Title: **Merchant Shipping (Maritime Labour Convention) (Hours of Work) (Amendment) Regulations ("the 2014 Regulations")** **IA No:** DfT00227 **Lead department or agency:** Maritime and Coastguard Agency **Other departments or agencies:** Department for Transport	Impact Assessment (IA) **Date:** 08/10/2013 **Stage:** Final **Source of intervention:** International **Type of measure:** Secondary legislation **Contact for enquiries**: Julie Carlton Tel: 023 8032 9216

Summary: Intervention and Options

RPC: RPC Opinion Status

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009 prices)	**In scope of One-In, Two-Out?**	**Measure qualifies as**
-£5.0m	-£2.8m	£0.1m	Yes	IN

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

It is considered that seafarers should be entitled to adequate paid annual leave. However, employment conditions for seafarers vary across the world, with some seafarers working under unacceptable conditions whilst ship operators operating substandard ships can gain a competitive advantage. Effective international standards are needed to address these issues. The ILO Maritime Labour Convention 2006 (MLC) aims to provide minimum living and working conditions for seafarers that are globally applicable and uniformly enforced, including provision for leave. Achieving this requires a package of new legislation in the UK. The UK ratified the MLC on 7 August 2013, so UK legislation must be fully compliant..

What are the policy objectives and the intended effects?

The purpose of the Regulations is to promote decent living and working conditions for seafarers globally and to promote an international level playing field for shipping. This will be achieved by a) introducing the minimum global standards for annual leave for seafarers on UK ships, so they fully comply with MLC standards, meeting the UK's international obligations as a ratifying country; b) allowing seafarers on UK ships to enforce their leave entitlement by an Employment Tribunal claim; and c) enforcing the minimum global standards for annual leave on non-UK registered ships that call at UK ports. Option 1 is the minimum required to ratify the MLC. Option 2 would align seafarers' entitlements with those for workers ashore. Specific objectives 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)

Doing nothing is not considered an appropriate course of action, as new legislation is required to fully comply with the MLC. Failure to ratify the MLC would have limited its effectiveness at securing seafarer living and working conditions and would have prevented UK ships obtaining MLC certification, risking potential delays at ports in ratifying countries. Option 1 is to introduce regulations which follow the approach of the MLC very closely, leaving uncertainty as to public holiday entitlements. Option 2 explicitly provides 8 days paid leave in respect of public holidays (avoiding different entitlements in different parts of the UK), giving seafarers similar entitlements to workers ashore; and provides the right to take a case to an employment tribunal on annual or additional paid leave. Option 2 is the preferred option as it provides certainty about seafarers' entitlements.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 03/2019

Does implementation go beyond minimum EU requirements?			Yes		
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	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	

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: 13/02/2014

Summary: Analysis & Evidence

Policy Option 1

Description: **To implement a minimum statutory entitlement for seafarers of 2.5 days paid annual leave per month of employment, and in addition to specify that justified absences should not be counted towards annual leave, closely following the approach in of the Maritime Labour Convention, 2006, Standard A2.4.**

FULL ECONOMIC ASSESSMENT

Price Base Year NA	PV Base Year NA	Time Period Years NA	Net Benefit (Present Value (PV)) (£m)		
			Low: NQ	**High:** NQ	**Best Estimate:** NQ

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	NQ	NA	NQ	**NQ**
High	NQ		NQ	**NQ**
Best Estimate	NQ		NQ	**NQ**

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

Some estimates were provided by consultees. However, these estimates do not allow industry-wide costs to be estimated because (a) they are not sufficiently detailed; (b) there is not sufficient evidence on current leave arrangements across the shipping industry to produce estimates, and (c) the proposals have been modified since consultation to take account of concerns raised by consultees.

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

1.) Shipowners may need to increase their employees' allowances of paid annual leave or give additional paid leave to cover public holidays. However, MCA believes that most seafarers already receive in excess of 38 days paid leave. 2.) Shipowners may incur costs as a result of the increased period of statutory leave during which seafarers may not be recalled to duty, reducing the flexibility of the shipowner to cover for absent colleagues. 3.) Seafarers and shipowners may also incur costs from the uncertainty inherent in Option 1 (e.g. costs of legal advice or litigation).

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NQ	NA	NQ	**NQ**
High	NQ		NQ	**NQ**
Best Estimate	NQ		NQ	**NQ**

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

Due to the limitations of the available evidence base, it has not been possible to monetise the potential benefits of Option 1. Consultees were invited to submit any additional evidence on these benefits at public consultation. However, no quantitative evidence was received to estimate industry-wide benefits.

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

1.) The potential benefits to workers of increased holiday identified by the Department of Business, Innovation and Skills are summarised at Annex 7. Some consultees considered that the changes proposed will assist in the recruitment and retention of seafarers, and might reduce sick absence due to fatigue and stress. However, as noted above, MCA believes that most seafarers already receive in excess of 38 days paid leave. 2.) Ratification of the MLC requires implementation of all the constituent Regulations (including these Regulations) and provides additional benefits (See Annex 3).

Key assumptions/sensitivities/risks **Discount rate (%)** NA

1. Due to the limited available evidence, it has not been possible to monetise the costs and benefits of Option 1 that have been identified, and several assumptions have been made for the purpose of this impact assessment. 2. A key risk is that more significant costs for the shipping industry would arise if the evidence to suggest that most seafarers currently receive annual leave in excess of the minimum requirements of MLC is not representative of all sectors of the industry.

BUSINESS ASSESSMENT (Option 1)

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

Summary: Analysis & Evidence

Policy Option 2

Description: In addition to seafarers' entitlements under Option 1, Option 2 will explicitly provide 8 days paid leave in respect of public holidays, in line with shore-based workers in the UK; and provide seafarers with the right to take a case to an employment tribunal on annual or additional paid leave (it is the Preferred Option)

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	**PV Base Year** 2013	**Time Period Years** 10	**Net Benefit (Present Value (PV)) (£m)**		
			Low: -£5.6m	**High:** -£4.4m	**Best Estimate:** -£5.0m

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	NA	NA	£0.53m	**£4.6m**
High	NA		£0.67m	**£5.7m**
Best Estimate	NA		£0.60m	**£5.1m**

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

The monetised costs as a result of providing seafarers with the right to take a case to an employment tribunal on annual or additional paid leave are estimated to be around £532,000 to £667,000 per year, with a Best estimate of around £595,000 per year.

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

MCA expects the costs to shipowners identified for Option 1 would be of a similar order of magnitude under Option 2. However, these costs could be lower under Option 2 as the number of public holidays that must be recognised would be limited to 8, avoiding the possibility that 9 or 10 days paid leave must be given in respect of public holidays, and ensuring that ad hoc public holidays will not lead to an entitlement to additional paid leave. In addition, the certainty provided by this option should reduce employment disputes and legal challenge for both seafarers and shipowners compared to Option 1.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	NA	NA	£0.02m	**£0.1m**
High	NA		£0.02m	**£0.2m**
Best Estimate	NA		£0.02m	**£0.2m**

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

The employment tribunal fees received by the Government as a result of providing seafarers with the right to take a case to an employment tribunal on annual or additional paid leave are estimated to be around £16,000 to £21,000 per year, with a Best estimate of around £18,000 per year.

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

1.) While MCA believes that most seafarers already receive in excess of 38 days paid leave, some will benefit from the clarification of their rights to paid leave, and from the same rights as workers ashore to take a claim to an Employment Tribunal if those rights are denied. 2.) Ratification of the MLC requires the implementation of all the constituent Regulations (including these Regulations) and provides additional benefits (See Annex 3).

Key assumptions/sensitivities/risks **Discount rate (%)** 3.5%

1. A key risk is that more significant costs for the shipping industry could arise if the evidence to suggest that most seafarers currently receive annual leave in excess of the minimum requirements of MLC is not representative of all sectors of the industry. 2. The comparison of costs under Options 1 and 2 is based on the premise that under both Options, leave given in respect of public holidays should be paid. The risk that this is incorrect is discussed in Section 8.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			**In scope of OITO?**	**Measure qualifies as**
Costs: £0.1m	**Benefits:** £0	**Net:** -£0.1m	Yes	IN

Evidence Base (for summary sheets)

Key Definitions

ILO = International Labour Organisation

MCA = Maritime and Coastguard Agency

MLC = ILO Maritime Labour Convention, 2006

SEA = Seafarer Employment Agreement

ET = Employment Tribunal

1. TITLE OF PROPOSAL

The draft Merchant Shipping (Maritime Labour Convention) (Hours of Work) (Amendment) Regulations ("the 2014 Regulations")

1a. CONSULTATION ON THE PROPOSALS

Like all Conventions of the International Labour Organisation (ILO), the Maritime Labour Convention, 2006 (MLC) 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 Maritime and Coastguard Agency (MCA) has continued to worked closely with its social partners on the implementation of the Convention, through a tripartite working group – see Annex 4.

A public consultation took place in 2009. An impact assessment for these proposals was issued as part of the public consultation package. Consultees were invited to submit additional evidence on the costs and benefits of the proposed regulations. 235 organisations, companies and individuals were directly notified of the consultation exercise, including the UK Chamber of Shipping which represents a broad cross section of UK shipping companies in all sectors, and other trade associations such as the British Marine Federation and International Marine Contractors Association. Twelve responses were received. There was considerable disagreement between consultees on the proposals for additional leave in respect of public holidays, and for seafarers' access to an Employment Tribunal, with employer organisations mainly being opposed to these proposals and seafarer representative organisations being in favour. There were some fundamental divergences in view, including on the cost impact of the proposals, with most employer responses supporting the MCA's view that most current leave entitlements exceed the MLC requirements, but some identifying possible costs from the increased entitlement, including because the prohibition on recall from leave would apply to more days. In contrast some respondents representing seafarers argued that seafarers were currently not receiving their entitlement to paid leave, because their "leave" was consolidated in their regular pattern of work (which often consists of a period at sea followed by a period ashore) where periods ashore were not paid leave, but compensatory rest for long hours worked at sea. Case law has since clarified the position as regards such patterns of work to some extent, making clear that paid leave can be included in a normal pattern of work – see Section 1B below for more details. In addition, since the consultation period closed, discussions have continued with the MLC Tripartite Working Group to resolve several of the issues where the parties' consultation responses disagreed.

As a result of this continuing dialogue, some of the concerns raised on details of UK implementation are being addressed through amendments to the regulations and improved guidance. The changes are as follows:

- the prohibition on seafarers being recalled from leave (e.g. to cover staff absences) will only apply to statutory paid annual leave; seafarers taking their additional leave may be subject to recall in the case of operational demands;

- the right of access to an employment tribunal is limited to paid leave entitlements, not covering hours of work issues under other parts of the 2002 Regulations; and
- incorporating into MCA guidance relevant parts of a UK social partners' agreement on how additional leave in respect of public holidays will be implemented.

Some quantified evidence of costs or benefits was provided in response to the consultation, but in most cases, it was company specific, and it would not be reasonable to assume that the arrangements currently in place and therefore the impact of the changes introduced by the regulations on that company were typical of UK shipping as a whole. In some cases, the evidence of costs was based on assumptions which no longer apply.

1B. SUPREME COURT RULING

Since public consultation took place on these Regulations, a Supreme Court judgment (Russell v Transocean (Scotland)) decided that offshore workers in the oil and gas industry who typically worked a two weeks on and two weeks off shift pattern could be required to take their annual leave during the two weeks off. The case was decided under the Working Time Regulations, which do not apply to seafarers, but it is thought that the same principle would be applied under the equivalent Merchant Shipping legislation. There was agreement in the case that some of the time off was compensatory rest for statutory rest periods which were not provided while the workers were working. How much, if any, of a seafarer's time off constitutes compensatory rest is a matter to be determined on a case by case basis. However we believe that the judgment weakens any argument that paid annual leave should be additional to leave provided as part of the normal pattern of work, since that pattern reflects the long hours worked when at sea.

MCA considers that this clarification of the legal position on paid leave as part of a pattern of work, together with the changes made to the regulations since public consultation (see the bullet points in Section 1A) will mitigate many of the costs identified by consultees.

2. PROBLEM UNDER CONSIDERATION

It is considered that all seafarers should have acceptable employment conditions, including adequate entitlements to paid leave. Annual leave provides an opportunity for rest and recuperation, helps to redress work-life balance, and is particularly important for providing time with friends and family for workers who regularly work away from home. Adequate leave provision therefore contributes to the health and well-being of seafarers (See Annex 7). However, employment conditions for seafarers vary across the world; some seafarers work under unacceptable conditions and some shipowners operating substandard ships, thus gaining competitive advantage. In particular, ILO (2012) suggests that "seafarers often have to work under unacceptable conditions, to the detriment of their well-being, health and safety and the safety of the ships on which they work." In addition, ILO (2012) suggests that flag States and shipowners which provide seafarers with decent conditions of work "face unfair competition in that they pay the price of being undercut by shipowners which operate substandard ships."

The specific problem under consideration which the 2014 Regulations directly address is how to ensure that seafarers on UK ships are entitled to an adequate amount of paid leave every year.

Before MLC was adopted, the most recent international convention specifying the annual leave entitlement for seafarers (No. 146, from 1976) provided for 30 days leave per calendar year but that has only been ratified by 17 countries, not including the United Kingdom. The previous Convention (No. 91) dating back to 1949 required only 18 days leave annually for masters, officers, radio officers and operators, and only 12 days for other members of the crew. There has therefore previously been no widely applicable international standard for annual leave for seafarers.

Commercially operated UK merchant ships and yachts are required under the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991 (S.I. No. 1991/2144) to have a 'crew agreement'[1] in place. Since at least 1991, the MCA has inspected any "non-standard" crew

[1] A "crew agreement" means a single written agreement which sets out the respective rights and obligations of every seafarer employed on a UK ship and the persons employing them. Such agreement is to be in a form approved by the Secretary of State, which complies with International Labour Organisation Convention No. 22 and is to be signed by every seafarer and the persons employing them. A crew agreement will usually cover all the crew which happen to work on a specific vessel during a fixed period. This differs from the requirements of seafarer employment agreements (SEAs) which would apply to specific crew members on specific vessels, and will be far more detailed than crew agreements are currently required to be.

agreements which contain requirements additional to those set out in a "standard" crew agreement which accords with the current Regulations. MCA's experience of checking non-standard crew agreements[2] indicates that, in many crew agreements, paid leave is consolidated into normal patterns of working, and periods of leave are well in excess of the minimum required under the MLC. However, this is not the case internationally. MCA surveyors carrying out port state inspections have evidence that seafarers on some non-UK ships are required to stay on board ships for a year or more without any paid leave and have minimal leave entitlements under their contract of employment. In these cases, a minimum standard of annual leave is required.

The above suggests that internationally, in the absence of government intervention, shipowners may not ensure that seafarers are given adequate paid leave.

One potential explanation of this risk is that the existing international conventions providing seafarers with an entitlement to adequate paid leave have not been widely enforced worldwide. Given that there are costs of providing seafarers with decent conditions of work (in this instance paid leave), this means that shipowners which provide substandard conditions of work can potentially undercut shipowners which provide seafarers with decent conditions of work, and can consequently potentially gain a competitive advantage.

3. RATIONALE FOR INTERVENTION

Given the international nature of the shipping industry, it is considered that effective international standards are needed to address the issues and risks that have been raised in Section 2, and to provide decent working conditions and a level playing field for ships of different flags. This is why the MLC has been developed in the ILO by government, employer and seafarer representatives as a global instrument to address these. The MLC aims to provide minimum rights for all seafarers that are globally applicable and uniformly enforced, including entitlements to paid leave. It was adopted in the ILO by a record vote of 314 in favour and none against (two countries abstained for reasons unrelated to the substance of MLC). The ratification criteria to bring the Convention into force internationally were met on 20 August 2012, and the MLC therefore came into force internationally on 20 August 2013. It is expected to be widely ratified. The Government's social partners, the shipping industry and the seafarer's Trades Unions (see Annex 4), strongly supported ratification of the MLC in the UK, which took place on 7 August 2013.

Implementation of the MLC in the UK requires a package of new legislation to be introduced to implement some of the provisions of MLC in UK law, including the provisions of MLC regarding paid leave. Doing nothing is therefore not considered to be an appropriate course of action.

Failure to ratify MLC in the UK would have limited its effectiveness at addressing the issues and risks raised in Section 2 of this impact assessment (IA).

The 2014 Regulations will bring existing legislation for UK registered vessels into line with the minimum global standards for paid annual leave and other leave provisions provided for in the MLC. Regulation 2.4 and Standard A2.4 of the MLC require that provisions be in place to ensure that seafarers are entitled to at least 2.5 days of paid leave per month of employment, that "justified absences"[3] are not counted as part of paid leave, and that seafarers are granted shore leave in ports of call, for their health and well-being and where consistent with their operational responsibilities (note - the provision on shore leave is considered in a separate impact assessment). The Merchant Shipping (Hours of Work) Regulations 2002 (S.I. No. 2002/2125) deal with the provision of paid annual leave for seafarers; regulation 12 currently provides for an entitlement to paid annual leave of at least four weeks, or a proportion of four weeks in respect of a period of employment of less than one year, and so amending legislation is required to comply fully with the MLC.

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

Furthermore, UK ratification of the MLC has avoided the costs of not ratifying the MLC. In particular, regardless of whether the UK ratified the MLC, it was recognised that UK registered vessels would still

[2] There is a statutory format for standard crew agreements, which states that wages, hours of work and leave provisions must be included, but there are no standard provisions for annual leave, so no assumptions can be made about current leave provision under standard agreements, other than that it complies with the current statutory requirement under the 2002 Regulations. However, since MCA must approve all non-standard crew agreements, MCA has experience of the leave provisions made in such agreements.

[3] Guideline B2.4 provides examples of types of absence, such as sick leave and attendance at a vocational training course, which should not be counted as annual leave, and these will be included in guidance supporting these Regulations as examples of "justified absences".

be subject to the provisions of the MLC on a “no more favourable treatment” basis when operating in foreign ports in countries that have ratified the MLC. If the UK had not ratified the MLC, this could have resulted in UK registered vessels being delayed due to inspections to check their compliance with the MLC. UK ratification has enabled UK registered vessels to benefit from the system of MLC certification, avoiding or reducing the likelihood of delays related to inspections in foreign ports in countries that have ratified the MLC. These regulations are needed to ensure that the UK fulfils its international obligations as a ratifying country, by having legislation which is fully compliant with the MLC as regards paid leave for seafarers.

Although the primary reason for UK ratification of the MLC was the benefits it will bring to UK shipping, and to avoid the risks of not ratifying, it should also be noted that there is a European Social Partners Agreement which seeks to implement the MLC. Council Directive 2009/13/EC annexes the Agreement between the European Community Shipowners' Association (ECSA) and European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006 and the agreement on amendments to the Agreement on the Organisation of Working Time of Seafarers dated 30 September 1998 (set out at Annex A to the Annex). Member States are required by virtue of Directive 2009/13/EC to implement the European social partners' agreement on the MLC. The provisions of the MLC on annual leave (Regulation 2.4) are transposed in full into the Annex to the agreement. The Directive came into force on the date on which the MLC came into force, which was 20 August 2013. The UK therefore has a duty to implement the social partners' agreement, which in practice means that the UK is under a European law requirement to implement some (but not all) MLC provisions in UK law. The transposition deadline is 12 months from the coming into force date i.e. 20 August 2014. However, as explained above, to support the UK shipping industry the UK needed to ratify the MLC by the time that it came into force internationally, which was earlier than the transposition deadline for the European Directive. Implementation of the minimum changes required to bring UK legislation fully into line with Title 2.4 of the MLC on annual leave will also fully implement the provisions of the annual leave aspects of Directive 2009/13/EC.

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

As well as implementing the MLC provisions on entitlement to leave, the 2014 Regulations will give seafarers the right to enforce their leave entitlements by proceedings in an Employment Tribunal. All other UK workers already have this right and the legislation will therefore meet the MLC Article III(d) principle of treating seafarers no less favourably than other workers.

4. POLICY OBJECTIVES

The primary policy objectives which the 2014 Regulations seek to address are to bring existing UK legislation into line with the requirements of MLC concerning entitlement to leave, in fulfilment of the UK’s international obligations as a ratifying country, in order to:

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

In particular, the 2014 Regulations will ensure that seafarers receive paid leave in line with the minimum global standard, and that those entitlements can be effectively enforced, that they are not penalised for other justified absences, and that they are granted shore leave in ports of call.

A further policy objective is to allow seafarers to enforce their leave entitlement by an Employment Tribunal claim, in line with workers in other sectors. This will give effect to the principle of avoiding discrimination on the basis of occupation which underpins the MLC (Article III(d)).

The 2014 Regulations, in conjunction with the other Regulations required to give effect to the MLC in the UK, will provide a stronger framework for the enforcement of decent standards of work as well as raising the profile of such issues with both shipowners and seafarers.

A country which has ratified the MLC is able to issue Maritime Labour Certificates to its ships, which will facilitate inspection in the ports of ratifying countries, so supporting their shipping industry. Ratifying countries are also able to enforce minimum standards for annual leave on ships of other flags calling at its ports, since the MLC provides that ships of non-ratifying countries should receive "no more favourable treatment" in the ports of ratifying countries. The 2014 Regulations will give the UK this power. This would limit the competitive advantage to shipowners operating into UK ports of flagging with a non-ratifying country. This is discussed further in Section 10.2.

5. DESCRIPTION OF OPTIONS CONSIDERED

Three policy options have been considered in this impact assessment.

5.1. Do nothing

Existing UK legislation is not currently in compliance with MLC in respect of Regulation 2.4 and Standard A2.4 of MLC. A "do nothing" option would not achieve the policy objectives that are outlined above, and is therefore not considered to be an appropriate course of action.

5.2. Policy Option 1:

To implement the minimum mandatory requirements of the Maritime Labour Convention, 2006, Standard A2.4 in respect of paid annual leave, supported by the Guidelines from B2.4 without making clear what days are to count as public holidays.

Option 1 would amend the Merchant Shipping (Hours of Work) Regulations 2002 to bring them into line with Regulation 2.4 and Standard A2.4 of MLC, by increasing the paid leave entitlement of seafarers on UK ships to 2.5 days per month of employment (i.e. 30 days leave per year), the minimum requirement of MLC. The entitlement for workers in shore-based industries is capped at 28 days annual leave per year (including public holidays). However, MCA considers the absence of a 28 day cap for seafarers reflects the fact that, since transport is a 24 hours a day/seven days a week activity and seafarers work long distances from home, a high proportion of seafarers work a 7-day week, and that seafarers can, and usually do, work much longer hours than workers ashore.[4] The statutory minimum hours of rest under the 2002 Regulations (unchanged under the MLC) allow seafarers to work 91 hours per week, whereas workers ashore are limited to an average of 48 hours per week (subject to their right to voluntarily "opt-out" of this limit)[5], albeit in certain circumstances calculated over an extended reference period.

During public consultation, there was no dispute over the provision of 2.5 days per month of employment. There were however differences as to how public holidays should be treated.

Option 1 would deal with public holidays in a way that closely follows the approach of the MLC. Sections of the MLC referred to below are reproduced in Annex 8. The regulations would provide that "justified absences" should not be counted as annual leave, in line with Standard A2.4.2. The meaning of justified absences would be clarified in a Merchant Shipping Notice (MSN) published by the MCA. It would list the absences in Guideline B2.4.1.4 which include public holidays. The MCA believes that Guideline B2.4.1.4 is intended to explain more fully the "justified absences" referred to in A2.4.2.

This conclusion is supported by MLC Standard A2.3.3 which states the principle that a seafarer's normal working hours should be based on "one day of rest per week and rest on public holidays".

MLC Guidelines are not mandatory but Member States are required to "give due consideration to implementing their responsibilities under Part A of the Code in the manner provided for in Part B" (Article VI of MLC) and where guidelines are interpretative of MLC standards they are likely to be followed by the courts.

The MSN would also include guidance that leave in respect of public holidays should be paid. Although Guideline B2.4.1.4 does not expressly require that the leave given for public holidays must be paid, other provisions of the MLC (in particular Guideline B.2.2.2.3 and Standard A2.3.3) indicate that that this is the

[4] See, for example, Jensen, O.C. et al (2006) Working conditions in international seafaring, Occupational Medicine, http://occmed.oxfordjournals.org/content/56/6/393.

[5] The Working Time Regulations 1998, as amended.

intention, and MCA believes this is the proper interpretation of the MLC provisions on annual leave, hours of work and wages, taken together. This is the premise on which the assessment of costs and benefits, and the comparison between Options 1 and 2 in Section 6 are based.

The MSN would not have binding legal effect but nevertheless we consider that publishing it would help protect us against challenge for failure to implement or criticism for creating uncertainty as to the meaning of justified absences.

Under Option 1, public holidays would be treated differently from paid annual leave, so the prohibition on shipowners recalling seafarers from annual leave in case of operational need would not apply to public holidays.

The main disadvantage of Option 1 is that it would create uncertainty as to the number of public holidays which have to be recognised, given the disparity between Scotland (which has 9), England and Wales which have 8) and Northern Ireland (which has 10)[6]. It would also require that ad hoc public holidays would have to be treated in the same way as permanent public holidays. This would be out of step with legislation for shore-based workers, where a fixed allowance (1.6 weeks) was added to paid leave entitlements in respect of public holidays.

If the Government does not give a clear legal entitlement to additional paid leave in respect of public holidays, which is available to other sectors, it may appear that seafarers are not being treated equally with other sectors, in breach of the principle of non-discrimination contained in Article III(d) of the MLC.

5.3: Policy Option 2 – the preferred option

To implement the minimum requirements of the Maritime Labour Convention, 2006 and in doing so explicitly providing 8 days paid leave in respect of public holidays, in line with shore based workers in the UK, and providing seafarers with the right to take a case to an employment tribunal on annual or additional paid leave.

In addition to the proposal for 2.5 days leave per month of employment under Option 1, Option 2 would explicitly give seafarers a statutory entitlement to 8 days of paid leave in respect of public holidays. Paid leave for public holidays would be additional to annual leave. This would bring the statutory provisions for seafarers in to line with workers ashore in relation to public holidays, and it would give effect to the principle that leave for public holidays should not be deducted from annual leave which is contained in Guideline B2.4.1.4 of the MLC. If such provision is made in the 2014 Regulations, public holidays would not need to be included as an example of justified absences in the MSN supporting the Regulations.

In 2006 the Department of Business, Enterprise and Regulatory Reform (now the Department of Business, Innovation and Skills) established through consultation the principle that the inequalities between those who received public holidays on top of their annual leave entitlement, and those whose statutory leave was calculated to include public holidays, should be addressed. It was determined that workers should have 8 days paid leave to account for public holidays in addition to their minimum statutory paid leave period.

Workers ashore received this statutory entitlement through an amendment to the Working Time Regulations 1998, introduced by Regulations made under section 13 (7) of the Work and Families Act 2006 (which applies to Great Britain only; there are separate, equivalent provisions for Northern Ireland). The amendment became effective from 1 October 2007.

In international shipping, ships generally operate, and therefore seafarers are working, 24 hours a day and 7 days a week, irrespective of whether or not a particular day is a weekend or a public holiday. Unlike many land-based workers, seafarers cannot usually take the day off on public holidays. For this reason the provision of paid leave in respect of public holidays will often become a paid day off in lieu of a public holiday and will generally be added to the leave entitlement amassed by the seafarer during his period of employment on board.

The provisions in Option 2 for an additional 8 days for public holidays formed the basis of a public consultation conducted in 2009, 8 days is representative of the number of statutory public holidays in England, Wales, Scotland and Northern Ireland and follows the Working Time Regulations 1998 (as amended) and the equivalent Northern Ireland regulations. For shore workers in the UK the period of statutory leave entitlement is capped at 28 days, whereas the total for seafarers on UK ships would be

[6] www.gov.uk

38 days (in each case of course additional contractual leave can be agreed). As above, MCA considers the absence of a 28 day cap for seafarers reflects the fact that, since transport is a 24 hours a day/seven days a week activity and seafarers work long distances from home, a high proportion of seafarers work a 7-day week, and that seafarers can, and usually do, work much longer hours than workers ashore.[7]

Option 2 would therefore ensure that seafarers were treated no less favourably than other non-marine sectors in relation to public holidays.

Both elements of Option 2 (2.5 days of paid leave per month of employment and 8 additional days of paid leave in respect of public holidays) were strongly supported by seafarer representatives during public consultation, but the main shipowner organisations rejected the proposal for additional entitlement for public holidays. A key concern raised was that, since seafarers should not be recalled from annual leave to cover for absences, changes in schedule etc, there were significant potential additional costs from an additional 8 days leave. However this concern could be met by providing (as is provided for shore-based workers) that the extra days' leave are not annual leave but are additional to annual leave. Accordingly, only the 2.5 days per month of employment would be subject to the prohibition on recall.

In their responses to public consultation, shipowners argued that the proposal for additional paid leave in respect of public holidays was "gold-plating" of the Maritime Labour Convention, 2006, since it is more detailed and prescriptive than Guideline B2.4.1 of the MLC Code. However, the social partners have since discussed the issue further: the Chamber of Shipping, Nautilus International and the National Union of Rail, Maritime and Transport Workers have accepted the advantages of the certainty provided by Option 2 and have agreed to support this option. They have therefore set out in an industry agreement a common understanding of how the requirement should be applied in practice. Where elements of this agreement related to the application of the statutory provisions, they have been included as guidance in the Merchant Shipping Notice supporting the Regulations. MCA considers that providing an appropriate level of certainty in legislation is not "gold-plating".

This option has the advantage of providing certainty for both shipowners and seafarers about the amount of paid leave due in respect of public holidays, by specifying 8 days for the whole of the UK, and would remove any doubt as to whether the UK had fully implemented the MLC requirements regarding public holidays.

It would also cap the number of days given for public holidays at eight, ensuring that no extra paid leave is mandated for ad hoc public holidays, also in line with the way these are treated for shore-based workers in the UK. A number of other large flags (e.g. Norway, Netherlands, Liberia) are providing explicit entitlement in relation to public holidays, and the Philippines Overseas Employment Agreement, which is mandatory for all those employing Filipino seafarers, includes a provision for paid leave in respect of public holidays. It is however possible that other States may not give a similar clear entitlement when implementing the MLC. This may be because they do not have the same issues concerning different public holidays in different parts of the State. And information is widely available which shows that many ratifying States have more than 8 public holidays which would put their shipowners at a disadvantage compared to owners of UK flagged ships.

The 2014 Regulations would also provide seafarers with the right to take a case against their employer in respect of their entitlements to paid annual or additional leave to an Employment Tribunal in the UK. Comparable workers ashore, and on fishing vessels and inland waterway vessels, already have such enforcement rights.

This enforcement right was strongly supported by seafarer representatives during public consultation, but key shipowner organisations rejected it.

The shipowners' argument for opposing the provision is that there will be sufficient protection for the seafarer through the survey and certification regime for the MLC, which will ensure that leave provisions and hours of rest are checked by or on behalf of States. The survey and certification regime is underpinned by criminal sanctions which can potentially be imposed for non-compliance. The MLC also requires shipowners to have on board complaints procedures, so that seafarers can bring complaints where they consider the shipowner is not meeting its obligations under the Convention. On shore complaints procedures, to the competent authority or to a port state, would provide a second tier of protection.

[7] See, for example, Jensen, O.C. et al (2006) Working conditions in international seafaring, Occupational Medicine, http://occmed.oxfordjournals.org/content/56/6/393.

The counter argument is that the right to appeal to an Employment Tribunal is one available to all other UK workers and it is therefore appropriate and, arguably, necessary to give the same right to seafarers as are available to other workers, in accordance with Article III(d) of MLC. While inspection and investigation of complaints by MCA should ensure compliance with statutory requirements, an Employment Tribunal can ensure recompense for monetary loss for the seafarer (for example if they have not received holiday pay to which they are entitled).

An Employment Tribunal is expected to consider whether the seafarer has either tried to resolve a complaint at a lower level (through shipboard complaints procedures, or by a complaint to their flag State) before appealing to the Employment Tribunal, or has other good reason to do so, in determining whether there is a case to answer. This should limit the scope for unreasonable or unfounded claims.

The draft regulations on which public consultation was conducted applied this right to entitlements to annual leave and hours of rest. However, other transport workers do not have this right in respect of hours of rest, which are enforced by the regulator as key safety requirements, as they are for seafarers. We have therefore removed from the draft regulations the additional proposed right to enforce hours of rest through a complaint to an Employment Tribunal.

5.5 Shore Leave

When ships are in ports of call it is current practice to allow seafarers ashore to make use of recreational and welfare facilities provided in the vicinity of the port (known as “shore leave”). Both options would introduce a new statutory duty on shipowners to grant seafarers shore leave in ports of call to benefit their health and well-being as far as was consistent with their operational responsibilities in line with MLC Regulation 2.4.2. This provision was subject to separate consultation and a separate impact assessment has been produced. The impact assessment indicates that this provision is not expected to introduce any significant new costs on shipowners, and this has been borne out by responses to the public consultation.

6. COSTS AND BENEFITS OF THE AVAILABLE OPTIONS:

For the purposes of this impact assessment, the costs and benefits of the 2014 Regulations have been monetised to the extent that is possible. However, given the limitations of the available evidence base, it has not been possible to monetise any of the costs and benefits of the 2014 Regulations with the exception of some of the costs and benefits of providing seafarers with the right to take a case to an employment tribunal on annual or additional paid leave – see Section 6.10. 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.

Consultees were invited to submit additional evidence on the costs and benefits of the 2014 Regulations. The responses on specific aspects of the proposals are included below, but in summary, no evidence was provided of costs or benefits arising from the requirements which would enable MCA to make credible estimates of the overall impact of the regulations for the industry as a whole.

When considering the evidence on the costs and benefits of the 2014 Regulations that is presented in this impact assessment, it should be noted that there has been considerable uncertainty and disagreement between the employers and unions in the merchant shipping industry as to what constitutes annual leave for workers like seafarers who work for concentrated blocks of time and then have blocks of time off work. The Supreme Court judgment (Russell v Transocean (Scotland)) referred to at Section 1B establishes the principle that annual leave does not have to be taken at a time when the worker is scheduled to be working. The public consultation took place before this judgment was published and so some responses are based on the assumption that annual leave must be additional to leave taken as part of the normal pattern of work.

Furthermore, the impact of Option 1 and Option 2 upon current leave provision is uncertain because it depends on the different leave arrangements and working patterns which exist amongst seafarers. In addition, if Option 1 is adopted, the requirements regarding public holidays may be interpreted differently by different shipowners, which makes it difficult to predict costs with any accuracy.

Accordingly, given the uncertainties and lack of consensus within the industry, it is not possible to quantify either the overall costs of either option, or the overall difference in costs between Option 1 and Option 2.

6.1 Status Quo

The available evidence on the amount of paid leave that seafarers are currently receiving is presented below. However, it should be noted that MCA only have a partial picture and that comprehensive data on current contractual levels of leave provision is not available.

(a) Responses to the consultation can be viewed at http://www.mcga.gov.uk/c4mca/mcga07-home/shipsandcargoes/consultations/mcga-consultations-archive/consultations-closed_started-2009/hours_of_work_consultation/mcga-hrs_of_work_consultation_feedback.htm.

(b) Most employer responses support the MCA's view that most current leave entitlements exceed the MLC requirements. For example, costs are identified as resulting from reduced flexibility for shipowners in recalling seafarers from leave, rather than from any increase in leave entitlements.

(c) However, one response provides an example of current leave arrangements which are less than the minimum 2.5 days per month plus an additional 8 days for public holidays

(d) In addition, another response referred to evidence from the Labour Force Survey[8]. However the data provided from the Labour Force Survey is not suitable to inform our understanding of current industry practice for seafarers regarding holiday entitlement.[9]

(e) Furthermore, MCA checks and approves "non-standard" crew agreements under current Regulations. MCA have many examples of non-standard crew agreements and related collective agreements and contracts which provide seafarers working under such agreements on sea going UK vessels with paid leave well in excess of the minimum 2.5 days per month plus an additional 8 days for public holidays.

(f) Based on MCA's experience of checking them, widely-used International Transport Workers' Federation (ITF) collective agreements generally state the rate that annual leave accrues, and it is generally well in excess of the minimum required under MLC: 8 days per month of service is typical.

(g) Crew agreements or contracts of employment relating to seafarers employed on UK registered cross-channel ferries, domestic ferries and near-coastal dredgers typically work for 2 weeks on board followed by 2 weeks on leave ashore. This equates to some 26 weeks paid leave per year. Paid leave is intended to cover all conditions of service, including compensation for long hours and rest days worked, annual leave and public holiday entitlements.

(c) UK seafarers employed on UK deep-sea vessels, such as cruise ships (which operate a changeover system whereby one crew goes on leave as another commences work), typically work 3 months on and 3 months off, 6 months on and 6 months off, or 4 months on and 3 months off. Paid time off is accordingly well in excess of MLC requirement.

(d) However, no assumptions can be made about current leave provision under standard crew agreements, other than that it complies with the current statutory requirement under the 2002 Regulations.

(d) Nonetheless, UK Shipowners were fully involved in the development of MLC and voted for adoption of the Convention, including its paid annual leave provisions. It was understood that their support was based on the fact that they are already paying for leave in excess of the Convention requirements.

On the basis of the above evidence, MCA considers that most seafarers are currently receiving paid leave in excess of the minimum 2.5 days per month plus an additional 8 days for public holidays.

[8] One response stated that "... the autumn 2008 Labour Force Survey data tells us that 37% of employees in the sea and coastal transport sector report that they have less than 20 days leave".

[9] There are four key reasons for this. 1. The survey is subjective and the data reflects respondent's perception of their entitlement as opposed to providing accurate evidence of a contractual entitlement, and pre-dated the Transocean Case referred to in Section 1B, which clarified what should be counted as paid leave. 2. The sample includes a broad range of job sectors connected to 'Sea and Coastal passenger and freight water transport', and therefore may not reflect holiday patterns specific to seafarers. It is not possible to disaggregate to a closer alignment to the definition of a seafarer due to small sample sizes. 3. The sample fraction provided by the Labour force survey is very low. There are 35,000 people employed in the 'Sea and Coastal passenger and freight water transport' sector. The sample working in this sector that provided a response through the Labour force survey was well below 100 people. 4. The sample framework used by the Labour Force Survey may not be appropriate for the seafarer sector. The Labour force survey only covers those with a UK residential address and those who are resident at this address for at least 6 months a year. Those living on communal establishments such as civilian ships are excluded.

6.2 Comparison against the Do 'Nothing' scenario

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

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

Therefore, MCA expects that a proportion of any additional costs of complying with the minimum mandatory requirements of the MLC in respect of leave entitlements would have been incurred under the 'Do Nothing' scenario. As this proportion is uncertain, we do not know the extent to which the costs of complying with the minimum mandatory requirements of the MLC in respect of leave entitlements are truly additional costs of the 2014 Regulations or whether they would have occurred anyway under the Do Nothing scenario.

Given these uncertainties, this impact assessment assesses the additional costs to business of complying with the minimum mandatory requirements of the MLC in respect of leave entitlements, relative to the requirements of existing UK legislation or existing industry practice as applicable. These costs are outlined on the summary sheets. However, as discussed above, we do not know the extent to which these costs are truly additional costs of the 2014 Regulations.

6.3 Costs and benefits of Option 1

6.3.1 Costs of Option 1

The costs of Option 1 that have been identified are discussed below. These costs are broken down as follows.

- Costs to shipowners of increasing their employees' allowances of paid annual leave or giving additional paid leave to cover public holidays (Section 6.3.1.1);
- Costs to shipowners of reduced flexibility available to them to recall seafarers from leave in case of operational need (Section 6.3.1.2);
- Costs to shipowners of reviewing and amending contracts (Section 6.3.1.3);
- Potential costs associated with legal challenges (Section 6.3.1.4); and
- Further details of the uncertainty surrounding the costs of Option 1 (Section 6.3.1.5).

6.3.1.1. Costs to shipowners of increasing their employees' allowances of paid annual leave or giving additional paid leave to cover public holidays

Shipowners may need to increase their employees' allowances of paid annual leave or give additional paid leave to cover public holidays in order to meet the basic requirements of MLC on minimum annual leave provision, or may do so to provide for justified absences on public holidays. The MLC, is not explicit about whether such "justified absences" should be paid (and we would therefore not be explicit in the MSN) but this appears to be the intention of the MLC when the provision on annual leave is read with other provisions about wages and hours of rest.

The MCA therefore considers that, if an employer does not currently provide at least 38 days paid leave per year (i.e. 2.5 days per month plus at least 8 days in respect of public holidays), the employer should provide additional paid leave under Option 1 (unless seafarers are able – exceptionally in the maritime transport world which works seven days a week - to take actual public holidays off work, for example because the business closes down).

The costs of providing additional paid leave are difficult to quantify due to lack of available industry-wide data on:

- The number of seafarers on UK-flagged ships that are covered by MLC, by rank and type of ship;

- The average daily wages of seafarers, by rank;
- The average number of days of paid leave currently being provided to seafarers, by rank, and whether this includes days in respect of public holidays; and
- The proportion of shipowners that currently provide at least 38 days paid leave per year.

Furthermore, insufficient evidence was provided by consultees to allow MCA to estimate industry-wide costs. For example:

- One company in responding to the public consultation exercise said that the new entitlement to 38 days leave would result in an increase in leave entitlement for the crews they manage and estimated that this would cost them €282,500 across a fleet of 45 vessels and 1000 crew. However, insufficient detail is supplied to allow the MCA to assess the validity of this estimate under the regulations as currently drafted, or to extrapolate costs for other companies from the information.
- In addition, one sectoral organisation estimated that the regulations as they stood at consultation stage could increase employment costs by 20%, but this was based on the assumption that paid leave had to be taken at a time when the seafarer would normally be working. As explained in Section 1B that assumption is no longer valid, since the Supreme Court has established the principle that, for workers with a pattern of periods of work and periods of leave, paid annual leave can be taken during time when a worker is not scheduled to work.

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

However, as discussed in Section 6.1, it should be noted that MCA considers that most seafarers are currently receiving paid leave in excess of the minimum 2.5 days per month plus an additional 8 days for public holidays.

In addition, it should be noted that it is possible that a shipowner could challenge MCA's conclusion that public holidays should be paid under Option 1, but this is likely to be challenged in court proceedings, and may well be rejected by the court. Since MCA believes, as explained in Section 5.2, that the proper interpretation of the MLC is that leave in respect of public holidays should be paid, MCA considers that Option 1 does not reliably deliver that outcome.

Furthermore, it should be noted that shipowners who currently provide over 38 days leave per annum, but do not specifically define that 8 of the days provided are in respect of public holidays, could if they wished redefine their contracts to incorporate this. For shipowners who provide well in excess of 38 days, such as the examples provided in Section 6.1, it is unlikely that such shipowners would need to provide additional paid leave under Option 2. It may be more likely that a dispute would arise over this matter if the shipowner provides closer to 38 days per year.

Further explanation of potential costs associated with legal challenges is provided in Section 6.3.1.4 below and further details on the uncertainty surrounding the costs of Option 1 are provided in Section 6.3.1.5 below.

6.3.1.2. Costs to shipowners of reduced flexibility available to them to recall seafarers from leave in case of operational need

Even if a shipowner does not need to increase their employees' allowances of paid annual leave or give additional paid leave to cover public holidays, they may nevertheless incur costs as a result of the reduced flexibility available to them to recall seafarers from leave in case of operational need.

Consultees suggested that the increase in the statutory entitlement, and therefore to the period of leave during which employers should not recall seafarers to the ship would give rise to additional costs. An example given was that there would potentially be additional costs to employ short-term agency staff to cover sickness absences.

One company running passenger ships estimated that additional costs of £400,000 per year could arise because of this effect due to increasing the statutory entitlement to 2.5 days per month (which would be

an increase of 2 days per year over the current entitlement of four weeks[10] per year for someone contracted to work a seven-day week) and that costs would be higher if 8 days in respect of public holidays were added to the statutory entitlement. No breakdown of this estimate was supplied, so it has not been possible to estimate the industry-wide costs based on this information. Furthermore, unless other companies had the same current arrangements for leave and recall from leave, and the same number of staff, this estimate is unlikely to be representative of the cost of the proposals for other firms in the industry.

It should also be noted that, under Option1, MCA would be advising that public holidays are not to be counted as annual leave. The prohibition on recall from annual leave in case of operational need (as specified by MLC Guideline B2.4.2.4) would not therefore apply to public holidays. This would partially address the concern of shipowners regarding the additional staffing costs incurred as a result of seafarers' increased leave, and limit the additional costs associated with the reduced flexibility available to shipowners to recall seafarers from statutory leave on these additional days under Option 1.

6.3.1.3. Costs to shipowners of reviewing and amending contracts

The introduction of separate entitlements for different types of paid leave may encourage shipowners to review their contracts to ensure transparency.

For example, if an employer currently provides in excess of the minimum required paid leave, the employer may, in order to align with the guidance on public holidays, want to make it explicit in the contract that paid time off includes time off in respect of public holidays.

There will be staff time costs associated with this, but MCA considers that these costs will largely overlap with the cost of introducing Seafarer Employment Agreements (SEAs) to replace the Crew Agreement and so these impacts cannot be quantified separately.

The administrative costs of amending SEAs to comply with MLC standards are discussed in the impact assessment for the "Merchant Shipping (Maritime Labour Convention) (Seafarer Employment Agreements) Regulations" (DfT00173).

6.3.1.4. Potential costs associated with legal challenges

Costs could also potentially arise due to legal challenges, although these are difficult to estimate due to the uncertainties involved.

For example, as noted above, it is possible that a shipowner could challenge MCA's conclusion that public holidays should be paid under Option 1, and this is likely to be challenged in court proceedings. Such a challenge and counter challenge would create a risk of additional costs for shipowners and seafarers (legal fees, management time, etc).

Further details on the uncertainty surrounding the costs of Option 1 are provided in Section 6.3.1.5 below.

6.3.1.5. Further details of the uncertainty surrounding the costs of Option 1

The classification of public holidays as a justified absence would not be stated in the draft Regulations, but would be in the MSN supporting the draft Regulations. The MSN would provide give guidance on how the Convention requirements in the Regulations should be applied in practice. Shipowners would not have an explicit legal obligation to give additional paid leave for public holidays, and there is a possibility that they would choose to challenge MCA's conclusion that this was the effect of the Regulations. Ultimately, if they do not follow the MSN, and were challenged by seafarers or prosecuted by the MCA, it would be for the courts to determine what the Regulations meant. This would involve seafarers' organisations in the cost of mounting a legal challenge or prosecution costs for MCA, and would result in costs for shipowners to obtain legal advice and defend a legal challenge.

However since the MCA's conclusions are supported by the wording of the MLC, it would be a bold shipowner who argued that it could be ignored and the chances of the court agreeing with such an argument seem small.

[10] The current entitlement is based on the normal working week. Where a seafarer is contracted to work a seven-day week, their current entitlement is to 28 days of paid annual leave per year.

We perceive a difficulty to be caused by copying out the wording of the MLC, using Guideline B2.4.1.4 which refers to "public and customary holidays recognised as such in the flag State. The difficulty is that, within the UK (the flag State) different nations have different public holidays. Whilst it is not without doubt we consider that the most likely interpretation of the wording is that seafarers on a UK flagged ship would be entitled to paid leave in respect of every day that is a public holiday in any part of the UK, whether ad hoc or recurring, which is significantly more than the 8 days of additional leave provided by Option 2. (Other possible interpretations would seem to involve either favouring the public holidays of one nation in the UK over the public holidays of the others or devising a way of linking each UK flagged ship with a nation within the UK for this purpose)

Using the "copyout" approach, in Option 1, there is therefore a lack of clarity as to whether shipowners have to recognise 8, 9 or 10 public holidays (there are 8 public holidays in England and Wales, but 9 in Scotland and 10 in Northern Ireland[11]). If the courts were to take the higher rather than lower figure that would make Option 1, in one sense at least, more onerous and costly for shipowners than Option 2. Unless and until the lack of clarity is resolved by the courts, shipowners may incur the cost of legal advice and potentially the cost of taking the issue to court. Alternatively, shipowners may give 9 days, if needed, to avoid being taken to court by the unions.

Further uncertainty is created as additional staffing costs would arise in any year when there was an additional ad hoc holiday (such as those given for the Royal Wedding and the Queen's Diamond Jubilee in 2012) because that would have to be treated in the same way as permanent public holidays. The extent that any additional ad hoc holidays would take place is uncertain.

6.3.1.6. Overall Costs under Option 1

Given the limitations of the available evidence base, it has not been possible to monetise the potential costs under Option 1. Consultees were invited to submit additional evidence. However, insufficient evidence was provided to allow MCA to estimate industry-wide costs.

6.3.2 Benefits of Option 1

The benefits of increased public holiday were analysed and reported in the BIS Public consultation document on the introduction of a statutory right to paid leave in respect of public holidays for shore-based workers, included at Annex 7 to this impact assessment (extracts have been edited to focus on those benefits which may be most relevant to the proposals for increased paid annual leave for seafarers). For seafarers who currently receive less than 38 days paid leave per year, MCA considers that they should receive the benefit of increased annual leave provision under Option 1. However, MCA believes that most seafarers already receive in excess of 38 days paid leave (See Section 6.1), which would limit the benefits to seafarers. The conclusions of this impact assessment are heavily contingent on this assumption.

A key difference between Option 1 and Option 2 is that Option 1 follows more closely the MLC provisions and leaves their interpretation to the courts, thus keeping elaboration to a minimum. This may give industry more flexibility but, in relation to the number of days that must be recognised as public holidays, Option 1 may potentially result in greater benefits to seafarers who currently receive less than 38 days paid leave per year than Option 2 (e.g. taking into account 9 public holidays in Scotland, or additional public holidays such as the Queen's Diamond Jubilee in 2012) (see Section 6.3.1.5. and 6.4.3 for more details).

Consultees were invited to submit any additional evidence on these benefits at public consultation. However, no quantitative evidence was received. Therefore, it has not been possible to monetise the benefits of Option 1 in this impact assessment.

6.4 Costs and benefits of Option 2 (The preferred option)

6.4.1 Costs of Option 2 (The preferred option)

The costs of Option 2 that have been identified are discussed below. These costs are broken down as follows.

[11] www.gov.uk

- Costs to shipowners of increasing their employees' allowances of paid annual leave or giving additional paid leave to cover public holidays (Section 6.4.1.1);
- Costs to shipowners of reduced flexibility available to them to recall seafarers from leave in case of operational need (Section 6.4.1.2);
- Costs to shipowners of reviewing and amending contracts (Section 6.4.1.3); and
- Potential costs associated with legal challenges (Section 6.4.1.4).

6.4.1.1 Costs to shipowners of increasing their employees' allowances of paid annual leave or giving additional paid leave to cover public holidays

Under Option 2, an explicit statutory provision would be made that paid leave is to be granted in respect of public holidays, thus raising the minimum required annual and other paid leave to be provided by shipowners to 38 days per year, with 8 of those days specifically defined as being in respect of UK public holidays.

MCA expects that the cost of giving additional paid leave to any seafarers who currently get less than the MLC minimum would be of a similar order of magnitude to that under Option 1. This is because, for seafarers who currently receive less than 38 days leave per year, MCA expect that they would receive increased paid leave provision under both Option 1 and Option 2.

However, unlike Option1, the number of public holidays that must be recognised would be limited to 8. This would avoid the possibility that 9 or 10 days paid leave must be given in respect of public holidays. In addition, it would ensure that ad hoc public holidays will not lead to an entitlement to additional paid leave and that there would be no increased costs for shipowners in those years when there are additional ad-hoc public holidays. These differences could potentially mean that these costs could be lower under Option 2 than under with Option 1.

As for Option 1, the costs of Option 2 are difficult to quantify due to lack of available industry-wide data (see Section 6.3.1.1). Furthermore, as for Option 1, insufficient evidence was provided by consultees to allow MCA to estimate industry-wide costs under Option 2 (see Section 6.3.1.1). Given the limitations of the available evidence base, it has therefore not been possible to monetise these costs in this impact assessment.

However, as for Option 1, it should be noted that MCA considers that most seafarers are currently receiving paid leave in excess of the minimum 2.5 days per month plus an additional 8 days for public holidays.

Furthermore, as for Option 1, it should be noted that shipowners who currently provide over 38 days leave per annum, but do not specifically define that 8 of the days provided are in respect of public holidays, could if they wished redefine their contracts to incorporate this. For shipowners who provide well in excess of 38 days, such as the examples provided in Section 6.1, it is unlikely that such shipowners would need to provide additional paid leave under Option 2. It may be more likely that a dispute would arise over this matter if the shipowner provides closer to 38 days per year.

6.4.1.2 Costs to shipowners of reduced flexibility available to them to recall seafarers from leave in case of operational need

As noted for Option 1, even if a shipowner does not need to increase their employees' allowances of paid annual leave or give additional paid leave to cover public holidays, they may nevertheless incur costs as a result of the reduced flexibility available to them to recall seafarers from leave in case of operational need.

Consultees suggested that the increase in the statutory entitlement, and therefore to the period of leave during which employers should not recall seafarers to the ship would give rise to additional costs. An example given was that there would potentially be additional costs to employ short-term agency staff to cover sickness absences (see Section 6.3.1.2).

Under Option 2, MCA would make a distinction between "annual leave" and "additional leave". The prohibition on recall from leave in case of operational need (as specified by MLC Guideline B2.4.2.4). would apply only to "annual leave". This would partially address the concern of shipowners regarding the

additional staffing costs incurred as a result of seafarers' increased leave, and the reduced flexibility available to shipowners to recall seafarers from statutory leave on these additional days. This option would, like Option 1, limit that additional cost.

Therefore, it is considered that these costs would be a similar order of magnitude to Option 1.

6.4.1.3. Costs to shipowners of reviewing and amending contracts

It is considered that these costs should be a similar order of magnitude to those under Option 1 which are discussed in Section 6.3.1.3.

6.4.1.5. Potential costs associated with legal challenges

Option 2 provides greater certainty for both seafarers and shipowners, minimising the risk of legal challenge. Given the uncertainty surrounding whether any legal challenges would take place, these costs are uncertain, but are considered likely to be lower than under Option 1 (see Section 6.3.1.4).

6.4.1.6. Overall Costs under Option 2

Given the limitations of the available evidence base, costs have not been quantified under Option 2 and it is not possible to identify the scale of these costs, nor the difference in cost between option 1 and option 2. Consultees were invited to submit any additional evidence. However insufficient evidence was provided to allow MCA to estimate industry-wide costs.

6.4.2 New right of access to Employment Tribunals

In response to public consultation, shipowner organisations raised concerns about the potential cost to shipowners of defending Employment Tribunal claims brought by seafarers about their paid leave entitlements. These costs are considered further in Section 6.10 below.

6.4.3 Benefits Option 2 (The preferred option)

MCA expect that the potential benefits to seafarers under Option 2 would be similar to those identified under Option 1. This is because, for seafarers who currently receive less than 38 days leave per year, MCA expect that they would receive the benefit of increased paid leave provision under both Option 1 and Option 2.

However, Option 2 states explicitly that the additional 8 days of leave in respect of public holidays is paid leave, removing any possible scope for argument.

As the number of public holidays that must be recognised would be limited to 8, this would avoid the possibility that 9 days paid leave must be given in respect of public holidays. In addition, it would ensure that ad hoc public holidays will not lead to an entitlement to additional paid leave. These differences could potentially mean that these benefits could be lower under Option 2 than under with Option 1.

For seafarers who currently receive less than 38 days leave per year, MCA expect that they would receive the benefit of increased paid leave provision under any of the policy options considered in this impact assessment. However, MCA believes that the majority of seafarers would not benefit in this way from the 2014 Regulations (Option 2), as MCA believes that most seafarers already receive in excess of 38 days paid leave. The conclusions of this impact assessment are heavily contingent on this assumption.

Consultees were invited to submit any additional evidence on these benefits at public consultation. However, no quantitative evidence was received.

6.5 Familiarisation Costs

MCA will publish information about the proposed changes in a new Merchant Shipping Notice. The MCA has consulted and discussed the provisions extensively through the Tripartite Working Group, and there have been a number of events publicising the changes resulting from the MLC as a whole. Indeed, the MLC has been available for scrutiny since 2006. These actions will minimise the costs for shipowners and seafarers of becoming familiar with the new requirements, which are considered to be too small to quantify for this element alone.

6.6 Overall costs and benefits of the proposal

MCA believes that, on a proper interpretation of all the relevant provisions of the MLC, that seafarers are entitled to leave for public holidays in addition to their paid annual leave entitlement, and that the additional leave for public holidays should be paid, the costs of providing additional paid leave to seafarers are likely to be comparable under Option 1 and Option 2.

MCA believes that most seafarers already receive in excess of 38 days paid leave (See Section 6.1). The extent of costs is uncertain given the lack of evidence for the industry as a whole (see Section 6.3.1 and Section 6.4.1).

However Option 1, unlike Option 2, requires that ad hoc public holidays be treated in the same way as permanent public holidays and also gives rise to uncertainty as regards the number of days due in respect of public holidays, given the disparity between Scotland, Northern Ireland and the rest of the UK. Both these issues could result in additional costs for shipowners and benefits for seafarers under Option 1 compared to Option 2 (see Section 6.3.1.1, Section 6.4.1.1, Section 6.3.2 and Section 6.4.3).

Option 2 (the 2014 Regulations) would provide greater certainty, which itself will, MCA believes, save costs for shipowners and the unions (see Section 6.4.1.1 and 6.4.1.5), and reduce the risk of challenge to the Government on the basis that the UK have under implemented or failed to treat seafarers as favourably as other workers.

Under Option 2, the introduction of the right to appeal to an Employment Tribunal may also give rise to additional costs to seafarers who bring claims, to shipowners required to defend claims, and to the government. These costs are described in section 6.10.

The above comparison of costs under Options 1 and 2 is based on the premise that under both Options, leave given in respect of public holidays should be paid. MCA believes this is the proper interpretation of the MLC provisions on annual leave, hours of work and wages. The risk that this is incorrect is discussed in Section 8.

6.7 "One-in/Two-out" (OITO)

Option 1 would be outside the scope of OITO because it simply copies out the requirements of the MLC Standard A2.4.

Option 2 is in scope of OITO. Option 2 has two main differences to Option 1 which are discussed in turn below.

Firstly, Option 2 specifically requires an additional 8 days of paid leave in respect of public holidays in the UK, which is in accordance with MLC Guideline B2.4.1.4(a), but is not copy-out of the minimum Convention text. As MCA believes that the proper interpretation of the MLC is that leave in respect of public holidays should be paid, MCA considers that specifically requiring an additional 8 days of paid leave in respect of public holidays in the UK would not go beyond the minimum requirements of the MLC. Therefore, MCA considers that this aspect of Option 2 would not impose any additional costs to business over the copy-out approach. In contrast, as explained in Section 5 and 6, the reason this has been done is that due to the uncertainty inherent in a copy-out approach, MCA considers that specifically requiring an additional 8 days of paid leave in respect of public holidays could result in lower costs to business than adopting a copy-out approach. For example, lower costs to business could arise as this would provide a firm limit the number of additional days of paid leave to which seafarers are entitled in respect of public holidays. MCA considers that this aspect of Option 2 provides clarification of the intention of the measure, and an appropriate level of clarity for UK legislation. Following extensive discussion of this issue since public consultation closed, the Chamber of Shipping and the seafarer unions have agreed an approach to paid leave in respect of public holidays and have accepted that this is the right way forward. Since MCA considers that specifically requiring an additional 8 days of paid leave in respect of public holidays in the UK would not go beyond the minimum requirements of the Convention, it is considered that this aspect of Option 2 is outside the scope of OITO.

Secondly Option 2 provides seafarers with the right to take a case to an employment tribunal on annual or additional paid leave. It is considered that this aspect of Option 2 is within the scope of OITO because under BIS guidance, "the …amendment of an enforcement framework, where considerations of the

treatment for individual companies are irrelevant, is in scope of OITO"[12]. Although there is already an enforcement framework which allows workers in the UK to appeal to an Employment Tribunal where they believe they are not receiving their statutory entitlements to paid leave, the 2014 Regulations would extend access to that framework to a group of workers who are currently excluded- i.e. seafarers employed on UK ships. Although there are potential costs from introducing this right, access to an Employment Tribunal is a form of remedy for those not obtaining entitlements, and is in line with government policy on moving enforcement action away from criminal to civil penalties. It would also bring seafarers' rights in this respect into line with other UK workers.

The costs and benefits of providing seafarers with the right to take a case to an employment tribunal on annual or additional paid leave are assessed in Section 6.10 of this Impact Assessment. The Regulatory Policy Committee has advised that "Any impacts on businesses that are compliant with employment law (e.g. where the seafarer's ET case is rejected) that result from this proposal, would be in scope of OITO." An estimate of the costs to businesses that are compliant with employment law is presented in Section 6.10.14 of this Impact Assessment, and an estimate of the resulting Equivalent Annual Net Cost to Business (EANCB) is presented in Section 9.1 of this Impact Assessment.

6.8 Benefits of UK Ratification of MLC

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 2014 Regulations in order for these benefits to be fully realised. However, these Regulations are part of a package of measures required to fully implement the MLC, and so it is not possible to determine the precise contribution of the 2014 Regulations to realising these benefits.

In consultation exercises on MLC legislation, consultees have been invited to provide additional evidence on these benefits. However, no evidence has been submitted.

The competitive benefits that implementation of the MLC will bring to UK shipowners are discussed in Section 10.2. These have been forcefully conveyed by UK industry in a letter to the then Better Regulation Minister, attached at Annex 6 to this IA, which states: "The shipping industry believes that the compliance costs [of the MLC] are manageable. By contrast, the costs to the UK shipping of not ratifying the MLC will be considerably higher. UK ships will be subject to detailed port state control inspections in other countries, without the flexibility that UK implementation will bring, and the UK will miss an opportunity to be seen as a leading advocate of decent living and working conditions for all seafarers. Until we ratify, the UK will also be denied the use of our own port state control procedures to ensure that ships visiting these islands comply with the standards of the MLC, and do not gain competitive advantage by ignoring them."

6.9. Costs of MLC Ratification for non- UK registered ships (See also Annex 3)

As the UK has ratified the MLC, these regulations will enable the UK to enforce the minimum rights for seafarers provided for by the MLC on non-UK registered ships that call at UK ports on a 'no more favourable treatment' basis, meaning that non-UK registered ships that call at UK ports would be required to comply with the standards of the MLC. This could potentially lead to additional costs for the owners and operators of non-UK ships registered in countries which have not ratified the MLC both in terms of the costs of complying with the MLC and the potential to face delays when calling at UK ports. However, the extent that the Regulations will contribute to such costs is uncertain. Furthermore, such costs would only represent a cost to the UK if they fall on UK entities (e.g. UK businesses or consumers). The extent to which this would be the case is uncertain. The costs for non-UK registered ships are discussed in detail in the impact assessment for the 'Merchant Shipping (Maritime Labour Convention)((Survey and Certification) Regulations 2013' (DfT00193).

In other consultation exercises on MLC legislation, consultees have been invited to provide additional evidence on these costs. However, no evidence has been submitted to date.

6.10. Costs and Benefits of providing seafarers with the right to take a case to an employment tribunal on annual or additional paid leave

6.10.1 Introduction

[12] One-in, Two-out Case Law, July 2013 – Department for Business, Innovation and Skills

Under Option 2, seafarers would be provided with the right to take a case to an employment tribunal on annual or additional paid leave. This section assesses the costs and benefits associated with introducing this enforcement measure. Due to the limitations of the available evidence, these costs and benefits are subject to significant uncertainty. In particular, there is considerable uncertainty regarding the number of Employment Tribunal Cases that seafarers working on UK registered ships will bring about their paid leave entitlement. The estimates presented in Section 6.10 are very sensitive to the choice of assumptions, and should therefore be interpreted as indicative estimates of the order of magnitude of these costs and benefits.

In addition, under Option 2, the Regulations would make separate provision for claims to be made to Industrial Tribunals in Northern Ireland. In this Impact Assessment, the estimated number of Employment Tribunal Cases and Hearings involving seafarers working on UK registered ships, and the estimated monetised costs and benefits associated with introducing this enforcement measure, are based on evidence and data relating to Employment Tribunals in Great Britain. However, since the estimated number of cases and hearings relates to all seafarers working on UK registered ships, the actual cases and hearings could be split between Great Britain and Northern Ireland. It is not possible to estimate what proportion of cases would be made in Northern Ireland because we do not know what proportion of seafarers working on UK registered ships would be likely to pursue their claim in Northern Ireland. Given this, for the purposes of this Impact Assessment, it has been assumed that all claims involving seafarers working on UK registered ships are pursed in Employment Tribunals in Great Britain.

It should be noted that Employment Appeal Tribunal cases are not taken into account in this analysis on the grounds of proportionality. This is because an Impact Assessment produced by the Ministry of Justice indicates that only around 3% of accepted Employment Tribunal Cases produced an appeal in the recent past.[13]

6.10.2 Estimated number of Employment Tribunal Cases

Table 1 shows that, during the period 2010/11 to 2012/13 (1 April 2010 to 31 March 2013), the average number of claims accepted by employment tribunals (ETs) in Great Britain was around 198,656 per year, comprising around 58,181 single claims per year and around 140,475 multiple claims per year; and that, on average, the multiple claims were grouped into around 5,263 'multiple claim cases' per year (i.e. there were around 26.7 claimants per 'multiple claim case'), and that the average number of cases accepted by ETs in Great Britain was around 63,443 per year.

Table 1: Claims and Cases accepted by Employment Tribunals, 2010/11 to 2012/13 (Great Britain)

	Single Claims per Year[14]	Multiple Claims per Year[14]	Multiple Claim Cases per Year[15]	Total Claims per Year[14]	Total Cases per Year[16]	Average Claimants per Multiple Claim Case[17]
April 12-March 13	54,704	136,837	4,688	191,541	59,392	29.2
April 11-March 12	59,247	127,084	5,200	186,331	64,447	24.4
April 10-March 11	60,591	157,505	5,900	218,096	66,491	26.7
Average	58,181	140,475	5,263	198,656	63,443	26.7

It should be noted that: "Single claims are those brought by an individual against an employer (the respondent). Each single claim is processed administratively, and managed and heard judicially on its own. Multiple claims are those where two or more people bring claims usually against a single employer (but not necessarily so) arising from the same or similar circumstances. Importantly, multiple claims are processed, managed and heard together in their multiple grouping."[18]

[13] http://www.legislation.gov.uk/ukdsi/2013/9780111538654/pdfs/ukdsifia_9780111538654_en.pdf

[14] Source: Ministry of Justice (2013) Tribunal Statistics Quarterly, January to March 2013 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207851/tribunals-stats-q4-2013.xls

[15] Source: Statistics received from the Ministry of Justice.

[16] Source: DfT calculation. Calculated by adding 'Single Claims per Year' plus 'Multiple Claim Cases per Year'.

[17] Source: DfT calculation. Calculated by dividing 'Multiple Claims per Year' by 'Multiple Claim Cases per Year'.

[18] Source: Ministry of Justice (2012) Employment Tribunals and EAT Statistics, 2011-12 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/163472/employment-trib-stats-april-march-2011-12.pdf.pdf

It should also be noted that: "A claim to an employment tribunal can contain a number of different types of complaint, known as jurisdictional complaints. When deciding any claim, the tribunal has to make determinations under each jurisdiction."[18]

Table 2 shows that, during the period 2010/11 to 2012/13, the average number of claims accepted by ETs in Great Britain in relation to the Working Time Directive was around 102,809 per year; and that, on average, around 52% of the total number of claims accepted by ETs contained a Working Time Directive claim.

Table 2: Claims accepted by Employment Tribunals by Jurisdiction, 2010/11 to 2012/13 (Great Britain)

	Working Time Directive Claims Accepted per Year[14]	Total Claims Accepted per Year[14]	Proportion of Total Claims that included a Working Time Directive Claim[19]
2012/13	99,627	191,541	52%
2011/12	94,697	186,331	51%
2010/11	114,104	218,096	52%
Average	102,809	198,656	52%

For the purposes of this Impact Assessment, it is assumed that Working Time Directive claims are distributed between 'Single Claims' and 'Multiple Claims' in line with the average for all claims. Therefore, it is estimated that, during the period 2010/11 to 2012/13, the average number of cases accepted by ETs in Great Britain that contained a Working Time Directive claim was around 32,800 per year[20].

The Ministry of Justice has advised that around 85% of Working Time Directive claims in 2012/13 in Great Britain related to Annual Leave. For the purposes of this Impact Assessment, it is assumed that this percentage applies in all years. Therefore, it is estimated that, during the period 2010/11 to 2012/13, the average number of cases accepted by ETs in Great Britain that contained a Working Time Directive claim relating to Annual Leave was around 27,900 per year[21].

On average, total employment in Great Britain between February 2012 and March 2013 was around 28.8 million.[22] For the purposes of this Impact Assessment, it is assumed that this figure applies in all years. Therefore, it is estimated that, during the period 2010/11 to 2012/13, the average number of cases accepted by ETs in Great Britain that contained a claim relating to Annual Leave was around 0.97 per year per thousand in employment[23].

The MCA does not have accurate figures for the number of people working on the UK fleet, but it is estimated that around 89,000 seafarers are working on UK registered ships (merchant ships)[24]. For the purposes of this Impact Assessment, it is assumed that the proportion of seafarers that would have wished to bring a case to an Employment Tribunal about their paid leave entitlement is line with the average ratio in the previous paragraph. Therefore, it is estimated that, during the period 2010/11 to 2012/13, the average number of Employment Tribunal cases brought by seafarers working on UK registered ships would have been around 86 per year if these seafarers had the right to bring a case to an Employment Tribunal about their paid leave entitlement at this time[25].

[19] Source: DfT calculation. Calculated by dividing 'Working Time Directive Claims Accepted per Year' by 'Total Claims Accepted per Year'.

[20] Source: DfT estimate. Estimated by multiplying around 63,443 by around 52%. Rounded to the nearest 100.

[21] Source: DfT estimate. Estimated by multiplying around 32,800 by around 85%. Rounded to the nearest 100.

[22] Source: Office for National Statistics, Regional Labour Force Statistics http://www.nomisweb.co.uk/

[23] Source: DfT estimate. Estimated by dividing around 27,900 by around 28.8 million and multiplying by 1000.

[24] Source: DfT estimate. Estimated using administrative data from the MCA Seafarer documentation system and from an industry survey undertaken by the Chamber of Shipping.

[25] Source: DfT estimate. Estimated by multiplying around 89,000 by around 0.97 and dividing by 1000.

However, when estimating the number of Employment Tribunal cases that would be brought by seafarers working on UK registered ships in future years under Option 2, the analysis needs to take account of policy developments. The key policy changes that are taken into account in this analysis are as follows:

- Early Conciliation: From April 2014, the UK Government is introducing an Early Conciliation process that will make it a requirement for most prospective claimants to send the details of their claim to Acas before they are able to lodge the claim with the employment tribunal. This would enable Acas to offer the parties the opportunity to resolve their dispute without the need for tribunal involvement[26], although there would be no obligation on the parties to accept this. An Impact Assessment has been produced by the Department for Business, Innovation & Skills (BIS) on Early Conciliation[27]. For the purposes of this Impact Assessment, it is assumed that this process is in place throughout the appraisal period for simplicity, although there is some uncertainty over the precise timing regarding when this will be introduced.

- Introduction of Fees: From 29 July 2013, the Government has introduced fees for lodging claims with Employment Tribunals and for the hearing. This is intended to reduce the number of claims brought, encouraging resolution of any dispute at a lower level, but will also reduce the cost borne by the taxpayer for the Employment Tribunal process. An Impact Assessment has been produced by the Ministry of Justice (MoJ) on the introduction of fees[28].

Early Conciliation is currently under consideration in Northern Ireland and may be introduced at a later date.

For the purposes of this Impact Assessment, it is assumed that the number of cases submitted to ACAS for Early Conciliation per year will be equal to the estimate of the average number of Employment Tribunal cases that would have been brought by seafarers working on UK registered ships per year during the period 2010/11 to 2012/13 if these seafarers had the right to bring a case to an Employment Tribunal about their paid leave entitlement at this time. Consequently, it is estimated that there will be around 86 cases submitted to ACAS for Early Conciliation per year during the appraisal period.

The assumptions that have been made regarding the impact of 'Early Conciliation' on the number of Employment Tribunal cases that would be brought by seafarers working on UK registered ships are shown in Table 3. Given the options that are available under the MLC for seafarers' complaints to be resolved, MCA consider that Early Conciliation may not have the impact on seafarer cases that it does generally. Therefore, a conservative approach is taken for the purposes of this Impact Assessment.

Table 3: Assumptions regarding the impact of Early Conciliation

High Scenario of the number of cases	No impact on the number of Employment Tribunal Cases.
Low Scenario of the number of cases	An 18% reduction in the number of employment tribunal cases. This assumption is based on the approach taken in the BIS Impact Assessment on Early Conciliation[27] which estimated that Early Conciliation will lead to an 18% reduction in employment tribunal claims overall.
Best Estimates	The mid-point of this range (i.e. a 9% reduction in the number of employment tribunal cases). This assumption is based on guidance in the Impact Assessment Toolkit.[29]

[26] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/52598/13-538-early-conciliation-a-consultation-on-proposals-for-implementation.pdf

[27] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/52611/13-539-early-conciliation-a-consultation-on_proposals-for-implementation-impact.pdf

[28] http://www.legislation.gov.uk/ukdsi/2013/9780111538654/pdfs/ukdsifia_9780111538654_en.pdf

[29] "In the absence of information on the distribution of costs and benefits, use the mid-point of the range." https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31608/11-1112-impact-assessment-toolkit.pdf

The assumptions that have been made regarding the impact of the 'Introduction of Fees' on the number of Employment Tribunal cases that would be brought by seafarers working on UK registered ships are shown in Table 4.

Table 4: Assumptions regarding the impact of the Introduction of Fees

High Scenario of the number of cases	No impact on the number of Employment Tribunal Cases.
Low Scenario of the number of cases	A further 5.3% reduction in number of employment tribunal cases[30]. This assumption is based on the 'High Response' scenario from the MOJ Impact Assessment on the introduction of fees[28].
Best Estimates	A further 3.2% reduction in number of employment tribunal cases[31]. This assumption is based on the mid-point between the 'Low Response' and 'High Response' scenarios from the MOJ Impact Assessment on the introduction of fees[28].

On the basis of the assumptions in Table 3 and 4, Table 5 presents the estimates of the number of Employment Tribunal cases that would be brought by seafarers working on UK registered ships per year.

Table 5: Estimated number of Employment Tribunal cases that would be brought by seafarers working on UK registered ships per year

	High Scenario	Low Scenario	Best Estimates
Number of cases submitted to ACAS for Early Conciliation per year	86	86	86
Impact of Early Conciliation (Percentage Change)	0%	-18%	-9%
Sub Total	86	71	78
Impact of the Introduction of Fees (Percentage Change)	0%	-5.3%	-3.2%
Estimated number of Employment Tribunal cases per year	86	67	76

For the purposes of this Impact Assessment, the estimates in Table 5 are used in the analysis of the costs and benefits of associated with introducing this enforcement measure. However, it should be noted that there is considerable uncertainty regarding whether experience in other sectors provides an appropriate guide for the number of Employment Tribunal cases that is likely in relation to seafarers working on UK registered ships. In particular, it should be noted that:

(1) Since 2007/08, the total number of Working Time Directive claims includes around 10,000 claims from airline employees that have been resubmitted a number of times[26]. This figure is therefore being distorted by one particular working time issue in another sector.

(2) Option 2 provides certainty about seafarers' statutory entitlements to paid leave. In addition, the guidance issued in support of these regulations should help to clarify the impact of the amending legislation and limit the number of unfounded claims.

(3) A high proportion of the enquiries MCA has received since the publication of the proposals for annual leave were based on disagreements between employers and seafarers about whether time spent ashore as part of the seafarers' normal pattern of work should include paid leave. The result of the recent Supreme Court judgment (Russell v Transocean (Scotland)) – referred to at the beginning of Section 6 –

[30] Source: DfT estimate. Estimated by calculating the percentage change from the baseline number of employment tribunal cases in the MOJ Impact Assessment (47,222) to the number of employment tribunal cases under the 'High Response' scenario (44,717).

[31] Source: DfT estimate. Estimated by calculating the percentage change from the baseline number of employment tribunal cases in the MOJ Impact Assessment (47,222) to the average number of employment tribunal cases under the 'Low Response' and 'High Response' scenarios (45,711) (which is the average of 44,717 and 46,705).

is likely to discourage seafarers' from bringing claims on the basis that paid annual leave should be additional to leave provided as part of the normal pattern of work.

(4) There are other ways that a seafarer may raise concerns about their paid leave entitlements.

(a) Shipowners must have a complaints procedure on board which allows seafarers to make a complaint if they believe they are not receiving any of their entitlements under the MLC, including those on paid leave.

(b) Seafarers also have the right to make a complaint to the MCA or any authorised officer in a foreign port, if they have not been satisfied with the shipowner's response to their complaint.

(5) There may be other factors that lead to seafarers working on UK registered ships bringing a higher or lower number of Employment Tribunal cases than workers in other sectors of the economy.

6.10.3 Costs to Employers of responding to Employment Tribunal cases

The BIS Impact Assessment on Early Conciliation[27] (Table 1) estimated that the average unit cost faced by an employer as a result of responding to an Employment Tribunal case is around £3,900 (2012 prices).

For the purposes of this Impact Assessment, this estimate is assumed to apply for Employment Tribunal cases involving seafarers working on UK registered ships. However, it should be noted that this estimate represents the average across all types of cases and all outcomes. Annual Leave cases are factual, and therefore this may be an overestimate of the average unit cost faced by the average employer in relation to an Annual Leave case. Furthermore, it should be noted that other factors may mean that the average cost for employers of seafarers working on UK registered ships differs from the average cost for other employers.

To estimate the total costs to Employers of responding to Employment Tribunal cases per year, the above estimate is multiplied by the estimated number of Employment Tribunal cases per year from Table 5.

Therefore, it is estimated that the total costs to Employers of responding to Employment Tribunal cases per year is between around £261,000 and around £336,000 per year, with a Best estimate of around £296,000 per year.

Over the 10 year appraisal period, the present value of these total costs is estimated at between around £2.2 million and around £2.9 million, with a Best estimate of around £2.5 million.

Furthermore, it should be noted that there may be additional costs for employers when providing seafarers with recompense for any loss suffered as a result of their entitlements being withheld, which have not been monetised due to the uncertainties involved. In addition, the MOJ Impact Assessment on the introduction of fees[28] explains that employers would pay fees in some instances. For example, there is a £60 fee for respondents for applying for dismissal after settlement or withdrawal. Given the estimates for all employers in the UK presented in the MOJ Impact Assessment and the estimates presented above, these costs have not been monetised on the grounds of proportionality.

6.10.4 Costs to Claimants as a result of Employment Tribunal cases

The BIS Impact Assessment on Early Conciliation[27] (Table 1) estimated that the average unit cost faced by a claimant as a result of an Employment Tribunal case is around £1,400 (2012 prices).

For the purposes of this Impact Assessment, this estimate is assumed to apply for Employment Tribunal cases relating to seafarers working on UK registered ships. However, it should be noted that this estimate represents the average across all types of cases and all outcomes. Annual Leave cases are factual, and therefore this may be an overestimate of the average unit cost faced by the average claimant in relation to an Annual Leave case. Furthermore, it should be noted other factors may mean that the average cost for a seafarer claimant differs from the average cost for all claimants.

To estimate the total costs to Claimants as a result of Employment Tribunal cases, the above estimate is multiplied by the estimated number of Employment Tribunal cases per year from Table 5.

Therefore, it is estimated that the total costs to Claimants of Employment Tribunal cases per year is between around £94,000 and around £121,000 per year, with a Best estimate of around £106,000 per year.

Over the 10 year appraisal period, the present value of these total costs is estimated at between around £0.8 million and around £1.0 million, with a Best estimate of around £0.9 million.

6.10.5 Costs to Government as a result of Employment Tribunal Cases

The BIS Impact Assessment on Early Conciliation[27] explains that ACAS' post-claim conciliation (Individual Conciliation) has a take-up rate of 75%.

In addition, MoJ statistics[14] show that, during the period 2010/11 to 2012/13 (1 April 2010 to 31 March 2013), an average of 35% of the total number of Working Time Directive claims in Great Britain that were disposed of, were disposed of at an Employment Tribunal Hearing (i.e. Successful at hearing, Unsuccessful at hearing, Dismissed at a preliminary hearing and Default judgement).

The BIS Impact Assessment on Early Conciliation[27] (Table 1) estimated that the average costs to the Government that are incurred throughout the employment tribunal process are around £3,200 (2012 prices) for a case where the outcome is an Employment Tribunal Hearing and around £590 (2012 prices) for a case where the outcome is post-claim conciliation (Individual Conciliation). In addition, the BIS Impact Assessment on Early Conciliation[27] (Table A2) estimated that the average unit cost of receipt and allocation per case is £400 (2012/13) prices, and also includes estimates of the average unit costs for other elements.

For the purposes of this Impact Assessment, the above estimates are assumed to apply for Employment Tribunal cases involving seafarers working on UK registered ships. However, it should be noted that these estimates represent the averages across all types of cases. Annual Leave cases are factual, and therefore this is expected to be an overestimate of the average unit cost to the Government in relation to an Annual Leave case. Furthermore, it should be noted that other factors may mean that the average cost of such cases involving seafarers working on UK registered ships differs from the average cost for all such cases.

For the purposes of this Impact Assessment, based on the above evidence, Table 6 sets out the assumptions that have been made to estimate the total costs to the Government.

Table 6: Assumptions

	Cases where the outcome is an Employment Tribunal Hearing	**Case where the outcome is post-claim conciliation**	**Other cases**
Proportion of overall cases	35%	48%[32]	16%
Cost per case	£3,200	£590	£400

To estimate the total costs to Government as a result of Employment Tribunal cases for each type of case in Table 6, the assumed cost per case is multiplied by the estimated number of Employment Tribunal cases per year from Table 5 and the assumed proportion of overall cases.

Therefore, it is estimated that the total costs to Government as a result of Employment Tribunal Hearings per year is between around £99,000 and around £128,000 per year, with a Best estimate of around £113,000 per year.

Over the 10 year appraisal period, the present value of these total costs is estimated at between around £0.9 million and around £1.1 million, with a Best estimate of around £1.0 million.

6.10.6 Costs to Employers of Early Conciliation

The BIS Impact Assessment on Early Conciliation[27] (Table 5) estimated that the average unit cost of Early Conciliation to Employers is around £512 per case (2012 prices). This was based on evaluation evidence from the operation of pre-claim conciliation.

[32] Source: DfT calculation. 75% * (1-35%)

To estimate the total costs to Employers of Early Conciliation per year, the above estimate is multiplied by the estimated number of cases submitted to ACAS for Early Conciliation per year from Table 4 multiplied by 75%. This is because the BIS Impact Assessment on Early Conciliation[27] indicates that "pre-claim conciliation… has a take-up rate of around 75 per cent".

Therefore, it is estimated that the total costs to Employers of Early Conciliation per year is between around £33,000 per year.

Over the 10 year appraisal period, the present value of these total costs is estimated at around £0.3 million.

6.10.7 Costs to Claimants of Early Conciliation

The BIS Impact Assessment on Early Conciliation[27] (Table 4) estimated that the average unit cost to Claimants of completing an intention to claim form is around £8.50 (2012 prices).

To estimate the total costs to Claimants of completing an intention to claim form per year, the above estimate is multiplied by the estimated number of cases submitted to ACAS for Early Conciliation per year from Table 4.

The BIS Impact Assessment on Early Conciliation[27] (Table 4) estimated that the average unit cost to Claimants of taking part in conciliation is around £64.70 (2012 prices). This was based on evaluation evidence from the operation of pre-claim conciliation.

To estimate the total costs to Claimants of taking part in conciliation per year, the above estimate is multiplied by the estimated number of cases submitted to ACAS for Early Conciliation per year from Table 4 multiplied by 75% (see Section 6.10.6).

Therefore, it is estimated that the total costs to Claimants of Early Conciliation per year is between around £5,000 per year.

Over the 10 year appraisal period, the present value of these total costs is estimated at between around £42,000.

6.10.8 Costs to Government of Early Conciliation

The BIS Impact Assessment on Early Conciliation[27] did not include estimates of the unit cost to Government of Early Conciliation. However, the BIS Impact Assessment on 'Resolving Workplace Disputes'[33] (Paragraph 82) stated that "The best indication of the costs to the exchequer of early conciliation are given by the current costs of the pre-claim conciliation service, as the service offered by Acas conciliators will be the same"; and estimated the unit cost of a completed case at £357 (2011 prices).

To estimate the total costs to Government of Early Conciliation per year, the above estimate is multiplied by the estimated number of cases submitted to ACAS for Early Conciliation per year from Table 4 multiplied by 75% (see Section 6.10.6).

Therefore, it is estimated that the total costs to Government of Early Conciliation per year is between around £23,000 (2012 prices) per year.[34]

Over the 10 year appraisal period, the present value of these total costs is estimated at between around £0.2 million.

Acas will also need to process statement of intent forms to kick-start the process. This is not monetised as a unit cost is not provided in the BIS Impact Assessment on 'Resolving Workplace Disputes'[33], although the aggregate estimate presented in that Impact Assessment indicates that this cost is small in relation to the costs of undertaking the early conciliations.

[33] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32182/11-1381-resolving-workplace-disputes-final-impact-assessment.pdf

[34] The above estimate has been converted from 2011 prices to 2012 prices using the GDP Deflator. This is available at https://www.gov.uk/government/publications/gdp-deflators-at-market-prices-and-money-gdp-march-2013.

6.10.9 Costs to claimants of Employment Tribunal Fees

Annual leave claims will be subject to Level 1 fees.[35]. The MOJ Impact Assessment on the introduction of fees[28] indicated that the Level 1 fees for single cases are as shown in Table 7.

Table 7: Level 1 fees for single cases

Issue fee	Hearing fee
£160	£230

To estimate the total costs to claimants per year, the Issue Fee shown in Table 7 is multiplied by the estimated number of Employment Tribunal cases per year from Table 5, and the Hearing fee shown in Table 7 is multiplied by the estimated number of Hearings which is approximately 35% of the estimated number of Employment Tribunal cases (see Section 6.10.5).

Therefore, it is estimated that the total costs to claimants of Employment Tribunal Fees per year is between around £16,000 and around £21,000 per year, with a Best estimate of around £18,000 per year (2012 prices).

Over the 10 year appraisal period, the present value of these costs is estimated at between around £0.1 million and around £0.2 million, with a Best estimate of around £0.2 million.

On the grounds of proportionality, no other factors are taken into account in this analysis. However, it should be noted that:

- The fees for Multiple Cases are up to 6 times the fees for single cases.[28] However, the proportion of multiple cases is estimated to be less than 10% of the number of total cases (see Table 1).

- A significant proportion of the general population of claimants is expected to receive a full or partial remission of fees.[28]

- There is a further fee for applying for a review, but the number of applications is expected to be low.[28]

Therefore, it is uncertain whether these estimates represent an overestimate or underestimate.

6.10.10 Benefits to Government of Employment Tribunal Fees

On the basis of the approach taken in Section 6.10.9, it is estimated that the total benefits of Employment Tribunal Fees to Government per year are between around £16,000 and around £21,000 per year, with a Best estimate of around £18,000 per year (2012 prices).

Over the 10 year appraisal period, the present value of these benefits is estimated at between around £0.1 million and around £0.2 million, with a Best estimate of around £0.2 million.

6.10.11 Benefits to Seafarers of the right to take a case to an employment tribunal on annual or additional paid leave

Seafarers would for the first time, have the same rights as other workers in the UK to take their grievances in respect of paid leave to an Employment Tribunal. It follows the MLC principle of fair treatment of seafarers relative to other professions, because it would ensure that seafarers are treated equally with other transport sector workers in respect of the right to enforce leave entitlements in an Employment Tribunal. This would remove the risk of a charge of discrimination against seafarers, in comparison with workers in other sectors, which is a concern of the seafarer unions. It may also result in fairer treatment for seafarers because of the added disincentive to unscrupulous shipowners to deny seafarers their rights. Unlike other available remedies, such a complaint to the shipowner or to the MCA under MLC procedures, or a criminal prosecution of the shipowner, this would give seafarers an opportunity to seek recompense for any loss suffered as a result of their entitlements being withheld. Given the uncertainties involved, these benefits are not monetised in this Impact Assessment.

[35] Paragraph 3.19 and Annex 3 to http://www.legislation.gov.uk/ukdsi/2013/9780111538654/pdfs/ukdsifia_9780111538654_en.pdf.

6.10.12 Summary of monetised costs and benefits

On the basis of the above estimates, it is estimated that the total monetised costs would be between around £532,000 and around £667,000 per year, with a Best estimate of around £595,000 per year (2012 prices). Over the 10 year appraisal period, the present value of these costs is estimated at between around £4.6 million and around £5.7 million, with a Best estimate of around £5.1 million.

On the basis of the above estimates, it is estimated that the total monetised benefits would be between around £16,000 and around £21,000 per year, with a Best estimate of around £18,000 per year (2012 prices). Over the 10 year appraisal period, the present value of these benefits is estimated at between around £0.1 million and around £0.2 million, with a Best estimate of around £0.2 million.

Table 8 summarises the Best Estimates.

Table 8: Summary of Costs and Benefits (Best Estimates)

Costs		
	Costs per Year	**Total Costs over 10 year appraisal period (Present Value)**
Costs to Employers of responding to Employment Tribunal cases	£296,000	£2.5 million
Costs to Claimants as a result of Employment Tribunal cases	£106,000	£0.9 million
Costs to Government of Employment Tribunal cases	£113,000	£1.0 million
Costs to Employers of Early Conciliation	£33,000	£0.3 million
Costs to Claimants of Early Conciliation	£5,000	£0.04 million
Costs to Government of Early Conciliation	£23,000	£0.2 million
Costs to Claimants of Fees	£18,000	£0.2 million
Total	**£595,000**	**£5.1 million**
Benefits		
	Benefits per Year	**Total Benefits over 10 year appraisal period (Present Value)**
Benefits to Government of Fees	£18,000	£0.2 million
Total	**£18,000**	**£0.2 million**

6.10.13 Risks of allowing a right of appeal to an Employment Tribunal

There is a risk that seafarers who feel aggrieved at their leave conditions may both raise complaints under the MLC procedure and bring a case to an Employment Tribunal (ET). This would incur duplication of costs and effort for the shipowner, both responding to the complaint and defending an ET case. However, it is expected that ETs would normally have expected seafarers to have exhausted their rights to use both on-board and on-shore complaints procedures before mounting a case at the ET.

If seafarers remain without a right of appeal to an ET given the strong support that the provision regarding access to Employment Tribunals has from the seafarer unions, there is a risk that the UK could be challenged for not fully implementing the MLC in respect of ensuring that there is no discrimination against seafarers in comparison with their colleagues ashore. Furthermore, an Employment Tribunal may also ensure that an employee receives redress for any financial loss as a result of their entitlements being denied.

6.10.14 Costs to businesses that are compliant with employment law

In order to estimate the costs to businesses that are compliant with employment law, an assessment needs to be made regarding the proportion of businesses that are compliant with employment law. The Department has been unable to locate any relevant research on this issue. Therefore, it has been

necessary to make a number of assumptions. The assumptions that have been made for the purposes of this Impact Assessment are as follows.

- It is assumed that the proportion of employment tribunal cases with each outcome will be equal to the average for Working Time Directive cases during period 2010/11 to 2012/13 (1 April 2010 to 31 March 2013) according to MoJ statistics[14].

- In addition, a further assumption needs to be made regarding the proportion of employment tribunal cases where the outcome is a "Private Settlement" due to limitations of the data collected by the Tribunals Service (TS). In particular, 'Findings from the Survey of Employment Tribunal Applications 2008' (SETA 2008)[36] indicates that "In the case of private settlements there is no requirement on either of the parties to inform the TS of the outcome beyond the claimant withdrawing the case. TS statistics, therefore, record these cases as having been withdrawn."

- It is assumed that the proportion of employment tribunal cases where the outcome is a "Private Settlement" is equal to around 56% of the employment tribunal cases where the outcome is listed as "Withdrawn" according to MoJ statistics[14]. This is the ratio between the proportion of employment tribunal cases that are "Privately settled" and the proportion of employment tribunal cases that are "Privately settled" or "Withdrawn" according to Table 9.1 of SETA 2008'[36].

- It is assumed that costs that fall on businesses where the outcome of an employment tribunal case is "Successful at hearing" or "Default judgement" represent costs to non-compliant businesses. The MOJ Impact Assessment on the introduction of fees[28] indicates that "Claimants would have the cost of their fees reimbursed if the ET or EAT finds in their favour and then makes an order for the unsuccessful party to pay. This means that a claimant would then be reimbursed if he is successful at hearing or if a Default Judgment is issued in his favour." For the purposes of this Impact Assessment, it is assumed that these outcomes only involved cases where the claimant was successful. In practice, this may not always be the case.

- It is also assumed that 85% of the costs that fall on businesses where the outcome of an employment tribunal case is an "ACAS Conciliated Settlement" or a "Private Settlement" represent costs to non-compliant businesses. This is because it is assumed that the employer was compliant in around 15% of claims that were settled. This assumption has been made as SETA 2008 results indicate that of those that settled, 3% of claimants who were made an offer thought they would lose the case, compared with 33% of employers who believed the claimant would lose; 15% is the middle value of this range.

- In addition, it assumed that 84% of the costs that fall on businesses where the outcome of an employment tribunal case is "Withdrawn" (and not a "Private Settlement") represent costs to non-compliant businesses. This is because it is assumed that the employer was complaint in around 16% of claims that were withdrawn. This assumption has been made because Table 9.15 of SETA 2008[36] indicates that 16% of claimants withdrew their case because they believed they could not win the case or did not have a valid case.

- In contrast, it is assumed that 100% of the costs that fall on businesses where there is another outcome of an employment tribunal case (e.g. "Unsuccessful at hearing") represent costs to compliant businesses. For the purposes of this Impact Assessment, it is assumed that these outcomes only involved cases where the employer was compliant with employment law. In practice, this may not always be the case. For example, a case may be struck out on administrative grounds, such as not completing the paperwork.

On the basis of the above assumptions, it is assumed that around 25% of the costs of employment tribunal cases would fall on businesses that are compliant with employment law and around 75% of employment tribunal cases would fall on businesses that are non-compliant with employment law for the purposes of this Impact Assessment. Further details of the proportion of employment tribunal cases that are assumed to fall in each category are provided below.

	Total	**Non-Compliant**	**Compliant**

[36] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/144018/10-756-findings-from-seta-2008.pdf

		Businesses	Businesses
Successful at hearing	*17%*	17%	
Default judgement	*10%*	10%	
ACAS Conciliated Settlements	*32%*	27%	5%
Withdrawn - Privately settled	*13%*	11%	2%
Withdrawn - Withdrawn	*10%*	9%	2%
Unsuccessful at hearing	*6%*		6%
Dismissed at a preliminary hearing	*2%*		2%
Struck Out (not at a hearing)	*9%*		9%
Total	100%	***75%***	***25%***

In the absence of better evidence, this is considered to be a proportionate approach for the purposes of this Impact Assessment. However, in practice, it should be noted that the proportion of the costs of employment tribunal cases would fall on businesses that are compliant with employment law is subject to considerable uncertainty.

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

The proposals make the minimum changes to bring UK legislation into line with the MLC provisions on annual leave. The MLC was developed on a tripartite basis and is strongly supported by UK shipowner and seafarer representative organisations, which also supported UK ratification. The regulations as regards paid leave are based on an agreement between the two sides of industry on how the provisions of the MLC should be implemented, following discussions on the proposals at the MLC Tripartite Working Group. The provision for appeal to an Employment Tribunal is in line with statutory provision for other transport workers. Further analysis of the impacts is not therefore considered necessary.

The complex implications of the 2013 Regulation regarding annual leave provision and the fact there are a large number of different types of contractual arrangements affected, mean that a deep level of explanation of the impacts is justified. However, since reliable data is not available, the magnitude of the implications of non-ratification of the MLC (albeit that these may not be quantifiable) mean that efforts to identify relatively small cost implications (in the context of the cost of operating a ship) and/or achieve spurious accuracy, would not be in line with the government policy and IA Guidance which require a proportionate approach in order to make prudent use of taxpayer resources.

8. RISKS

The 2014 Regulations need to be made in UK law in order that the UK fully complies with the Maritime Labour Convention, 2006, which it ratified on 7 August 2103.

The risks of ratifying the Convention, and of not ratifying the Convention, are explored in Annex 2.

Option 1

There are risks associated with the uncertainties inherent in Option 1. These include a risk that shipowners and seafarers organisations will have to spend time and money in order to obtain clarity as to what is required. This may involve court proceedings. There is also the possibility that seafarer organisations will raise an objection with the ILO scrutiny committees against the UK for failure effectively to implement the Convention. This would create uncertainty for both seafarers and shipowners and potentially lead to additional policy work for MCA, both in responding to ILO scrutiny, and in amending the guidance or regulations. Although the approach taken in Option 1 closely follows the wording of the Convention, it provides a different approach to public holidays from that adopted in other sectors, and creates scope for arguing that Option 1 treats seafarers less favourably than other workers.

A separate risk is that Option 1 could prove more onerous and costly than Option 2 for shipowners because it does not cap the number of public holidays to be recognised at eight.

Option 2

There is a risk that an explicit statutory requirement for an additional 8 days of paid leave in respect of public holidays could disadvantage UK shipowners in comparison with other flags. However, we know

that a number of important or closely competitive flags (Liberia, Norway, Netherlands, Denmark) have also added public holidays to the statutory leave requirement (though we do not have the complete picture). In order to counteract this, shipowners may seek to absorb the additional costs in future pay negotiations.

The comparison of costs under Options 1 and 2 is based on the premise that under both Options, leave given in respect of public holidays should be paid. MCA believes this is the proper interpretation of the MLC provisions on annual leave, hours of work and wages. However, the MLC is not explicit on this point. If the premise is incorrect, the costs to shipowners under Option 1 might reduce (because there are staff costs associated with paid leave entitlements) in comparison with Option 2. However, seafarers would still be entitled to justified absences for public holidays, and significant uncertainties as regards the number of days leave to be given for public holidays would remain. Option 2 would remain the preferred option because it provides clear entitlements for seafarers, certainty about the requirements for shipowners, and it reliably meets the policy objectives.

The risks arising from the introduction of a right for seafarers to appeal to an employment tribunal are discussed under paragraph 6.10.3.

9. REDUCING REGULATION POLICY

9.1 Direct costs and benefits to business calculations (following OITO methodology)

Option 2 specifically requires an additional 8 days of paid leave in respect of public holidays in the UK, which is in accordance with MLC Guideline B2.4.1.4(a). Although this is not copyout of the MLC text, MCA considers that it imposes the same requirement on shipowners as Option 1, and that this aspect of Option 2 does not therefore go beyond the minimum requirements of the MLC. For this reason, this aspect of Option 2 is considered to be out of scope of "OITO". The right to appeal to an Employment Tribunal is considered to be within the scope of OITO because under BIS guidance, "the …amendment of an enforcement framework, where considerations of the treatment for individual companies are irrelevant, is in scope of OITO"[37]. See Section 6.7 for more details.

The Best estimate of the present value of the total net cost to business over the 10 year appraisal period is around £2.8 million in 2012 prices. On the basis, the Best estimate of the overall Equivalent Annual Net Cost to Business (EANCB) is around £0.3 million per year in 2009 prices. This has been converted from 2012 prices to 2009 prices using the GDP deflator[38].

The Regulatory Policy Committee has advised that "Any impacts on businesses that are compliant with employment law (e.g. where the seafarer's ET case is rejected) that result from this proposal, would be in scope of OITO." It is assumed that around 25% of the costs of employment tribunal cases would fall on businesses that are compliant with employment law (see Section 6.10.14 in this Impact Assessment). Therefore, the Best estimate of the Equivalent Annual Net Cost to Business (EANCB) for businesses that are compliant with employment law is around £0.1 million per year in 2009 prices. This estimate is shown on the 'Summary: Intervention and Options' sheet in this Impact Assessment.

9.2 Copy out

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

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

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

[37] One-in, Two-out Case Law, July 2013 – Department for Business, Innovation and Skills

[38] https://www.gov.uk/government/publications/gdp-deflators-at-market-prices-and-money-gdp-march-2013

In this instance, as explained above, the varying incidence of public holidays in different parts of the UK would give rise to a fundamental uncertainty as to the obligations imposed if the provisions of the MLC on public holidays were copied out without more information about how many public holidays were covered.

9.3 Alternatives to regulation

Introducing the proposals without recourse to legislation has been considered but, as the Convention explicitly requires ratifying States to take action to deliver the measures, no satisfactory alternative mechanism has been identified at this stage.

9.4 Review clauses

The 2014 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.

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

10. SPECIFIC IMPACT TESTS

10.1. Equalities Assessment

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

a. freedom of association and the effective recognition of the right to collective bargaining;

b. the elimination of all forms of forced or compulsory labour;

c. the effective abolition of child labour; and

d. the elimination of discrimination in respect of employment and occupation.

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

10.2 Competition Assessment

The 2014 Regulations would 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 MLC will be very widely implemented internationally.

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

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

By supporting the ratification of MLC in the UK, it is possible that the 2014 Regulations could have an impact on competition. The precise impact would depend on how the Regulations affect relative costs.

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.

In providing an explicit requirement for 8 days additional paid leave in respect of public holidays, the 2014 Regulations (Option 2) could potentially adversely impact on the competitiveness of UK registered ships if other countries chose not to specify additional days leave in respect of public holidays, or have fewer public holidays than the UK. However, a number of other large flags (e.g. Norway, Netherlands, Liberia) are providing explicit entitlement in relation to public holidays, and the Philippines Overseas Employment Agreement, which is mandatory for all those employing Filipino seafarers, includes a provision for paid leave in respect of public holidays. In addition,

(a) the UK has fewer public holidays than many other countries in the world; and

(b) other States may not give a similar clear entitlement when implementing the MLC but not all States have to deal with the issue of different public holidays in different parts of the State

Internationally, it is considered that MLC is more likely to provide a competitive benefit to UK firms.

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

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. However, the Convention makes no specific provision for concessions in respect of Annual Leave.

A significant proportion of the ships operated by small firms operate on domestic voyages within 60 miles of a safe haven in the UK and will not therefore be covered by the UK’s implementation of the inspection and certification aspects of the MLC. However where existing legislation on a particular MLC issue is already in place covering vessels in this area, the updated MLC standards will be applied, to avoid confusing dual standards. In the case of annual leave the current legislation is EU based, and the EC Directive has been updated to reflect the MLC standards (2009/13/EC).

No specific issues for small firms were raised during public consultation from members of the Domestic Passenger Ship Steering Group or from representatives of the Small Commercial Vessel sector, who represent the majority of small firms operating vessels affected by the Regulations. A substantial proportion of vessels in these sectors operate seasonally and so leave can usually be provided during the closed season.

10.4 Health Impact Assessment

The health and wellbeing benefits of these proposals are set out in Annex 7.

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.

10.5 Human Rights

The 2014 Regulations implement provisions of the International Labour Organization’s Maritime Labour Convention, 2006 which requires respect for the following fundamental rights and principles of workers (Article III):

a. freedom of association and the effective recognition of the right to collective bargaining;
b. the elimination of all forms of forced or compulsory labour;
c. the effective abolition of child labour; and
d. the elimination of discrimination in respect of employment and occupation.

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

10.6 Justice System

The main enforcement mechanism for these 2013 Regulations will be through the inspection and certification of UK ships under MLC by MCA surveyors. These powers are backed up by offences and penalties laid down in the existing Hours of Work Regulations. The proposed provision of access to an Employment Tribunal for annual leave claims is in line with enforcement rights in place in the corresponding Regulations for sea-fishermen, workers on inland waterways and transport workers on-shore.

10.7 Greenhouse Gas Emissions

As the proposed measure only affects seafarer entitlements to leave and industry has confirmed that the costs of compliance with the MLC are not expected to have a major impact in the context of the operating costs of ships, it is not expected to affect maritime transport volumes. Therefore, no change in greenhouse gas emissions is expected

11. SUMMARY AND PREFERRED OPTION

MCA believes that a proper interpretation of the MLC provisions on annual leave, hours of work and wages is that seafarers should be given leave in respect of public holidays and that leave should be paid.

Option 1 represents the minimum action needed to allow the UK to implement the standards in the Maritime Labour Convention, 2006. This option uses a “copy-out” approach to transposition. It might therefore be thought that the risk of challenge to UK implementation would be low. However Option 1 creates uncertainty as to how it should operate given that different parts of the UK have different public holidays and this uncertainty and the different treatment of seafarers compared with other workers, may enable an argument to be raised that the UK has not properly implemented the MLC. To the extent that shipowners have to provide additional leave in order to meet the minimum required by the MLC, Option 1 would therefore potentially be more expensive than Option 2, particularly when ad hoc public holidays are declared.

Option 2 would address the risk of uncertainty and provide equal treatment for seafarers with workers ashore in respect of public holidays. Option 2 also caps the public holiday allowance at 8 days. In addition, Option 2 gives seafarers the right to complain to an Employment Tribunal if they are not receiving their entitlements in respect of paid leave, which addresses the secondary policy objective of equal treatment for seafarers on UK ships with UK workers ashore.

In providing the minimum of 2.5 days of annual leave per month of employment, plus 8 days paid leave in respect of public holidays, and in providing a new effective enforcement mechanism, it meets the main policy objective on all four counts, set out in the policy options section. For example, in providing the opportunity for restitution to the seafarer for entitlements that have been denied, it fulfils the first bullet point of the main objective. This option is the only option considered which fully meets the secondary objective of bringing seafarers into line with other workers in respect of the right to appeal to an Employment Tribunal on disputes about paid leave entitlements. There are, however some risks attached to this option (as discussed in Section 6.10.3 above).

Taking into account the arguments above, *the preferred option is Option 2*.

12. IMPLEMENTATION PLAN

The 2014 Regulations are part of a package of Regulations that are required to fully implement the MLC standards in the UK. There are two criteria for the MLC to come into force internationally: ratification by

flag states representing 33% of the world's tonnage; and ratification by 30 member states. Both criteria have been met, and the MLC came into force on 20 August 2013, 12 months after both thresholds were passed. The UK ratified the MLC on 7 August 2013.

A Merchant Shipping Notice will be published to accompany the Regulations which will explain the provisions and give guidance on their practical interpretation. Information will also be available on the DfT/MCA website.

The primary enforcement mechanism for the Regulations on UK ships will be through Flag State inspections for issue or renewal of a Maritime Labour Certificate. MCA surveyors will check the provisions for paid leave and shore leave in the shipowners' declaration of maritime labour compliance Part II and in seafarer employment agreements, as part of the inspection of UK ships. Further details about this regime are given in the impact assessment for the 'Merchant Shipping (Maritime Labour Convention)((Survey and Certification) Regulations 2013' (DfT00193).

Furthermore, shipowners must have published procedures to deal with seafarers' complaints about their working and living conditions, and seafarers will also have the right to complain to an MCA surveyor in the UK or to any port state control officer in other countries, if they are not receiving their entitlements. This requirement will be implemented in UK law by the draft 'Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations and is therefore not assessed in this impact assessment.

A third layer to the enforcement mechanism, in respect of entitlements to paid leave only, would be the right of seafarers to appeal to an Employment Tribunal, which has the power to provide monetary recompense.

13. CONSULTATION STAGE IMPACT ASSESSMENT

Public consultation on these proposals was undertaken in early 2009, so although an impact assessment was produced and published as part of the consultation package, the RPC did not exist at that time and so did not issue an opinion on this impact assessment at consultation stage.

REFERENCES **Annex 1**

No.	Legislation or publication
1	Maritime Labour Convention, 2006 http://www.ilo.org/global/What_we_do/InternationalLabourStandards/MaritimeLabourConvention/lang--en/index.htm
2	Council Directive 2009/13/EC implementing the agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers Federation (ETF) on the Maritime Labour Convention, 2006 and amending Council Directive 1999/63/EC
3	Merchant Shipping (Hours of Work) Regulations 2002 http://www.opsi.gov.uk/si/si2002/20022125.htm
4	Increasing the holiday entitlement – a further consultation: Summary of responses and Government response to the consultation http://webarchive.nationalarchives.gov.uk/20100216092443/http://www.berr.gov.uk/files/file39592.pdf
5	ILO (2001) http://www.ilo.org/public/english/dialogue/sector/techmeet/jmc01/jmc-r3.pdf
6	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.
7	ILO (2012) Maritime Labour Convention, 2006: Frequently asked questions. http://www.ilo.int/global/Standards/maritime-labour-convention/WCMS_177371/lang--en/index.htm .
8	ILO (2011) Advantages of the Maritime Labour Convention, 2006. http://www.ilo.int/global/Standards/maritime-labour-convention/WCMS_153450/lang--en/index.htm
9	Nautilus Biennial report/social study
10	Ministry of Justice's Employment Tribunals and EAT Statistics 2010/11 http://www.justice.gov.uk/downloads/statistics/mojstats/employment-trib-stats-april-march-2010-11.pdf
11	Ministry of Justice's Employment Tribunals and EAT Statistics 2011/12 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/163472/employment-trib-stats-april-march-2011-12.pdf.pdf
12	Impact assessment on Introducing a fee charging regime into Employment Tribunals and the Employment Appeal Tribunal http://www.legislation.gov.uk/ukdsi/2013/9780111538654/pdfs/ukdsifia_9780111538654_en.pdf
13	Consultation document and impact assessment on early conciliation https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/52598/13-538-early-conciliation-a-consultation-on-proposals-for-implementation.pdf https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/52611/13-539-early-conciliation-a-consultation-on_proposals-for-implementation-impact.pdf
14	Final impact assessment on resolving workplace disputes – November 2011 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/32182/11-1381-resolving-workplace-disputes-final-impact-assessment.pdf

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	Shipowners, MCA
		Compliance Costs	Shipowners
		Benefits of MLC provisions	Seafarers and Shipowners
	Non-UK registered ships	Costs of PSC inspections in UK ports, and potential compliance costs if non-compliant	Shipowners, MCA
		Benefits of PSC inspections	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	Shipowners
		Benefits of MLC provisions	Seafarers and Shipowners
		Compliance Costs	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.[39] Monetising this impact would require additional evidence on which to base assumptions regarding the operational patterns of UK registered ships, and the extent of MLC ratification amongst the port states that these ships call at. The associated risks are discussed in section A.3.4 of this annex.

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

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

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

- Employment conditions for seafarers vary across the world, with some seafarers working under unacceptable conditions.

- ILO (2001) discusses some of the problems faced by seafarers globally, including poor standards of crew accommodation, nutritionally inadequate food, and not receiving the same quality of medical care as available to land-based workers.

- By providing minimum rights for all seafarers that are globally applicable and uniformly enforced, the MLC promotes decent working and living conditions for seafarers globally, with the European Commission (2006) suggesting that the MLC "can help to bring about more homogeneous employment conditions for the benefit of seafarers".

- One of the ILO fundamental rights and principles on which the MLC is based is to eliminate discrimination in respect of employment and occupation (MLC Article III(d)). One of the underlying principles of the MLC is therefore to ensure that seafarers, as far as practicable, are not discriminated against but enjoy the same living and working conditions as employees ashore

[39] The MLC Certification regime, together with the "no more favourable treatment" clause, will bring competitive benefits to all UK ships to the extent that they are competing globally, as explained in A3.3. section 3.

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

- ILO (2011) discusses the mechanisms that would ensure that the benefits of the MLC for seafarers would be realised, including that the MLC provides improved "enforcement of minimum working and living conditions" and the right "to make complaints both on board and ashore".

- As UK registered ships already broadly comply with most of the standards required by the MLC, it is expected that seafarers working on non-UK registered ships would benefit to a greater extent. UK nationals working on non-UK ships would be among those to benefit in this way, although no data is available to quantify the magnitude of this potential benefit.

- The MLC requires wide international implementation (which it is expected to get) in order to be fully effective for all seafarers, and hence UK ratification could drive further benefits by providing additional incentives for other countries with ships calling at UK ports to ratify the MLC.

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

- ILO (2011) notes that one of the benefits of the MLC is that it protects "against unfair competition from substandard ships through 'no more favourable treatment' for ships of non-ratifying countries".

- Regardless of whether the UK ratifies the MLC, UK registered ships would still be subject to the provisions of the MLC on a 'no more favourable treatment' basis when visiting foreign ports in countries that have ratified the MLC. This means that UK registered ships operating internationally would be required to comply with the standards of the MLC when visiting ports in ratifying countries whether the UK has implemented the MLC or not.

- The ILO Guidelines on Port State Control state that possession of a valid Maritime Labour Certificate should be considered as prima facie evidence that the ship complies with the MLC. MLC certification is only available through a vessel's flag state administration, hence non-ratification of the MLC in the UK would be expected to put UK Registered ships at a disadvantage as they would lack MLC certification which is a deficiency under the MLC even if they are otherwise in compliance with the MLC standards.

- Under the ILO Guidelines on Port State Control, failure to hold such a certificate, and the accompanying documentation, would give the Port State sufficient reason to subject the vessel to a more detailed inspection – although if conditions on board are found to be good then the inspection may not need to be extensive (this would be at the discretion of the PSC officer). Part of the documentation is a record of the national legislation applying to the vessel concerned. Where there is no documentation, the Port State Control inspectors may apply inappropriate standards from their own national interpretation of the MLC standards – particularly where the MLC standards are expressed in general terms.

- Therefore, the absence of an MLC certificate could potentially subject UK registered ships to longer delays in port than they would otherwise face as port states verify compliance with the MLC through port state control procedures. The benefits of UK ratification, in terms of the costs of non-ratification thereby avoided, would only apply when calling at ports of MLC-ratifying states.

- Furthermore, it should be noted that serious or repeated non-compliance with the MLC could also result in UK registered ships being detained in foreign ports in countries that have ratified the MLC.

- When the new EC directive on port state control is fully in force, ships would be considered as high, medium or low risk. UK ships are currently considered as low risk, minimising the frequency of inspection under PSC in Europe. If the UK does not ratify the MLC and so UK ships have no MLC documentation, this may over time affect the ranking of UK ships for PSC purposes, potentially leading to increases in the frequency of inspections.

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

- At present, ship operators which operate substandard ships can gain a competitive advantage. This is because shipowners operating substandard ships can potentially gain a cost advantage and undercut shipowners which provide seafarers with decent conditions of work.

- UK ships generally have reasonably good employment conditions, and therefore operate with higher operating costs than ships registered on many other flags. UK ratification of the MLC would therefore benefit UK shipowners by ensuring that ships registered on other flags that call in UK ports would need to apply the minimum global standards of MLC and so lose some of their competitive advantage on costs.

- ILO (2011) reports that a benefit of the MLC would be a "more level playing field to help ensure fair competition and to marginalize substandard operations".

- By enabling countries that ratify the MLC to enforce the minimum global standards provided for in the MLC on foreign registered ships that call at their ports on a "no more favourable treatment" basis, the MLC will help to create a more level competitive playing field and help to ensure fairer competition by limiting the scope for ship operators to gain a competitive advantage through operating substandard ships.

- As a consequence, the European Commission (2006) suggests that the MLC "should help to stabilise the maritime transport sector in the face of global competition and reduce the double gap between, firstly, European and third country operators and, secondly, between the different flags which favours *de facto* those maritime nations and operators with the least stringent social legislation."

- The impacts of each set of proposed UK implementing Regulations on competition are fully discussed in the competition assessment contained in their respective impact assessments.

A.3.4. Risks of UK ratification of the MLC

The MLC will come into force in August 2013, after ratification by 30 flag states representing at least 33% of the world fleet tonnage. The benefits arising from ratification of the MLC will depend on how widely the MLC is implemented. Therefore, the main risk associated with ratifying the MLC is that the UK introduces new legislation to implement the MLC, but that subsequently the MLC only achieves a low take-up internationally. This would reduce the potential benefits and could potentially put UK-registered ships at a competitive disadvantage. However, it is likely that the MLC will be widely ratified internationally due to the high level of commitment from all sides.[40]

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

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

- The risk of EU infraction proceedings;

- The risk of negative impacts on the competitiveness of UK registered ships; and

- The risk of negative impacts on the competitiveness of the UK Ship register.

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

[40] See Question A18 in ILO (2012).
And : ILO Maritime Labour Convention, 2006 A Guide for the Shipping Industry Page 8, Coverage

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

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

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

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

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

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

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

A.3.6. Conclusion

1. Due to various uncertainties and the limitations of the available evidence base, it has not been possible to monetise any of the overall costs and benefits of UK ratification of the MLC.

2. Key additional benefits of UK ratification of the MLC include promoting decent living and working conditions for seafarers globally, enabling UK registered ships to benefit from the system of MLC certification and promoting a more level competitive playing field for shipping globally.

3. Despite the various uncertainties and limitations of the available evidence base, the UK Chamber of Shipping and Seafarer's unions expect that the benefits to the UK of ratification of the MLC would significantly outweigh the costs to the UK.

4. The key risk to the UK of ratifying the MLC before it comes into force internationally is that the UK introduces new legislation to implement the MLC but that subsequently the MLC only achieves a low take-up internationally. This would reduce the potential benefits and could potentially put UK-registered ships at a competitive disadvantage. However, this is thought to be a low risk.

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

Annex 4 - Shipowner and seafarer representatives

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

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

The members of the TWG are:

Government Representatives
Department for Transport (Maritime Employment, Pensions and Training Branch)
The Maritime and Coastguard Agency
A representative of the other administrations of the Red Ensign Group (UK Crown Dependencies and UK Overseas Territories)

Shipowner representatives
The British Chamber of Shipping
The British Tugowner Association

Seafarer representatives
Nautilus International
National Union of Rail Maritime and Transport Workers
Unite

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

P&I Clubs

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

Annex 5 - Glossary of Terms

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

Ship includes any description of vessel used in navigation *(Merchant Shipping Act 1995 s.313)* other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply. *(Article II.1(i))* The Convention applies to all ships which are ordinarily engaged in commercial operations *(Article II.4)*

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

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

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

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

Shipowner*:* means the owner of a ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Convention, regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner *(Maritime Labour Convention Article II .1(j))*

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

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

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

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

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

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

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

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

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)*

Annex 7

DTI/BERR ANALYSIS OF THE POTENTIAL BENEFITS OF INCREASED HOLIDAY[41] IN THE CONTEXT OF THE INTRODUCTION OF A STATUTORY RIGHT TO PAID LEAVE IN RESPECT OF PUBLIC HOLIDAYS FOR SHORE-BASED WORKERS

Economic benefits

It is anticipated that there may be economic benefits to particular sectors of the economy, depending on how people use the additional leisure time that an increased holiday entitlement would bring. Research commissioned by the Scottish Parliament... suggests that there would be a positive impact on retail, tourism and hospitality sectors of an increased holiday entitlement.

A better work life balance

The increased opportunity for holiday should lead to a better work-life balance for the workforce. It will allow more time to spend time on aspects of life that are important to them outside of work including allowing parents, and other carers, to better manage their time to avoid conflict between work and home.

A more committed workforce

The extension in the entitlement…should contribute to better relationships at the workplace leading to improvements in workforce commitment, morale and performance and could result in higher productivity. Some organizations may also choose to review working practices, which could lead to more efficient and strategic working arrangements.

Stress

Stress remains a debilitating factor among the UK workforce: the Health and Safety Executive estimates that a total of 12.8 million working days were lost to stress, depression and anxiety in 2004/5, at a cost to the UK economy of £3.7 billion per year.

A major cause of stress for parents of younger children is the conflicting demands of employment and raising a family – this also follows for those with other caring responsibilities. Increasing opportunities for holidays and time with dependents will help to reduce stress levels; it will also reduce the need for unscheduled leave – noted by employers as more difficult to work around than annual leave.

Productivity

Two studies[42] have shown that staff that receive good terms and conditions feel valued by their employer and are happier and more motivated in their work.

Family cohesion

Increased holiday will give people the opportunity to spend more time with their families, be it partners, children and other dependents or other family members[43].

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[41] Source: Success at Work - Increasing the Holiday Entitlement: A further consultation, <http://www.berr.gov.uk/files/file36449.pdf>; pages 33 and 34 of the Partial Regulatory Impact Assessment, <http://www.berr.gov.uk/files/file36457.pdf>; and pages 33, 34 and 35 of the Final Impact Assessment, <http://www.berr.gov.uk/files/file39873.pdf>. Edited to include only benefits which may be relevant to the proposals for increased paid annual leave for seafarers.

[42] Robert Taylor, Britain's World of Work – Myths and Realities (ESRC, 2002) <http://www.esrc.ac.uk/ESRCInfoCentre/Images/fow_publication_3_tcm6-6057.pdf> and Nick Isles, The Joy of Work (The Work Foundation, 2004 <http://www.theworkfoundation.co.uk/Assets/PDFs/Joy_of_Work.pdf>).

[43] Families and work in the twenty-first century, (Joseph Rowntree Foundation September 2003) and More time for families: Tackling the long hours crisis in UK workplaces (TUC/Working Families report August 2004)

Improved clarity over holiday allowance [*Relevant to Option 2*]

There remains a good deal of confusion among both staff and their employers on annual leave. Over 10% of calls to the ACAS Helpline (100,000 calls) in 2005 were on holiday; working time and whether or not public holidays are included causes “particular confusion”. The proposals will provide clarity on the entitlements for all staff.

Annex 8

Relevant Extracts from the Maritime Labour Convention, 2006

Guideline B2.2 – Wages

Guideline B2.2.2 – Calculation and payment

3. National laws or regulations or collective agreements may provide for compensation for overtime or for work performed on the weekly day of rest and **on public holidays** by at least equivalent time off duty and off the ship or additional leave in lieu of remuneration or any other compensation so provided.

Standard A2.3 – Hours of work and hours of rest

3. Each Member acknowledges that the normal working hours' standard for seafarers, like that for other workers, shall be based on an eight-hour day with one day of rest per week **and rest on public holidays**. However, this shall not prevent the Member from having procedures to authorize or register a collective agreement which determines seafarers' normal working hours on a basis no less favourable than this Standard.

Standard A2.4 – Entitlement to leave

1. Each Member shall adopt laws and regulations determining the minimum standards for annual leave for seafarers serving on ships that fly its flag, taking proper account of the special needs of seafarers with respect to such leave.

2. Subject to any collective agreement or laws or regulations providing for an appropriate method of calculation that takes account o0f the special needs of seafarers in this respect, the annual leave with pay entitlement shall be calculated on the basis of a minimum of 2.5 calendar days per month of employment. The manner in which the length of service is calculated shall be determined by the competent authority or though the appropriate machinery in each country. **Justified absences form work shall not be considered as annual leave.**

3. Any agreement to forgo the minimum annual leave with pay prescribed in this Standard, except in cases provided for by the competent authority, shall be prohibited.

Guideline B2.4 – Entitlement to leave

Guideline B.2.4.1

1. Under conditions as determined by the competent authority or through the appropriate machinery in each country, service off-articles should be counted as part of the period of service.

2. Under conditions as determined by the competent authority or in an applicable collective agreement, absence from work to attend an approved maritime vocational training course or for such reasons as illness or injury or for maternity should be counted as part of the period of service.

3. The level of pay during annual leave should be at the seafarer's normal level of remuneration provided for by national laws or regulations or in the applicable seafarers' employment agreement. For seafarers employed for periods shorter than one year or in the event of termination of the employment relationship, entitlement to leave should be calculated on a pro-rata basis.

4. The following should not be counted as part of annual leave with pay:

(a) public and customary holidays recognized as such in the flag State, whether or not they fall during the annual leave with pay;
(b) periods of incapacity for work resulting from illness or injury or from maternity, under conditions as determined by the competent authority or through the appropriate machinery in each country;
(c) temporary shore leave granted to a seafarer while under an employment agreement;
and
(d) compensatory leave of any kind, under conditions as determined by the competent authority or through the appropriate machinery in each country.