

Title: Implementation of Regulation 2.4.2 of the International Labour Organization (ILO) Maritime Labour Convention, 2006 (MLC) on shore leave for seafarer IA No: Lead department or agency: Maritime Coastguard Agency Other departments or agencies:	Impact Assessment (IA)		
	Date: 09/10/2013		
	Stage: Final		
	Source of intervention: International		
	Type of measure: Secondary legislation		
Contact for enquiries: Julie Carlton 023 8032 9216			

Summary: Intervention and Options	RPC: RPC Opinion Status
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Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
NQ	NQ	NQ	No
			NA

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

Employment conditions for seafarers vary across the world, with some seafarers working under unacceptable conditions and some ship operators which operate substandard ships gaining a competitive advantage. Effective international standards are therefore needed to address these issues. The Maritime Labour Convention 2006 (MLC) aims to provide minimum living and working conditions for seafarers that are globally applicable and uniformly enforced, including granting seafarers shore leave. Achieving this aim requires the MLC to be ratified by governments, which requires a package of new legislation in the UK. The UK ratified the MLC on 7 August 2013, so UK legislation must be fully compliant.

What are the policy objectives and the intended effects?

The policy objective is to promote the health and well-being of seafarers, as part of the UK's implementation of the MLC, and to promote an international level playing field by a) introducing a requirement for shore leave for seafarers on UK ships in line with the minimum global standards provided for in the MLC; b) fully complying with MLC standards, under UK international obligations as a ratifying country; and c) enforcing these minimum global standards for shore leave on non-UK registered ships that call at UK ports. Specific objectives for shore leave 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 to be 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 addressing the issues on seafarer living and working conditions discussed above and UK ships would not have been able to obtain MLC certification. The preferred policy option is therefore to introduce the Regulations, which make the minimum changes to existing legislation to implement the provisions of the MLC on shore leave (Policy Option 1). No further measures have been deemed necessary and so only one Policy Option has been considered in this impact assessment.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 03/2019					
Does implementation go beyond minimum EU requirements?			No		
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: Make the minimum changes to existing legislation to implement the provisions of the MLC on shore leave.

FULL ECONOMIC ASSESSMENT

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

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

It has not been possible to monetise any of the potential costs that have been identified.

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

1.) MCA considers that granting shore leave is an accepted part of ship operation on UK ships. Therefore, MCA does not expect that implementing the provisions of the MLC on shore leave would result in any significant additional costs to UK businesses (see Section 6.1). 2.) MCA considers that familiarisation costs are too small to quantify for this element of the UK's implementation of the MLC alone (see Section 6.2).

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

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

It has not been possible to monetise any of the potential benefits that have been identified.

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

There may be benefits to shipowners and seafarers in providing greater clarity regarding the entitlement for shore leave, including the limitations on this. However, MCA understands that the provisions of the MLC on shore leave reflect current industry practice. So, these potential benefits are not expected to be significant. Therefore, the key benefit of Option 1 is that, as part of the package of new legislation, it supports UK ratification of the MLC, which provides additional benefits as discussed in Annex 3.

Key assumptions/sensitivities/risks	Discount rate (%)	N/A
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It is assumed that the views expressed by the MLC Tripartite Working Group that shore leave is already an accepted part of the operation of a ship, are representative of UK industry as a whole.

BUSINESS ASSESSMENT (Option 1)

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

Evidence Base (for summary sheets)

Key Definitions

ILO = International Labour Organization

MCA = Maritime and Coastguard Agency

MLC = ILO Maritime Labour Convention 2006

1. TITLE OF PROPOSAL

Implementation of Regulation 2.4.2 of the International Labour Organization (ILO) Maritime Labour Convention, 2006 (MLC) on shore leave for seafarers.

1a. CONSULTATION ON THE PROPOSALS

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

The consultation-stage impact assessment for these proposals, which was published as part of the public consultation exercise, invited consultees to submit additional evidence on the costs and benefits of Policy Option 1. One hundred and seventy six organisations and companies were directly notified of the consultation exercise, including the UK Chamber of Shipping which represents a broad cross section of UK shipping companies in all sectors, and other trade associations such as the British Marine Federation and International Marine Contractors Association. In addition, a meeting was held during the consultation period for the operators of small commercial vessels such as workboats, and charter yachts, to consider the impact on smaller businesses. One issue was raised, which is the application of the right to shore leave when a ship is moored off the coast, rather than alongside in port – this is discussed below. The only quantified evidence of costs or benefits provided related to the costs of a “liberty boat” to ferry crew ashore in those circumstances. The only other significant comment raised concern about the presence of a criminal penalty for the master or shipowner for breach of the duty. This is a general MLC issue, and, due to the highly mobile and international nature of shipping, criminal penalties have been deemed necessary in a number of circumstances in which they would not be deemed necessary ashore, as civil penalties would not be a deterrent for retrospective offences.

2. PROBLEM UNDER CONSIDERATION:

It is considered that all seafarers should have acceptable employment conditions, including the right to shore leave in ports of call, to benefit their health and well-being, where compatible with their operational duties. However, employment conditions for seafarers vary across the world, with some seafarers working under unacceptable conditions and some shipowners operating substandard ships, thus gaining a competitive advantage. In particular, ILO (2012) suggests that “seafarers often have to work under unacceptable conditions, to the detriment of their well-being, health and safety and the safety of the ships on which they work.¹” 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.”

¹ Maritime Labour Convention, 2006: Frequently asked questions http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_177371/lang-en/index.htm

The specific problem under consideration which the provisions of the MLC on shore leave directly address is that seafarers are sometimes confined to the ship for many months, with limited access to communication with family and friends, and limited opportunities for social contact. Shore leave during port calls provides seafarers with the opportunity to visit seafarer welfare centres, which offer recreational and other facilities, and importantly often internet and telephone access, as well as a change of scenery and company. This can relieve stress and isolation, and is important for the seafarers' health and well-being.

Seafarer and shipowner organisations negotiating the Maritime Labour Convention considered that this was an important issue and should be included as an entitlement for seafarers.

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 on shore 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 the MLC). The ratification criteria to bring the Convention into force internationally were met on 20 August 2012, and the MLC therefore came into force internationally on 20 August 2013. It is expected to be widely ratified. The Government's social partners, the shipping industry and the seafarer's Trades Unions, strongly supported ratification of the MLC in the UK, which took place on 7 August 2013.

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

Widespread ratification of the MLC, including the provisions on shore leave, and the improved enforcement mechanisms introduced by the MLC, could improve the consistency of health and safety standards between ships of different flags, and could help to ensure that seafarers – including UK nationals - have a reasonable expectation of decent working conditions on ships of any flag where they work. The proposed Regulations would bring existing legislation for UK registered vessels into line with this minimum global standard as regards shore leave provided for in the MLC. In addition, as the UK has ratified the MLC, the proposed Regulations would allow the UK to enforce the minimum global standards for shore leave on non-UK registered vessels visiting UK ports on a “no more favourable treatment” basis.

Furthermore, UK ratification of the MLC has avoided the costs of not ratifying the MLC. In particular, regardless of whether the UK ratified the MLC, UK registered vessels would still be subject to the provisions of the MLC on a “no more favourable treatment” basis when operating in foreign ports in countries that have ratified the MLC. If the UK had not ratified the MLC, this could have resulted in UK registered vessels being delayed due to inspections to check their compliance with the MLC. UK ratification has enabled UK registered vessels to benefit from the system of MLC certification, avoiding or reducing the likelihood of delays related to inspections in foreign ports in countries that have ratified the MLC. 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 shore 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 provision of Regulation 2.4.2 is transposed in full into the Annex to the agreement. The Directive came into force on the date on which the MLC came into force, 20 August 2013. The UK has a duty to implement the social partners' agreement, which in practice

means that the UK is under a European law requirement to implement some (but not all) MLC provisions in UK law. The transposition deadline is 12 months from the coming into force date i.e. 20 August 2014. However, as explained above, to support the UK shipping industry the UK needed to ratify the MLC before 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 Regulation 2.4.2 of the MLC on shore leave will also fully implement the provisions on shore leave in Directive 2009/13/EC. The Directive is not therefore considered further in this IA.

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

4. POLICY OBJECTIVE:

The purpose of implementing the provisions of the MLC on shore leave in UK law is to bring existing UK legislation into line with the requirements of the MLC related to shore 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 shore 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 the MLC covered by Directive 2009/13/EC), thus avoiding the risk of infraction proceedings being taken against the UK.

In particular, the proposal would require the Company and the master to grant shore leave to seafarers on UK ships "where reasonable and taking into account the associated benefits to the health and well-being of the seafarers and the operational requirements of their positions", bringing UK legislation into line with Regulation 2.4.2 of the MLC.

In order to ensure a level playing field the MLC provides that a country which has ratified the MLC may enforce the same standards for health and safety on ships of other flags calling at its ports, since the Convention provides that ships of non-ratifying countries should have "no more favourable treatment" in the ports of ratifying countries. Implementing the provisions of the MLC on shore leave in UK law would give the UK this power. This would remove the competitive advantage to shipowners operating into UK ports of flagging with a non-ratifying country.

5. DESCRIPTION OF OPTIONS CONSIDERED:

Do nothing

Existing UK legislation is not fully in compliance with the MLC in respect of shore leave. A 'Do nothing' Option would not achieve the policy objectives that are outlined above, and is not therefore considered to be an appropriate course of action.

One policy option has been considered in this IA.

Policy Option 1: To implement only the minimum mandatory requirements of the Maritime Labour Convention, 2006 in respect of the requirement to grant shore leave to seafarers.

Policy Option 1 is to include an additional provision for the Merchant Shipping (Maritime Labour Convention) (Hours of Work) (Amendment) Regulations 2014 ("the 2014 Regulations"), requiring seafarers to be granted shore leave, taking into account the associated benefits to the health and well-being of the seafarers and the operational requirements of their positions. This would implement regulation 2.4.2 of the MLC.

6. COSTS AND BENEFITS OF OPTION 1:

In the consultation-stage impact assessment, consultees were invited to submit additional evidence on costs and benefits of Option 1. The evidence submitted by consultees has been taken into account when updating this impact assessment following the consultation and is described below.

Comparison with 'Do Nothing' scenario

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

The MLC came into force in August internationally in August 2013.

A large number of nations have already ratified and 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 would be incurred under the 'Do Nothing' scenario. As this proportion is uncertain, we do not know the extent to which any costs of complying with the minimum mandatory requirements of the MLC are truly additional costs of introducing UK legislation or whether they would have occurred anyway under the Do Nothing scenario.

Given these uncertainties, this IA assesses whether there would be any additional costs to business of complying with the minimum mandatory requirements of the MLC on shore leave relative to the requirements of existing UK legislation or existing industry practice as applicable. The IA concludes that there would not be any significant additional costs to UK businesses of complying with the minimum mandatory requirements of the MLC on shore leave. This is explained in Section 6.1 below.

6.1 Costs to business of complying with the minimum mandatory requirements of the MLC in respect of shore leave

6.1.1 Range of impact:

The MLC applies to all ships operating commercially except fishing vessels and ships of traditional build. Pleasure vessels, warships and naval auxiliaries are also excluded.

The UK fleet consists of 1,081 ships on the UK shipping register (merchant ships)², and about 5,500 small commercial vessels³, a large number of which are not registered. The MCA does not have accurate figures for the number of people working on the UK fleet, but it is estimated that around 89,000 seafarers are working on UK registered ships (merchant ships)⁴.

There would be no absolute duty to give seafarers shore leave, but where such leave is compatible with the seafarer's operational duties, and where it benefits their health and well-being, shore leave should be provided. (Example of why it may not benefit their health and well-being would be port security restrictions and safety risks.) "Consistent with operational duties" is taken to mean that seafarers may have shore leave either when they are scheduled to be off duty, or when they are scheduled to be on duty but circumstances are such that they may be given additional time off to go ashore without adversely affecting the operation of the ship.

(The International Convention on the Facilitation of Maritime Traffic 1965, as amended (known as the FAL Convention) places duties on the port state as regards permitting seafarers to go ashore for shore leave provided that the appropriate formalities are completed.)

6.1.2 Costs

² UK Ship Register data - April 2013

³ Source: MCA database of Coded vessels Jan 2013

⁴ Source: Estimated using administrative data from the MCA Seafarer documentation system and from an industry survey undertaken by the Chamber of Shipping

The potential costs to a shipowner in allowing a seafarer to go ashore in a port are discussed below. However, as MCA considers that granting shore leave is an accepted part of ship operation on UK and non-UK ships, MCA does not expect that implementing the provisions of the MLC on shore leave would result in any significant additional costs to UK businesses.

Consultees were invited to submit any additional evidence of whether there would be any additional costs associated with a new duty to grant shore leave to seafarers to benefit their health and well-being and where compatible with their operation duties. The only evidence provided is discussed under 6.1.2.4 below.

6.1.2.1. Visa costs

Under the MLC, the shipowner is responsible for any visa costs for seafarers on their ships. However, in most countries, a seafarer identity document is accepted in lieu of a visa, and seafarers are allowed ashore for shore leave without further documentation, provided they are rejoining the ship when it leaves; where a visa is required, this is not exclusive to shore leave but might be needed for other reasons (e.g. to enter the country for repatriation).

6.1.2.2 Local port costs

An example of local costs is transport to seafarer welfare centres. In some cases, this is provided by local welfare organisations but in other cases the port may provide transport and make a charge to cover their costs. While there is no obligation on the employer or shipowner to meet these costs, many would do so as good practice.

6.1.2.3 Administrative costs of monitoring seafarers' departure and return to the vessel

This is required to ensure that the master has information about who is on board the ship in the event of fire or another emergency. However, systems to record persons joining and leaving the ship are required for a many other purposes – for example, inspections by statutory authorities or others; welfare visitors; owners agents etc – so there are not considered to be any additional costs as a result of shore leave.

Since the duty only applies where operational duties allow (i.e. if the seafarer has duties to perform while the ship is in port, they are not entitled to shore leave during that time), there are not considered to be any costs for the seafarer's time while ashore.

6.1.2.4 Transfer costs when ship is anchored off the coast, rather than alongside in a port

One consultee raised concerns that the new duty might require shipowners to provide transfer facilities from the ship to the shore when the ship was anchored off the coast, rather than alongside in a port, in situations where they might not do so currently. It was stated that the cost of a "liberty boat" to perform this function might be as much as £1500 per day.

Two possible scenarios where a ship would be anchored off the coast are –

- (a) where the ship is waiting for a berth; or
- (b) where the ship is too large to go alongside in a particular port.

In either scenario, the master would need to make a judgment about whether the operational duties of the seafarers allowed them to go ashore (a ship anchored off the coast needs more crew than one safety tied up alongside), and also about whether it was reasonable to make provision for this in the particular circumstances – since the regulations provide for a defence of showing that the duty holder did what was reasonable to ensure compliance. In the first situation, if the ship was due to berth within a short period of time, and seafarers would then have the opportunity for shore leave, it may not be reasonable for the shipowner to incur the costs of transferring seafarers ashore. If the ship was too large to berth, it is likely that arrangements would be required to allow passengers, surveyors, port officials etc to leave or board the vessel, and therefore the costs of transfer would not all be attributable to the need to provide shore leave for seafarers.

Since no evidence was provided of how often ships are required to anchor offshore, or of the circumstances when this might occur, it is not possible to estimate the impact of the provision from the

information provided. Furthermore, as discussed above, MCA, supported by the MLC Tripartite Working Group, does not think this entitlement is intended to do more than reinforce existing good practice.

This evidence does not therefore change our assessment that the provision will have only a minor impact on UK ships.

6.2 Familiarisation Costs

MCA will publish information about the proposed changes. The Agency has consulted widely with seafarer and shipowner representatives on the Tripartite Working Group on the MLC, the National Maritime Occupational Health and Safety Committee (NMOHSC) for the merchant fleet, and the Domestic Passenger Ship Steering Group, and there have been a number of events publicising the changes resulting from the MLC as a whole. (NMOHSC is a Committee which produces guidelines for good practice in maritime health and safety.) These actions will minimise the costs for shipowners, seafarers and the fishing industry of becoming familiar with the new requirements, which are considered to be too small to quantify for this element alone.

6.3 Costs to Non-UK ships

As the UK has ratified the MLC, once these regulations are made, the MCA would have the authority 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 registered ships 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 implementing the provisions of the MLC on shore leave in UK law would 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 that this would be case is uncertain, but as this requirement is believed to reflect current best practice in the industry (see Section 6 above), any costs are not expected to be significant. 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).

6.4 Benefits

The benefits of shore leave are stated in the MLC provision itself – shore leave will benefit the seafarer's health and well-being, by providing opportunities to contact family and friends using the facilities provided by port welfare organisations, to meet different people socially, for example in seafarer centres run by welfare organisations, and to make use of other recreational facilities ashore.

As stated above, the proposals reflect current practice. However, there may be some benefit to both shipowners and seafarers in providing greater clarity as regards both the entitlement and the limitations on it. These benefits are not however considered significant and cannot be monetised.

6.5 Benefits of UK Ratification of the MLC

The benefits of the UK ratifying the MLC are considered in Annex 3. The 2014 Regulations will be necessary in order for those benefits to be realised. However, it is not possible to determine the precise contribution of the Regulations to realising these benefits.

Consultees were invited to submit any additional evidence of the benefits of UK Ratification of the MLC, No such evidence was provided.

6.6 Monitoring and Enforcement

The requirements contained in the 2014 Regulations would be monitored and enforced by the Maritime and Coastguard Agency in the UK, and other maritime safety administrations when UK ships visit ports in other countries, as part of their maritime labour inspections. The Survey and Certification costs apply across all requirements of the MLC and are investigated in the Impact Assessment for the 'Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013' (DfT00193).

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

The MLC was developed on a tripartite basis and is strongly supported by UK shipowner and seafarer representative organisations, which also supported UK ratification of the MLC. Discussions on the MLC provisions for shore leave at the MLC Tripartite Working Group were non-controversial, with both sides of industry stating that they reflect current good practice. Further evidence on specific impacts was sought through the consultation exercise, but insufficient evidence was provided to monetise the impacts, and there was general support for the measure. Further analysis of the impacts at this stage is not therefore considered necessary.

8. RISKS AND ASSUMPTIONS;

The minimum mandatory requirements of the MLC in respect of shore leave need to be implemented in UK law in order that the UK fully complies with the Maritime Labour Convention, 2006 which it ratified on 7 August 2103.

9. SPECIFIC IMPACT TESTS

9.1. Equalities Assessment

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

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

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

9.2 Competition Assessment

The 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. A high threshold was set for bringing the MLC into force internationally and this has been met, and it is expected that the MLC will be very widely implemented internationally.

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

It is likely that this would reduce the competitiveness of ship operators that are currently less compliant with the requirements of the MLC and improve the competitiveness of ship operators that are currently more compliant with the requirement of the MLC. The MLC is expected to bring competitive benefits to UK and other European flagged ships. However, the magnitude of this impact is uncertain.

By supporting the ratification of the 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. However, industry sources have indicated an expectation that the shore leave provisions in the 2014 Regulations would not cause significant additional costs for UK flagged vessels.

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 other ratifying states. This

should ensure that UK flagged vessels do not suffer a competitive disadvantage as a result of the introduction of the MLC globally.

Consultees were invited to offer any additional evidence on the potential for the 2014 Regulations to impact on competition, but none did so.

9.3. Small Firms Impact Test

It is appropriate that the working conditions for all seafarers 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 MLC designed for smaller vessels or likely to apply to small companies. The MCA has discussed the implications of the MLC with the Domestic Passenger Ship Steering Group and representatives of the Small Commercial Vessel sector, who represent the majority of small firms operating vessels affected by the Regulations. A significant proportion of the ships referred to above actually operate on domestic voyages within 60 miles of a safe haven in the UK and will not therefore be covered by some aspects of the UK’s implementation of the MLC. The requirement to grant shore leave is unlikely to be relevant to such vessels.

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

Consultees were invited to provide any additional evidence on the potential impacts of the 2014 Regulations on small firms, but none did so, and no particular concerns were raised about the impact of the Regulations on small businesses.

9.4 Health Impact Assessment

The objective of the Maritime Labour Convention is to provide all seafarers with decent employment by setting minimum global standards for living and working conditions, providing an effective regime to ensure that those standards are enforced, and a framework for continuous improvement. The requirement for shore leave is explicitly intended to benefit seafarer’s health and well-being as described in Section 2.

9.5 Human Rights

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

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

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

9.6 Justice System

The main enforcement mechanism for the MLC provisions on shore leave will be through the inspection and certification of UK ships under the MLC by MCA surveyors. There is also a new offence and penalty laid down in the Regulations for this proposed requirement. MCA has reviewed these offences and penalties with the Ministry of Justice as part of the Gateway Clearance process to ensure a consistent approach in all sets of regulations implementing the MLC.

10. REDUCING REGULATION POLICY

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

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

10.2 Copy out

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

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

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

10.3 Alternatives to regulations

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

10.4 Review clauses

The 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.

11. SUMMARY AND PREFERRED OPTION

The proposal will implement in legislation the minimum changes required to ensure that the requirement to grant shore leave to seafarers on UK ships complies fully with Regulation 2.4.2 and of the MLC.

Although MCA expects that this new duty will have a very minor impact on UK ships, it will contribute to ensuring that the UK fully complies with the MLC, fulfilling the UK’s international obligations as a country which has ratified the Convention. This in turn will enable the UK to enforce the same standards as regards shore leave on all ships calling at UK ports, whether or not they fly the flag of a country which has ratified the

MLC.

12. IMPLEMENTATION PLAN

The proposal is part of a package of Regulations that are required to support UK ratification of the MLC. 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.

The provisions of the MLC on shore leave will be incorporated in the Merchant Shipping (Maritime Labour Convention) (Hours of Work) (Amendment) Regulations, 2014. The supporting merchant shipping notice accompanying the Regulations would explain the provisions and give guidance on their practical interpretation. Information would also be available on the MCA website.

The primary enforcement mechanism for these regulations on UK ships would be through Flag State inspections for issue or renewal of a Maritime Labour Certificate. MCA surveyors would check the provisions shore leave in the shipowners' declaration of maritime labour compliance (DMLC) Part II as part of the inspection of UK ships.

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

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

References

No.	Legislation or publication
1	Maritime Labour Convention, 2006 http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_090250/lang-en/index.htm
2	ILO (2001) The impact of seafarers' living and working conditions of changes in the structure of the shipping industry. Report JMC/29/2001/3 http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_PUBL_9221122379_EN/lang-en/index.htm
3	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 .
4	ILO (2012) Maritime Labour Convention, 2006: Frequently asked questions. http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_177371/lang-en/index.htm
5	ILO (2011) Advantages of the Maritime Labour Convention, 2006. http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_153450/lang-en/index.htm

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

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

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

The Convention's provisions are arranged in 5 Titles, as follows:

Title 1: Minimum requirements for seafarers to work on a ship (minimum age; medical certification; training; recruitment and placement).

Title 2: Conditions of employment (employment agreements; wages; hours of work; annual leave; repatriation; compensation for ship's loss; manning; career development).

Title 3: Accommodation, recreational facilities, food and catering.

Title 4: Health protection, medical care, welfare and social provision (medical care on board and ashore; shipowners' liability; health and safety; welfare facilities; social security).

Title 5: Compliance and enforcement

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

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

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

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

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

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

A.3.1. Context

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

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

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

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

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

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

A.3.2. Scope of impacts

In considering the impacts of the MLC, the international nature of the shipping industry must be considered. Whilst impact assessments should assess all of the impacts of the policy options that are being considered, the focus of the impact assessment process is assessing the impacts of the policy options that are being considered on the UK, which includes the impacts on the public sector in the UK, the impacts on UK businesses and the third sector in the UK, and the impacts on UK consumers.

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

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

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

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

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

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

Table 1 – Main impacts of MLC ratification

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

Whilst it is expected that the MLC will indeed be widely ratified internationally, it is not possible to predict precisely to what extent it will be ratified. Consequently, the scale of the costs and benefits of UK ratification is uncertain. For example, the benefits to UK registered ships of the system of MLC certification would mainly apply to UK registered ships that call at ports in MLC-ratifying states.⁵ 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

⁵ 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.⁶

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

⁶ 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*)