to examine and take advice on SEA before signing it.

Although this provision is in a similar vein, it differs in as much as A1.4.5(c)(ii) requires recruitment and placement service to be pro-active, but A2.1.1(b) just requires that time is provided. Also, the obligation in A2.1.1(b) is placed on the shipowner, whereas in A1.4.5(c)(ii) the obligation is placed on the recruitment and placement service.

However, the definition of Employment Agency in these Regulations is narrower than that in the existing legislation, so as to exclude those organisations which do not make decisions related to the selection process, in order to ensure that requirements are not make unnecessarily onerous for those bodies.

These Regulations will ensure MLC compliance for Employment Agencies or Employment Businesses supplying personnel to UK ships.

In addition, the proposed Regulations would fulfil the UK's obligation in MLC Regulation 1.4.2 and Standard A1.4.6 and Standard A1.4.9 to conform to the standards set out in the (Part A of the MLC Code), and closely supervise and control all seafarer recruitment and placement services operating in its territory to ensure that they comply with national laws and regulations, thus ensuring compliance with the Convention.

The intention behind MLC Regulation 1.4.2 and Standard A1.4.6 and Standard A1.4.9 is, at least in part, that ships from any flag State will be able to use a seafarer recruitment and placement service based in a ratifying state in the knowledge that it is compliant with the Convention, without needing any further assurance of this. It is very significant that this Option meets this obligation but Option 2 (attempting to enforce the RPS obligations via the shipowner) does not, as described below in Section 5.3. Whether or not an Option fulfils this function is a “deal breaker”, and is therefore a crucial factor in the decision whether an Option is viable.

MLC implementation would require UK ships to use compliant recruiters (whether they be based in the UK or elsewhere). The obligation on shipowners will not appear in these Regulations, but will be included in other MLC implementing Regulations which are more shipowner-facing.

A drawback with this Option is that enforcement would be split between government Departments, as the Secretary of State for Transport, through the Maritime and Coastguard Agency (MCA), has responsibility for ensuring that UK ships comply with UK merchant shipping legislation, whereas the Department for Business, Innovation and Skills (BIS), through the Employment Agency Standards inspectorate (EAS) has responsibility for the regulation of Employment Agencies and Employment Businesses in Great Britain. The devolved Northern Ireland government’s Department of Employment and Learning (DEL(NI)) has a similar responsibility towards Employment Agencies and Employment Businesses in Northern Ireland. The MCA is already in discussion with BIS/EAS and DEL(NI) to mitigate this problem.

Voluntary/non-mandatory certification scheme

In response to requests from recruitment and placement services themselves, the MCA is supplementing the proposed Regulations with a separate, voluntary/non-mandatory certification scheme, to enable recruitment and placement services to more easily demonstrate MLC compliance to potential clients. Such certification does not constitute automatic evidence of compliance with the law. As this scheme would stand alone and be separate from the proposed Regulations, the costs and benefits associated with the introduction of a voluntary/non-mandatory certification scheme are not included in the assessment of the costs and benefits of Option 1. A more detailed explanation of the possible certification schemes can be found in Annex 6.

5.3 Option 2: Introduce new Regulations to ensure that shipowners may only source personnel from Employment Agencies and Employment Businesses which are compliant with the Convention, with no enhancements

This Option would also have to fill the gaps identified in Table 1 in the Policy Objectives section above, but in this Option the Regulations would be drafted to place the responsibility for checking these on the shipowner – the “end user” - for ensuring the MLC compliance of recruitment and placement services they use. In this scenario, recruitment and placement services would not be liable in law for non-compliance, but the pressure to comply would be brought to bear by market forces, as shipowners would not be willing to use non-compliant services as they (the shipowners) would be held to account for any non-compliance.

Such an approach would be in tandem with a voluntary/non-mandatory certification scheme delivered by third party organisations. The certificates would be taken by the MCA as prima facie (on the face of it) evidence of compliance of the shipowner in respect of personnel recruited and placed through the certificated recruitment and placement service, in the absence of any specific evidence of non-compliance such as may come to light through, e.g., a seafarer complaint. It was anticipated the voluntary/non-mandatory scheme in this Option would play a pivotal part in demonstrating compliance, as it was expected that production of a copy of the certificate would be the shipowners’ favoured method of demonstrating the recruitment and placement service’s compliance during a maritime labour inspection of the ship, due to the fact it would probably be the least resource intensive approach for both RPSs and shipowners.

It is therefore likely that this would make it effectively mandatory for UK based recruitment and placement services supplying personnel to UK registered ships. Demand for such a voluntary/non-mandatory scheme under this Option would be expected to be equal to or greater than under Option 1 above due to the imperative created by the need to use it to demonstrate compliance.

However, a fatal flaw was identified with this Option. Given that this Option places responsibility on shipowners (and only UK shipowners at that, as it would not be possible to apply this Merchant Shipping

legislation to non-UK ships) rather than recruitment and placement services, this Option would not meet the obligation on the UK in MLC Regulation 1.4.2 and Standard A1.4.6 to closely supervise and control all seafarer recruitment and placement services operating in its territory to ensure that they comply with national laws and regulations, thus ensuring compliance with the Convention.

This approach of focussing on UK ships rather than recruitment and placement services themselves would not prevent non-compliant UK based recruiters supplying personnel to non-UK registered ships. Under Regulation 1.4.2 and Standard A1.4.6 non-UK shipowners have a right to expect that recruitment and placement services operating in any ratifying state have been regulated to ensure compliance with the Convention, so they would therefore be assured of its MLC compliance. This Option would not provide such assurance, and would therefore not fulfil the policy objective of implementing MLC Title 1.4 into UK law.

As it has been established that it is not a viable Option, this Option has been ruled out and it is not considered further in this IA.

6. COSTS AND BENEFITS OF THE PROPOSED REGULATIONS (Option 1)

Given the limitations of the available evidence base, it has not been possible to monetise some of the potential costs and benefits of policy option 1. Where it has not been possible to monetise a cost or benefit, a full qualitative description of the cost or benefit has been provided in this impact assessment. The costs and benefits of policy option 2 have not been assessed as it has been established that this is not a viable option.

Following the consultation, we have considered whether further analysis could be undertaken to attempt to improve the extent that the costs and benefits of policy option 1 are monetised. To assist this process, Consultees were invited to submit additional evidence on the potential costs and benefits of policy option 1. Although the public consultation was obviously open to all, consultees directly targeted included a large number of UK based seafarer recruitment and placement services, and the Recruitment and Employment Confederation itself (which the MCA had alerted to the MLC over the previous two years or so) and the Association of British Insurers (ABI). However, no additional evidence on the potential costs and benefits of policy option 1 was offered by consultees. Therefore, we have been unable to improve the extent that the costs and benefits of policy option 1 are monetised following the consultation.

6.1. Changes due to the proposed Regulations (Option 1)

The purpose of the proposed Regulations is to promote decent recruitment standards for seafarers globally and a more level competitive playing field for shipping through bridging the gaps between existing UK legislation and full Convention compliance.

The amendments to existing UK legislation for RPSs needed to bridge these gaps are broadly:

- a) placing an obligation on EAs and EBs to inform the seafarer of their rights and duties under the seafarer employment agreement;
- b) placing an obligation on EAs and EBs to ensure the seafarer is qualified for the post; and
- c) placing a requirement on EAs and EBs to provide a system of protection (insurance or equivalent appropriate measure) for seafarers.

There also needs to be an obligation placed on shipowners to take reasonable steps to ensure they only source personnel from compliant RPSs. This obligation may be placed in a different set of regulations to provide greater clarity for the ship-owner, but will nevertheless form part of this Option 1 approach. In practice, this requirement will be most easily satisfied by using a RPS based in a ratifying country. However, if a shipowner chooses to use a RPS in a non-ratifying country, they will need to provide evidence to the satisfaction of the maritime administration that reasonable steps have been taken to ensure their compliance. This may be evidence of an audit carried out by themselves or a reliable third party.

6.2 Costs of Option 1

6.2.1 Costs to recruitment and placement services from obligation to inform seafarer of rights and duties

Standard A1.4.5(c)(ii) provides an obligation to inform a seafarer of their rights and duties under their Seafarer Employment Agreement (SEA). Although formal data does not exist on the matter, there are estimated to be around 30 UK based Recruitment and Placement Services (RPS) which deal entirely with seafarers, and another 50 which deal partially with seafarers and partially with non-seafarers. The split between EAs and EBs is not known but is estimated to be about 10:1 in favour of EAs.

All Employment Businesses and some Employment Agencies are already compliant with this obligation (see Section 4 for details). For those Employment Agencies which are not already compliant with this obligation (which is a new obligation for Employment Agencies but not Employment Businesses), an adjustment of administrative processes will bring them into compliance with the obligation – i.e. an explanation, orally or in writing, of what the seafarer's rights and duties are under the SEA. It also involves giving the seafarer time to take advice on the SEA prior to signing it.

The MCA considers that this represents only a slight increase in the administrative burden, and that the cost of this is assumed to be negligible. For example, the impact assessment for The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2010¹ completed by the Department for Business, Innovation & Skills (BIS) used an estimate of the cost of obligations to agree terms with work-seekers of around £14 (2009 prices) per Employment Agency. However, the extent that the cost of this obligation would differ from this estimate required here is uncertain. Due to both this, and the limitations of the available evidence base (e.g. the number of Employment Agencies already compliant is unclear), it is not considered proportionate to attempt to quantify this cost.

Consultees were requested to provide evidence on the additional costs to business associated with this requirement. No such evidence was received.

6.2.2 Costs to recruitment and placement services from obligation to ensure seafarer is qualified for the post

Standard A1.4.5(c)(iii) provides an obligation to ensure the seafarer is qualified for the post – all Employment Businesses and some Employment Agencies are already compliant with this (see Section 4 for details). For those which are not compliant, an adjustment of administrative processes will bring them into compliance. This involves checking the seafarer's qualification certificates are appropriate and acceptable for the post in question, and "in date".

The MCA considers that this represents only a slight increase in the administrative burden and that the cost of this is assumed to be negligible. For example, the impact assessment for The Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2010² completed by BIS used an estimate of the cost of obtaining confirmation of required information when carrying out suitability checks prior to introducing or supplying a work-seeker to a hirer of around £120 (2005 prices) per Employment Agency. However, the extent that the cost of this obligation would differ from the estimate required here is uncertain. Due to both this, and the limitations of the available evidence base (e.g. the number of Employment Agencies already compliant is unclear), it is not considered proportionate to attempt to quantify this cost.

Consultees were requested to provide evidence on the additional costs to business associated with this requirement. No such evidence was received.

6.2.3 Costs to recruitment and placement services from requirement to provide a system of protection for seafarers

Standard A1.4.5(c)(vi) provides a requirement to provide a system of protection for seafarers – few, if any, Employment Businesses or Employment Agencies will already be compliant with this as it is a new requirement (see Section 4 for details). The options regarding methods of compliance with this Standard are still being explored. Based upon initial tri-partite discussions between the MCA, Nautilus (the union for maritime professionals), the National Union of Rail and Maritime Transport Workers (RMT) and the UK

¹ <http://www.ialibrary.bis.gov.uk/ImpactAssessment/?IAID=8afcc2d6717b456996232672397f1905>

² <http://www.ialibrary.bis.gov.uk/ImpactAssessment/?IAID=8afcc2d6717b456996232672397f1905>

Chamber of Shipping the most likely method of compliance will be an insurance policy. Other proposals from industry will be considered (if any are offered) on a case by case basis.

Consultees were invited to submit any additional evidence on the costs to recruitment and placement services from requirement to provide a system of protection for seafarers, including any additional evidence on the costs of taking out an insurance policy to comply with this requirement, and any additional evidence on any other options for compliance. No such evidence was received. Therefore, we have been unable to update the analysis below following the consultation and the estimates below are unchanged from the consultation-stage impact assessment.

Type of insurance policy

UK EAs and EBs will be required to have a system of protection (SoP) for seafarers. This however does not mean they, themselves, become liable for all the shipowners financial obligations beyond this insurance coverage.

Indications from the UK insurance industry are that it is likely to cost shipowners between \$350 (US) and \$450 (US), with a best estimate of \$400 (US) (the mid-point of the range), per head per annum to cover their own MLC liabilities for “first line” insurance, i.e. when a shipowner takes out insurance to cover their own liabilities. At an exchange rate of \$1 (US) to £0.63 based on a 3 year average of spot rates from 19/12/09 to 19/12/12³, this works out at around £221 and £284 per person per annum, with a best estimate of £252 (the mid-point of the range).

However, the MCA’s understanding is that what this scenario in the proposed legislation involves is “backup” insurance, i.e. a policy a recruitment and placement service takes out with an insurer is to cover not only their own obligations but also any of the shipowner’s obligations, **but only** if the shipowner defaults. Therefore, the MCA considers the cost of SoP insurance will be lower than if it were front line insurance as the risk will be lower. In particular, under the MLC shipowners will be required to have insurance for some of their liabilities. For these liabilities, it is only if the shipowner’s insurance provider is unable to cover the costs that the SoP insurance will be claimed against.

It has not been possible to ascertain exactly how much cheaper it will be but for the time being it is assumed it will result in a reduction in cost. So, it has been necessary to make illustrative assumptions in order to estimate the costs to recruitment and placement services from the requirement to provide a system of protection for seafarers. Therefore, for the purposes of this impact assessment, it is assumed that SoP insurance would cost RPSs between 10% and 50%, with a best estimate of 30% (the mid-point), of what the cost of the policy would be if it were all “first line” insurance. It should be noted that the estimated costs are very sensitive to these assumptions.

Consultees were invited to comment on any of these assumptions, and propose alternative assumptions and provide supporting evidence. No such comments or alternative assumptions were provided by consultees. Therefore, no changes have been made to these assumptions following the consultation.

Estimates of Duration of Insurance Policy

Based upon initial discussions between government, industry and Unions in the UK MLC implementation Tri-partite Working Group (TWG), it is expected that the implementation of Standard A1.4.5(c)(vi) will apply fully to Employment Businesses (i.e., the cover will be required throughout the seafarer’s time on the ship, as the Employment Business remains the individual seafarer’s employer during that time).

It is expected Employment Agencies (which place seafarers on ships and cease to be the employer once the seafarer is placed) will only be required to provide cover for a short period, as it is not considered reasonable to place an open ended commitment on Employment Agencies for individuals with whom they no longer have a relationship.

It has been agreed between government, industry and Unions in the UK MLC implementation Tri-partite Working Group (TWG) that, in the case of Employment Agencies, they need put cover in place for a seafarer for only the first two months of their placement.

³ <http://www.ukforex.co.uk/forex-tools/historical-rate-tools/historical-exchange-rates>

On the basis that cover for Employment Agencies will only be required for 2 months per seafarer, i.e. one sixth of the year, it is assumed that the costs would be one sixth of the annual cost, which as a percentage is around 17% of the annual cost.

Consultees were invited to comment on this assumption, and propose an alternative assumption and provide supporting evidence. No such comments or alternative assumptions were provided by consultees. Therefore, no changes have been made to this assumption following the consultation.

Estimates of Number of Seafarers

An estimate of the number of seafarers on UK Employment Businesses' books at any one time is approximately 7,000 to 8,500, with a best estimate of 7,750 (the mid-point of the range), based on figures received from industry. This was obtained from industry sources, but is only an estimate, as data is not kept on this. It should be borne in mind that many seafarers who appear, at first impression, to be on the books of UK based EBs, are actually on the books of sister companies with similar names based offshore, and thus do not fall into the UK based EB data set.

An estimate of the number of seafarers placed by UK Employment Agencies' per annum is 4,000-6,500, with a best estimate of 5,250 (the mid-point of the range). This was obtained from industry sources, but is only an estimate, as data is not kept on this.

Consultees were invited to comment on any of these estimates, and provide alternative estimates and supporting evidence. No such comments or alternative estimates were provided by consultees. Therefore, no changes have been made to these estimates following the consultation.

Estimated Cost per Year

The cost to UK based Employment Agencies (EA) and Employment Businesses (EB) has been estimated as below:

Table 2a: Annual Cost to UK based Employment Agencies from requirement for a system of protection for seafarers

	Estimated No. of Seafarers	Cost of "first line" insurance for shipowner for 2 months per seafarer	Cost of system of protection insurance for UK based Employment Agencies (% of Cost of "first line" insurance)	Total annual cost to UK based Employment Agencies from system of protection (obtained by multiplying columns 2,3 & 4)
Low Estimate	4000	£37	10%	£0.01 million
High Estimate	6500	£47	50%	£0.15 million
Best Estimate	5250	£42	30%	£0.07 million

Table 2b: Annual Cost to UK based Employment Businesses from requirement for a system of protection for seafarers

	Estimated No. of Seafarers	Cost of "first line" insurance for shipowner for 1 year per seafarer	Cost of system of protection insurance for UK based Employment Businesses (% of Cost of "first line" insurance)	Total annual cost to UK based Employment Businesses from system of protection (obtained by multiplying columns 2,3 & 4)
Low Estimate	7000	£221	10%	£0.15 million

High Estimate	8500	£284	50%	£1.20 million
Best Estimate	7750	£252	30%	£0.59 million

Table 2c: Total Annual Cost to UK based Employment Agencies and Employment Businesses from the requirement for a system of protection for seafarers

	Total annual cost to UK based EA & EBs from the requirement for a system of protection for seafarers
Low Estimate	£0.17 million
High Estimate	£1.36 million
Best Estimate	£0.65 million

Therefore the cost to UK Employment Businesses (EB) and UK Employment Agencies (EA) is estimated to be around **£0.2 to £1.4 million** per year, with a best estimate of around **£0.7 million**.

Comparison against the Do Nothing option

The costs above represent the costs to UK RPS in becoming compliant with the requirements of the MLC compared to the current requirements imposed upon them by UK legislation.

However, it is potentially misleading to suggest that costs associated with this option are purely driven by the proposed Regulations. The MLC came into force internationally on 20 August 2013. The number of nations ratifying the MLC is continuing to increase. Being a Convention with worldwide application, and given that any UK ships visiting ports in ratifying countries (which are expected to be 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, and Recruitment and Placement Services wishing to provide seafarers for ships which trade internationally.

The MCA considers that in reality these costs will be incurred by EAs and EBs less because of the introduction of the proposed Regulations than because of the worldwide effect of the MLC, which will compel UK based EAs and EBs which wish to continue supplying seafarers to become compliant whether UK legislation is in place or not – although the UK is now obliged to regulate recruitment and placement services as an MLC ratifying country. The MCA considers recruitment and placement services would likely feel the need to take out the necessary insurance anyway to demonstrate to their customers (shipowners) that they are compliant with the convention.

Therefore, it is expected that the costs estimated above would represent an overestimate of the additional costs to UK RPS compared to the do nothing scenario, as many of them would be incurred without changes in UK legislation. The MCA is unable to quantify the proportion of these costs that would be occurred under the do nothing scenario due to the uncertainties involved. For example, the proportion of UK RPS business that would be lost if the UK did not ratify the MLC is not currently clear.

Consultees were invited to provide any additional evidence on the proportion of these costs that would be incurred under the Do Nothing scenario, including any additional evidence on the proportion of UK recruitment and placement services that would comply with the requirements of the MLC after 20 August 2013 in the absence of the proposed Regulations. No such evidence was received.

6.2.4 Costs to shipowners

Under Option 1, UK shipowners would be required to use compliant recruiters whether they are based in the UK or elsewhere, and evidence that they have recruited seafarers in a compliant manner, as required by the Convention.

The additional costs to shipowners of complying with these requirements under Option 1 would depend on the extent that UK shipowners would comply with these requirements under the Do Nothing scenario. The MCA expect that a significant proportion of UK shipowners would comply with these requirements under the Do Nothing scenario. However, no evidence is available on the extent that UK shipowners would comply with these requirements under the Do Nothing scenario.

The available evidence on the costs to shipowners of complying with these requirements under Option 1 is discussed below.

Where recruitment has been conducted using a RPS from a MLC ratifying country, or one which held a third party audit certificate from a qualified and reliable third party, MCA considers that the administrative costs associated with evidencing that they have recruited seafarers in a compliant manner would be negligible, as it would require a few extra lines in the Declaration of Maritime Labour Compliance (DMLC) Part 2 outlining their approach to ensuring they had used compliant RPSs.

If a shipowner would have recruited from a RPS in a non-ratifying country that does not hold a third party audit certificate from a qualified and reliable third party under the Do Nothing scenario, it would be required to either recruit from another RPS under Option 1 which could potentially affect the shipowner's costs; or undertake additional action to evidence that they have recruited seafarers in a compliant manner, such as conducting their own audit to establish the RPS's compliance or using a qualified and reliable third party. However, there is no evidence available on these costs. Furthermore, it is expected that the costs of conducting these audits would vary between shipowners depending on their existing audit processes and the location of RPSs.

The costs to shipowners of using MLC compliant recruiters would depend on whether recruitment and placement services would pass on the costs associated with meeting the MLC requirements to shipowners (such as the costs to recruitment and placement services from the requirement to provide a system of protection for seafarers which are discussed in Section 6.2.3). However, there is no evidence available on this.

Given the limitations of the available evidence base, it has not been possible to monetised the additional costs to shipowners under Option 1.

Consultees were invited to submit any additional evidence on the costs of the proposed Regulations to shipowners and the proportion of these costs that would be incurred under the Do Nothing scenario (i.e., any additional evidence on the proportion of UK shipowners that would comply with the requirements of the MLC after 20 August 2013 in the absence of the proposed Regulations). No such evidence was received.

6.2.5 Costs to government

Costs to government are expected to be minimal. Given that the majority of MLC obligations are already enshrined in UK law, the measures introduced by the Regulations to stop the gaps between the current UK legal position and the necessary position to implement Title 1.4 of the MLC are expected to have minimal enforcement cost implications.

The Employment Agency Standards inspectorate (EAS) of the Department for Business, Innovation and Skills (BIS), which has responsibility for regulating Employment Agencies and Employment Businesses, already responds to complaints of non-compliance with existing UK law. Given that the new requirements would form only a small part of the overall requirements, any additional work generated by the new requirements is expected to be minimal.

Consultees were invited to submit any additional evidence on whether there would be any additional costs as a result of these provisions. No such evidence was received.

6.2.6 Familiarisation Costs

The MCA would publish information about the proposed changes. The MCA has consulted/discussed with social partners (industry and Unions) through tri-partite Working Group meetings, and other contacts outside that group, to gather data for this Impact Assessment, and there have been a number of events publicising the changes resulting from the MLC as a whole. Indeed, the MLC itself has been available for public scrutiny since 2006. These actions would minimise the costs for shipowners, seafarers and recruitment and placement services of becoming familiar with the new requirements, the residual value of which is not considered significant.

Consultees were invited to submit any additional evidence on these familiarisation costs. No such evidence was received.

6.2.7 Costs to Insurance Companies

The amount that insurance companies would pay out in claims to seafarers due to UK RPS taking out SOP insurance is uncertain (see Section 6.3.4).

Other costs to insurance companies associated with offering System of Protection insurance would include costs to insurers associated with selling System of Protection insurance and handling claims. However, no evidence is available on these costs.

Given the limitations of the available evidence base, these costs have not been monetised. Nonetheless, it is expected that UK insurers would only offer System of Protection insurance if they expect to make a profit.

Consultees were invited to submit any additional evidence on the costs to insurance companies of offering System of Protection insurance. No such evidence was received.

6.2.8 Costs to Seafarers

There could be costs to seafarers associated with making a claim in relation to System of Protection insurance. However, no evidence is available on these costs.

Given the limitations of the available evidence base, these costs have not been monetised. Nonetheless, it is expected that a seafarer would not make a claim unless they expected the benefits to outweigh the costs.

Consultees were invited to submit any additional evidence on the costs to seafarers of making a claim in relation to System of Protection insurance. No such evidence was received.

6.3 Benefits of Option 1

6.3.1 Benefits to seafarers.

Certainty as regards standards to be applied by UK RPSs. Seafarers would know that RPSs would be required to comply with the Convention by means of the application of domestic law, and would be subject to penalties for non-compliance.

The seafarer would enjoy greater confidence that they would have a certain amount of security to ensure they would not need to take out an expensive court action against a shipowner or RPS as a result of, for example, being abandoned in a foreign port, for arrears of unpaid wages, arrears of medical treatment costs, etc. This additional confidence afforded will serve to narrow the gap between the risks which a seafarer is forced to take simply because their employment is afloat and remote, and the risks that a land based counterpart takes as a result of accepting an offer of employment.

Option 1 would also ensure that UK based RPSs would be able to continue trading, providing seafarers for jobs in international shipping. In contrast, under the “do nothing” option, it is expected that UK based RPSs which recruit and place seafarers could lose business, and that those which exclusively deal with seafarers could have their viability threatened, if they are not able to demonstrate that they are MLC compliant. Since MCA considers that recruiting from recruitment and placement services based in ratifying countries would be the least onerous way for a shipowner to evidence their own compliance with the MLC, and these regulations are an important part of the measures enabling the UK to ratify, MCA considers that failure to make these regulations could cause shipowners – even UK ones – to recruit from non-UK based recruitment and placement services if this is the least costly option to comply with this aspect of the MLC. However, it should be noted that MCA does not have access to any evidence on how the costs to shipowners of different options for complying with this aspect of the MLC would differ (see Section 6.2.4).

Given the limitations of the available evidence base (e.g. the number of seafarers that would benefit from the proposed Regulations and the value of any benefits per seafarer, which are both uncertain), it has not been

possible to monetise any of the benefits to seafarers of the proposed Regulations (Option 1) that have been identified in this impact assessment.

Consultees were invited to submit any additional evidence on the benefits of the proposed Regulations to seafarers. No such evidence was received.

6.3.2 Benefits to shipowners

Compared to the Do Nothing scenario, Option 1 would make it easier and cheaper for shipowners using UK-based RPSs to evidence that they have recruited seafarers in a compliant manner, as demonstrating that recruitment has been conducted through a UK based recruitment and placement service will be deemed to be prima facie (on the face of it) evidence of compliance. Therefore, compared to the Do Nothing, there could be savings for any UK shipowners which would comply with these requirements under the Do Nothing scenario.

Given the limitations of the available evidence base (e.g. the number of shipowners that would benefit from the proposed Regulations and the value of any benefits per shipowner, which are both uncertain), it has not been possible to monetise any of the benefits to shipowners of the proposed Regulations (Option 1) that have been identified in this impact assessment.

Consultees were invited to submit any additional evidence on the benefits of the proposed Regulations to shipowners. No such evidence was received.

6.3.3 Benefits to recruitment and placement services

Option 1 would ensure that all UK based recruitment and placement services (EAs and EBs) are compliant with the Convention, which, in turn, will enable them to remain competitive not only in the UK, but also in the global marketplace, now the MLC has come into force internationally, and with ever-increasing numbers of countries ratifying the MLC (see Annex 3). Therefore, this should ensure they would not suffer a loss of business due to the introduction of the MLC. For a discussion of the risk that there is not widespread ratification of the MLC see Annex 3 (A.3.4).

Although formal data does not exist on the matter, there are estimated to be around 30 UK based Recruitment and Placement Services (RPS) which deal entirely with seafarers, and another 50 which deal partially with seafarers and partially with non-seafarers. The split between EAs and EBs is not known but is estimated to be about 10:1 in favour of EAs.

Given the limitations of the available evidence base (e.g. the value of any benefits per EA or EB is uncertain), it has not been possible to monetise any of the benefits to recruitment and placement services of the proposed Regulations (Option 1) that have been identified in this impact assessment.

Consultees were invited to submit any additional evidence on the benefits of the proposed Regulations to recruitment and placement services. No such evidence was received.

6.3.4 Benefits from the requirement for a system of protection for seafarers

It is expected that UK insurers and UK seafarers would both benefit from the System of Protection requirement placed on Recruitment and Placement Services.

It is assumed that most UK based Recruitment and Placement Services – and possibly some other nations' Recruitment and Placement Services - would source any System of Protection insurance from UK insurers. So it is expected that there would be increased business in the UK insurance industry. This is because they are geographically convenient, linguistically compatible and also because the UK is a world leader in invisible trade, so supply of suitable policies is expected to be at least as plentiful as supply of such policies from other nations.

However, it should be noted that an increase in revenues does not represent a net benefit to UK insurers. In particular, an increase in revenues received by insurers from System of Protection insurance would be distributed between seafarers (in the event of a claim) and insurers (in the event that a claim is not made). Given the limitations of the available evidence base (e.g. the likely frequency of claims is uncertain); it has

not been possible to determine the precise distribution of these revenues between insurers and seafarers. In addition, there would also be other costs to insurers associated with offering System of Protection insurance which are uncertain (see Section 6.2.7) and could be costs to seafarers associated with making a claim (see Section 6.2.8). So, the extent that there would be a net benefit to UK seafarers and the extent that there would be a net benefit to UK insurers are both uncertain.

Furthermore, just as it can be argued the cost to RPSs would be due more to the MLC coming into force internationally than to the proposed Regulations, so it can be argued that the benefits will also derive more from the Convention than the proposed Regulations. Recruitment and Placement Services would likely feel the need to take out the necessary insurance anyway to demonstrate to their customers (shipowners) that they are compliant with the Convention. Therefore, the extent that there would be additional benefits under Option 1 is uncertain.

Given the limitations of the available evidence base, it has not been possible to monetise these benefits in this impact assessment.

Consultees were invited to submit any additional evidence on the benefits of the requirement for a system of protection for seafarers. No such evidence was received.

6.4 Costs and benefits of Option 2

The costs and benefits of option 2 have not been assessed as it has been established that this is not a viable Option.

6.5 Benefits of UK Ratification of the MLC

This applies to Option 1 only. Section 3 and Annex 3 of this Impact Assessment discuss the overall benefits of UK ratification of the MLC. It would be necessary to introduce the proposed Regulations in order for these benefits to be realised. However, a range of new legislation will be required for the UK to fulfil its obligations as a ratifying country. Therefore, it is not possible to determine the precise contribution of the proposed Regulations to realising these benefits.

6.6 Monitoring and Enforcement

The requirements contained in the proposed Regulations would be monitored and enforced by the Employment Agency Standards inspectorate (EAS) (part of the Department for Business, Innovation and Skills) to the extent they involved the direct actions of the recruitment and placement services. The Maritime and Coastguard Agency (MCA) would monitor compliance from a shipowner's perspective, and follow up complaints of non-compliance from seafarers and other interested parties in conjunction with the EAS.

The Survey and Certification costs, and costs of investigating complaints, for UK registered ships would apply across all requirements of the MLC and are investigated in a separate Impact Assessment (IA Number DFT 00193).

The marginal costs of including the enforcement of the Regulations proposed in this Impact Assessment are negligible as detailed in section 6.2.

The MCA would be required to accept a Maritime Labour Convention certificate issued by another ratifying flag State to a non-UK registered vessel visiting a UK port, in the absence of any evidence of non-compliance. However, if any evidence of non-compliance came to light, for example through a seafarer complaint, an MCA inspector would have reason to carry out a more in depth investigation of that ship's MLC compliance; any costs associated with this are discussed in the separate Impact Assessment relating to Survey and Certification Costs. The UK would report instances of non-compliance to the flag State concerned for enforcement.

7. RATIONALE AND EVIDENCE THAT JUSTIFY THE LEVEL OF ANALYSIS IN THIS IMPACT ASSESSMENT

The proposals are intended to bring UK legislation into line with the MLC provisions on Recruitment and Placement Services. The MLC was developed on a tripartite basis and is strongly supported by UK shipowner and seafarer representative organisations, which also support the prompt ratification of the MLC.

No further evidence of possible cost implications was provided by industry at consultation. This is partly due to a lack of suitable and compliant products currently on the market to meet the system of protection requirement. Indications are that the insurance industry is working towards providing such products, the costs of which will become more apparent over the coming months.

Discussions on the proposals for implementing the MLC provisions for Recruitment and Placement Services at the MLC Tripartite Working Group have arrived at a consensus on the manner of implementation. Further analysis of the impacts is not therefore considered necessary.

8. RISKS

The proposed Regulations need to be implemented in order for the UK to fulfil its obligations as an MLC ratifying country. The risks of ratifying the Convention, and of not ratifying the Convention, were explored in Annex 3 of this impact assessment.

The estimated cost to business is sensitive to the assumptions that have been made and the underpinning estimates that have been used. If the cost of SoP insurance is significantly higher than assumed, the cost estimates presented here would not be an accurate reflection of the costs to industry. Assumptions made in this impact assessment have not been challenged at consultation. However, as noted in Section 7 above, there is a lack of suitable and compliant products currently on the market to meet the system of protection requirement. So, these costs are still subject to considerable uncertainty.

9. DIRECT COSTS AND BENEFITS TO BUSINESS CALCULATIONS

9.1 “One-in/Two-out” (OITO)

Option 1 implements the minimum Recruitment and Placement requirements of the Maritime Labour Convention. The Maritime Labour Convention is an international instrument and thus Option 1 falls outside the scope of “One In - Two Out”.

No other policy options have been deemed to be appropriate and have therefore not been assessed.

9.2 EANCB calculations

The only costs monetised in this impact assessment are the costs to UK Recruitment and Placement Services (RPS) of putting in place a System of Protection (SOP) to protect the seafarer from either the RPS or the shipowner defaulting on their liabilities. These costs are estimated at around £0.2 to £1.4 million per year, with a best estimate of around £0.7 million per year. These estimated costs are shown on the summary sheets. However, they are expected to represent an overestimate of the additional costs to UK RPS compared to the Do Nothing scenario (see Section 6.2.3).

On the basis of the Best estimates of these costs, the EANCB has been estimated at around -£0.6m per year (2009 prices).

10. SPECIFIC IMPACT TESTS

10.1. Equalities Assessment

The proposed Regulations would be advantageous 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.

Therefore the MCA does not believe the reforms will have any material impact on equality.

10.2. Competition Assessment

The proposed Regulations would primarily 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 will be very widely implemented internationally.

By introducing a set of minimum standards that apply internationally, the MLC should promote 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 possible that the proposed Regulations could have an impact on competition. The precise impact would depend on how the proposed Regulations affect relative costs. Global implementation of the Convention in the area of Recruitment and Placement could actually be advantageous to UK business, as UK Employment Agencies are already almost compliant with the Convention standards by virtue of existing UK legislation. Global implementation is expected to result in sub-standard Employment Agencies and Businesses, which are not compliant with MLC or UK standards, having less scope to gain competitive advantage by cutting corners. This will result in the provision of a more level playing field for UK business in which to operate assuming widespread ratification of the MLC. See Annex 3 - as ratifying countries number in the mid-fifties (as at 13 January 2014) and are rising, confidence in this assumption is ever-increasing.

Cost increases introduced through new Regulations that change costs of some suppliers relative to others have the potential to impact competition (for example) if they thereby limit the range of suppliers. However, industry sources have indicated an expectation that the proposed Regulations would not cause significant additional costs for UK shipowners or Employment Agencies or Businesses.

Internationally, it is considered that the MLC is more likely to provide a competitive benefit to UK shipowners and recruitment and placement services, as existing regulation in the UK is much closer to MLC standards than many other states. Certification to a common standard would therefore mitigate the competitive advantage enjoyed by recruitment and placement services based in those other states over those based in the UK.

Consultees were invited to provide any additional evidence on the potential impacts of the proposed Regulations on competition. No such evidence was received.

10.3. 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 will inevitably have the greatest impact on small firms with a small turnover. As the Convention 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 Convention designed for smaller vessels or likely to apply to small companies. There are no specific relaxations available to small firms regarding recruitment and placement. However, with regards to the impacts on recruitment and placement services, the MCA considers that many of the smaller companies fall into the category of "job board" type enterprises which are not involved in the

recruitment and selection process and will therefore not be covered by these regulations, although it should be noted that MCA does not have access to any quantitative evidence on this issue.

In addition, vessels operating within 60 miles of a safe haven will not be required to source their personnel from compliant recruiters. The MCA considers seafarers operating exclusively on domestic voyages within 60 miles of a safe haven generally have sufficient protection because their terms and conditions of employment are already more akin to those enjoyed by shore based workers, not least as they will not need the MLC repatriation, subsistence and medical protections associated with the international operation of a vessel. However, in reality, the MCA considers that recruitment and placement services falling under these regulations are unlikely to distinguish between seafarers placed in jobs inside and outside 60 miles and instances of recruiters only supplying personnel for vessels operating within 60 miles will be rare.

Consultees were invited to provide any additional evidence on the potential impacts of the proposed Regulations on small firms and micro businesses. No such evidence was received.

10.4. Health Impact Assessment

The objective of the Maritime Labour Convention 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.

Therefore the MCA expects these Regulations to have a positive impact on the living and working conditions for seafarers and therefore a positive health impact. It is widely accepted that high levels of seafarer stress affect not only the safety of ships, but the underlying health of the seafarers onboard. There are a large number of stresses inherent with a seafarer's role. For example, they may travel half way across the world to do a job on a ship, when the job has not been adequately or accurately described to them, and which they would not have accepted had they known the full facts. They may arrive onboard to find obligations in their employment contract they do not expect, or a lack of rights which they do expect, and there is always a risk that someone fails to meet their financial obligations to them. All these concerns, on top of all the normal concerns inherent in a seafaring life, can take a toll on a seafarer's health. For example, they are frequently away from home and family for long periods of time, and it has been known for quite a number of seafarers to be unpaid for long periods, with the consequential stress for the seafarer worrying about the family they support. There is a danger of getting stranded in a foreign port – perhaps without money - and suffering due to inadequate medical care.

These regulations cannot remove all the stress associated with a seafaring career – but they do go some way to alleviating the ones which are likely brought about by a lack of diligence by a RPS or a shipowner. The seafarer will have more assurance that he/she is not taking a risk when accepting a post offered by a RPS, due to the underpinning standards and the measures to ensure they do not lose out financially.

10.5. Human Rights

The proposed Regulations would 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.

10.6. Justice System

The main enforcement mechanisms for these proposed Regulations would be through Employment Agency Standards (EAS) inspectorate inspections in response to complaints in Great Britain, the parallel enforcement mechanisms in the Department for Employment and Learning in Northern Ireland and the inspection and certification of UK ships under the MLC by MCA surveyors. There would however also be

offences and penalties laid down in the draft Regulations. The MCA has reviewed these offences and penalties with the Ministry of Justice to ensure a consistent approach in all sets of regulations implementing the MLC. However, most of the requirements of the proposed Regulations are either new or re-instated.

10.7. Greenhouse Gas Emissions

As it is not expected that the proposed regulations would significantly affect shipping activity, and no other impacts on greenhouse gas emissions have been identified, the MCA does not expect that there will be any effect on greenhouse gas emissions from the proposed Regulations.

11. SUMMARY AND PREFERRED OPTION

Introducing the proposed Regulations (Option 1) to amend UK legislation to fully implement the MLC requirements on recruitment and placement services with no enhancement is the preferred policy option.

12. IMPLEMENTATION PLAN

The proposed Regulations are part of a package of Regulations that are required to allow the UK to fulfil its obligations as an MLC ratifying country. The MLC to come into force internationally on 20 August 2013, 12 months after ratification of the 30th state.

A Merchant Shipping Notice/Marine Guidance Note 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.

The main enforcement mechanisms for these proposed Regulations would be through the Employment Agency Standards (EAS) inspectorate inspections, in response to complaints, and the inspection and certification of UK ships under the MLC by MCA surveyors. MCA surveyors would check that a shipowner has evidenced in their Declaration of Maritime Labour Compliance Part II how they have ensured that compliant recruitment and placement services have been used.

Furthermore, shipowners must have published procedures to deal with seafarers' complaints about their working and living conditions, and seafarers would 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 have not been treated in accordance with the Convention.

13. REVIEW CLAUSES

The proposed 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 legislation or to the Convention.

The review will examine UK MLC inspection reports and any enforcement action taken under the regulations, and 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.

References

No.	Legislation or publication
1	Maritime Labour Convention, 2006 http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_090250/lang--en/index.htm
2	Employment Agencies Act 1973 http://www.legislation.gov.uk/ukpga/1973/35/introduction
3	Conduct of Employment Agencies and Employment Businesses Regulations 2003 http://www.legislation.gov.uk/uksi/2003/3319/contents/made
4	Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations 2010 http://www.legislation.gov.uk/uksi/2010/1782/contents/made
5	Employment Relations Act 1999 (Blacklists) Regulations 2010 http://www.legislation.gov.uk/uksi/2010/493/contents/made
6	Conduct of Employment Agencies and Employment Businesses Regulations (Northern Ireland) 2005 http://www.legislation.gov.uk/nisr/2005/395/contents/made
7	Conduct of Employment Agencies and Employment Businesses (Amendment) Regulations (Northern Ireland) 2010 http://www.legislation.gov.uk/nisr/2010/360/contents/made
8	ILO (2001) The impact of seafarers' living and working conditions of changes in the structure of the shipping industry. Report JMC/29/2001/3 http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_PUBL_9221122379_EN/lang--en/index.htm
9	European Commission (2006) Communication from the Commission under Article 138(2) of the EC Treaty on the strengthening of maritime labour standards. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0287:FIN:EN:PDF
10	ILO (2012) Maritime Labour Convention, 2006: Frequently asked questions. http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_177371/lang--en/index.htm
11	ILO (2011) Advantages of the Maritime Labour Convention, 2006. http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_153450/lang--en/index.htm

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 30th 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

Impacts of...	Impacts on...	Type of impact	Direct impact falls on...
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.⁴ 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

⁴ 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.

discriminated against but enjoy the same living and working conditions as employees ashore 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.⁵

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

⁵ See Question A18 in ILO (2012).

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

employment agreement (SEAs), repatriation, hours of work, annual leave, shipowner liability and 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*)

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)

Voluntary/Non-Mandatory Certification Scheme

The MCA is currently providing a voluntary/non-mandatory scheme for those Recruitment and Placement Services which choose to participate in it. A decision whether to approve third party certifying organisations to deliver certification services in the context of the voluntary/non-mandatory scheme will be taken within the normal business of the MCA, but could potentially also provide business opportunities to the private sector.

Under the voluntary/non-mandatory certification scheme, one alternative is that the certification could be provided by third party organisations recognised by the Maritime and Coastguard Agency (MCA) to issue such certificates, following an audit of the Recruitment and Placement Service. Many Recruitment and Placement Services feel such certification would be beneficial to their businesses, as it would be used as a marketing tool to enhance their power to attract business worldwide, and a large number of these have already been audited by the MCA.

Alternative approaches being considered are that the MCA would carry out audits as a “wider markets” initiative and charge to cover costs, or that the function would be shared between the MCA and ROs, both charging as appropriate.

The latest position is that the MCA has started carrying out these audits and may involve ROs in carrying out this work as and when they can be approved. Ongoing approval costs would be negligible, as the MCA will recover most of the cost of audits carried out by themselves, and, regarding third party organisation approval, as most third party organisations involved are also expected to be MCA Recognised Organisations (ROs) (which already carry out other work for the MCA) so ongoing approval is expected to comprise one or two additional checks during an existing RO audit, so systems are in place, and could be extended to cover this additional function. Costs of this could be absorbed within existing resources, and current MCA policy is not to charge for the RO audits. Once up and running, approved third parties would offer their audit services at market rates to Recruitment and Placement Services which wish to be certificated in this way.

With any of the above approaches, the cost to government, if any, is expected to be negligible, and there would be no mandatory cost to industry, as Recruitment and Placement Services would have the choice whether they wished to partake in this scheme or not.

It is expected that demand for such certification would come from the following:

- a) UK based Employment Agencies and Employment Businesses wishing to demonstrate compliance to UK and non-UK shipowners;
- b) non-UK based Employment Agencies and Employment Businesses, some based in ratifying flag States and some in non-ratifying flag States, wishing to be able to demonstrate Convention compliance to owners of UK registered and non-UK registered ships for the purpose of doing business supplying personnel to them.

However, this would only be worthwhile for Employment Agencies and Employment Businesses which supply a significant number of seafarers, a phrase used in MLC Standard A1.4.2.