

DfT Regulatory Triage Assessment

Title of regulatory proposal	Merchant Shipping (Maritime Labour Convention) (Amendment) Regulations 2017
DfT RTA number	DfTRTA00092
Lead DfT directorate/Agency	Maritime and Coastguards Agency
Expected date of implementation	18/01/2017
Origin	International
Date	27/04/2016
Lead Policy	Louise Unsworth
Lead Economist	Shafiq Pandor
Departmental Triage Assessment	Low cost (fast track)

Rationale for intervention and intended effects

Background - Maritime Labour Convention 2006

In August 2013 the UK ratified the International Labour Organisation's (ILO) Maritime Labour Convention, 2006. (MLC) The Convention introduced global minimum standards for living and working conditions for seafarers for the first time. UK legislation was amended in 2014 to bring it fully into line with the Convention¹.

Amendments to the Convention

In 2014, the ILO adopted the first set of amendments to the Convention, introducing provisions to further ensure the welfare of seafarers and their families if seafarers are abandoned by the shipowner.

The amendments:

- Require shipowners to have sufficient financial security to cover the costs of abandonment on board MLC compliant vessels
- Provide a more detailed explanation of when a seafarer can be considered to be abandoned
- Provide a more detailed explanation of the existing financial security requirements to cover repatriation, or in the event of the seafarer's death, or where long term disability occurs as a result of occupational injury, illness or hazard, and
- Make it a flag state responsibility to ensure by inspection that a financial security system is in place for ships flying its flag to cover these costs.

The original intention of regulation 2.5 (Repatriation) of the Convention was to ensure that seafarers are always able to return home. The shipowner must have financial security to cover this liability. The amendment tightens this by placing an obligation on the shipowner to show that they have financial security meeting particular criteria and sufficient to cover these liabilities for seafarers in their employ, even in cases of abandonment.

The amendments also provide a clearer definition of what constitutes abandonment of seafarers and the employing company's obligations to its seafarers. This is a clarification of the existing regulation rather than a new requirement and should make it easier for shipowners to familiarise themselves with the existing requirements.

¹ Primarily SI 2014 No. 1613. The Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014

In addition to the benefits for seafarers, it is in the interest of the Government to implement these amendments to legislation because where shipping companies are unable to meet responsibilities for repatriation either the port state or the flag state ends up footing the bill.

It is anticipated that the amendments to the Convention will come into force internationally in January 2017. The MCA published details of the expected change in November 2014 to raise awareness in the industry, (Marine Information note MIN 497²) and has prepared draft legislation to implement the amendments into UK Law. The UK Shipping Industry and UK seafarer's representatives have been involved in discussions with the MCA about the amendment through a tripartite working group. No objections to implementation have been raised by UK industry.

Corrections to Existing Legislation

At the same time, it is intended to make a number of relatively small corrections and amendments to the implementing UK legislation, plus one significant amendment ("reg 50") which could substantially reduce the liabilities of the ferry industry in particular for wages in cases of seafarers' sick leave by limiting the obligation to pay wages for up to 4 months in certain circumstances.

Policy Objectives

The policy objectives are:

MLC amendments:

- To protect seafarers by ensuring fair living and working conditions
- To make clear the necessary coverage of financial security for repatriation and compensation in case of death or disability.
- To ensure abandoned seafarers are looked after until they can be repatriated and receive the wages they are due.

Corrections:

- To correct a small number of errors in the original implementing legislation
- To allow issues relating to level of wages paid during periods of sickness or injury to be set by negotiation between management (shipowner) and workers (seafarers), where a Collective bargaining agreement (CBA) is in place.

Viable policy options (including alternatives to regulation)

MLC Amendments

For the MLC amendments, only one policy option is being developed: to do the minimum required to comply with the amendments to the Convention by amending The Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.).

Article I of the Convention requires ratifying states to fully implement the terms of the Convention including amendments to the Convention. Since the problems arise where irresponsible shipowners do not fulfil their obligations to the seafarers working on their ships and the Convention obliges Governments to ensure compliance, enforcement powers are needed.

Corrections to Existing Legislation

For reg 50, only one policy option is being considered: to provide for wages during sickness to be paid in part where so provided in a Collective Bargaining Agreement; and to end liability when the employment contract ends.

² <https://www.gov.uk/government/publications/min-497m-maritime-labour-convention-2006-mlc-proposed-amendments>

Initial assessment of business impact

MLC Amendments

The MLC amendments require all ship owners to have financial security arrangements to cover the costs associated with abandonment at sea.

This will affect all shipowners with UK-registered ships operating commercially. There are currently about 880 merchant ships on the UK ship register operated by about 140 shipping companies. There are also a number of smaller vessels [estimate: 5500 based on MCA figures from 2013] flagged to the UK which are covered by the MLC (such as commercial yachts). Each company will have to amend their current financial security arrangements to include financial security for the event of abandonment of seafarers for each ship. The exceptions are ships of traditional build, and ships with no seafarers ordinarily working on board.

The most common form of security used by merchant shipping companies is Protection and Indemnity Insurance (P&I). This is provided by P&I Clubs and is a maritime insurance provided by underwriters on a mutual basis. P&I insurance is international, and the individual clubs belong to the International Group of P&I Clubs (IGP&I) ³

As explained by the IGP&I in a presentation to the ILO special tripartite committee on the MLC in February 2016, one of the challenges identified in adapting insurance to fit the requirements to these amendments to the MLC is that wages due to abandonment are not a traditional P&I risk and that insolvency is currently an excluded risk.

Costs

There will be both transitional and on-going costs of the proposed amendments.

There may be set up costs for the insurance industry including finalising the new insurance arrangements, calculating appropriate levels of cover and administration costs such as redesigning financial security certificates to reflect new requirements. As shipowners already hold insurance for other more expensive risks, the marginal cost to both shipowners and the insurance industry from the new requirements is expected to be negligible.

There will also be renewed familiarisation costs though again, these are expected to be fairly negligible given the scale of the changes, and the number of shipping companies affected. Additionally, these additional familiarisation costs will be balanced against reduced legal uncertainty from the clarifications included in the proposals.

Financial security providers are also required to give 30 days' notice to the flag state when cover is to cease. There are no expected costs for this because existing legislation such as the Bunkers Convention already requires providers to notify the flag state when insurance cover ceases. The providers only need notify the flag state once. There may be some slight extra administration costs to government in processing this information, though this is a very marginal impact and is therefore expected to be negligible.

The only part of the package of proposals expected to introduce significant costs is the provision of financial security to cover the costs associated with abandonment at sea.

The International Group of P&I Clubs (IGP&I) and insurers are considering possible options and premiums have not yet been calculated. For the ship owners who use P&I clubs it is likely to remain a mutual form of insurance. Unless numerous, high value claims are made (which would only occur where a shipowner has abandoned seafarers, in contravention of their statutory duties) there is unlikely to be a significant increase in the cost of insurance. We expect the increase in insurance

³ www.igpandi.org

premiums to be equal to the risk of abandonment of seafarers and the costs of such incidents (repatriation costs and unpaid wages).

We have been informed by IGP&I that the expected cost of a single incident on a large cruise ship employing hundreds of seafarers is large (in the millions). However, the risk of an abandonment incident for such vessels will be very low as the UK only has 6 cruise ships on its ship register, all owned by very large multinational conglomerates which are unlikely to become insolvent. The exposure for small commercial vessels which carry less crew (between 1 and 3 seafarers) are much less, though the risk is higher.

Overall however, there are very few cases of abandonment of seafarers on UK-flagged ships. The ILO database detailing seafarer abandonments worldwide contains no cases of abandonment of seafarers on UK ships⁴. However, there were 2 cases in 2013 where the owners of UK registered vessels did not meet their obligations, resulting in an average of 4-5 months of unpaid wages and the MCA paying £20,000 to repatriate the crews (20 seafarers). These have been the only instances of abandonment of UK registered ships in the past 10 years. This indicates that the risk of default for ships on the UK ship register is very low.

Corrections and amendments

Annex A lists the other changes proposed and explains why no significant costs are expected.

Summary

Although the exposure of a single occurrence of abandonment could be as large as the figures in the table above, the likelihood of such an occurrence is very low. As a result, the impact of the proposal on annual insurance premiums is expected to be limited. To illustrate, in the two cases of abandonment of UK ships in the past 10 years, the total cost of repatriation was £20,000. Assuming the average wage for the seafarers was £325 per week⁵, and wages were unpaid for 20 weeks, the cost of the wage arrears would be £130,000 for the 20 seafarers. This gives an indication of the likely scale of higher insurance premiums across the whole industry (£160k spread over 10 years or more). Including transition costs in the first year, which are expected to be small given the changes are fairly minor, we are confident that the total costs will be safely below the £1 million per annum threshold.

Benefits

As the proposals are a requirement for ship owners to hold financial security against the risk of abandonment, the benefits are equal to the cost of the insurance premiums (as a transfer from shipowners to abandoned seafarers and governments, via P&I clubs). An important point to note is that the changes introduce a different mechanism to ensure compliance of existing regulations. In other words, the obligation on shipping companies to ensure they have sufficient provisions for repatriating seafarers and paying wages has always existed.

The new provisions will ensure:

- Transparency to seafarers and to inspection authorities that valid financial security cover is in place;
- Provision for the seafarer to have direct access to make claims;

In the event of seafarers being abandoned and entitled to repatriation, or to compensation, the seafarer would therefore benefit, but only to the extent that they will receive what they were already entitled to.

Governments will benefit because in the event of abandonment by a shipowner the flag state is responsible for repatriating the seafarers on board (and in default by the flag state, the port state). Although the Convention provides recourse to recover those costs from the shipowner, the process of

⁴ <http://www.ilo.org/dyn/seafarers/seafarersbrowse.home>

⁵ Annual Survey of Hours and Earnings (2014) – Mean water transport wage per week.

doing so may be expensive and time-consuming. If the seafarers can recover the money they are entitled to directly from the financial security provider; it reduces costs to the governments involved.

The MCA also has evidence of individual cases of abandonment of non-UK ships in UK ports, where the cost of supporting abandoned seafarers fell to local charities and businesses⁶. As this legislation will be implemented internationally, we expect there to be savings to local charities and businesses from needing to support seafarers on board non-UK ships abandoned at UK ports.

Corrections and amendments

The current regulations require payment of full basic wages to seafarers who fall ill or are injured while employed on the vessel for up to 16 weeks (or until they are recovered if sooner). Liability is not automatically ended when employment ends for those on fixed term contracts whose employment ends before the expiry of the 16-week period.

The amendment will:

- (a) terminate the shipowner's liability for wages when the employment agreement terminates, if that is before the expiry of the 16-week period; and
- (b) provide for payment of reduced wages during periods of incapacity (a set proportion of the normal basic wage) where this is agreed in a collective bargaining agreement (CBA).

Three large ferry companies have provided estimates of the impact of reg 50 as currently drafted, which they believe increases their liability for sick pay by over £4m each year. This is because:

1. they have a large number of short term, seasonal or part-time staff for whom the fixed period of 16 weeks extends their liability significantly.
2. they have CBAs predating the UK regulations which allow for payment of part wages.

The MCA proposals would reduce those liabilities significantly.

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Business Impact Target and One-in, Three-out status

The proposal is for an amendment driven by International Legislation which is outside the scope of OI30. This is a small amendment to legislation to update our regulations in line with changes to the Maritime Labour Convention 2006 to which the UK is already a signatory. The measure is a Non-Qualifying Regulatory Proposal which will not score against the Business Impact Target because it implements changed obligations under international commitments.

Rationale for Triage rating

The proposed changes are suitable for fast track because they are minor amendments to existing UK legislation implementing the Maritime Labour Convention 2006 and result in amplification of the existing regulations rather than new policy. The UK shipping industry and maritime insurance bodies are supportive of the need to make these changes in order that the UK continues to comply with the Convention.

As noted in the impacts to business section, the additional regulatory burden of the amendments is very likely to be below the £1 million per annum threshold (discounting any benefits). As the UK is

⁶ <http://www.shorehamherald.co.uk/news/captain-heads-home-as-ship-leaves-at-last-1-6069257>
http://www.gazette-news.co.uk/news/11402306.Stranded_ship_seamen_have_left_for_home/

considered a high-quality flag, the risk of default and abandonment is very low and therefore, the additional insurance costs to UK-registered shipowners is also expected to be low.

Confirmation that the proposed measure is suitable for Fast Track

Policy sign-off:	Signature	Roger Towner
	Date	20/05/2016
Economist sign-off:	Signature	Jonathan Saks
	Date	11/05/2016
Better Regulation Unit sign-off:	Signature	Chris Simon
	Date	07/06/2016

Annex A – Remedial changes

The Maritime Labour Convention, 2006 (MLC) came into force in the UK on 7 August 2014. Since then, it has become apparent that there are some corrections and improvements which it would be useful to make to the UK's domestic transposing legislation. These are a combination of the correction of errors, clarification of grey areas and addressing issues which have arisen in the practical implementation of the Convention in the UK. These Instructions detail those improvements.

These **remedial adjustments** to UK legislation transposing the original Convention are distinct from the Amendments to the Convention itself, referred to in this IA as “the MLC Amendments”, which have been agreed internationally, and which are being transposed into UK law.

Only one of the remedial adjustments (number 5 in the following pages) represents (if it goes ahead) a significant change of policy with cost implications for industry (in this case a saving).

1. Amendment required to: The Merchant Shipping (Maritime Labour Convention) (Medical Certification Regulations 2010 (SI 2010/737)	
Effect of amending regulations	To clarify the duty on seafarers to provide complete and correct information to ADs to at their medical examination.
Impact on shipowners	None.
Impact on seafarers	No direct or quantifiable costs. Has the potential benefit of avoiding harm from going to sea with an undeclared medical condition which may put themselves or their colleagues at risk; also, will prevent complications if the condition is identified by a doctor at a later medical examination, possibly restricting their ability to pursue their career.

2. Amendment (Correction) required to: The Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations (SI 1998/2771) OR Regulations 11(3) & (4) of the Merchant Shipping (Maritime Labour Convention) (Consequential and Minor Amendments) Regulations 2014 (SI 2014/1614)	
Effect of amending regulation	Correction of error. Small commercial vessels operating under the MCA Codes of Practice for small commercial vessels (SCVs) should be exempted ONLY from the crew accommodation standards set by regulation 29(2) and regulation 30 of S.I. 2014/1613 and MSN 1844(M), provided that they comply with the substantially equivalent provisions set out currently in MGN 490(M) Amendment 1 or MGN 491(M) Amendment 1 as appropriate, and not (as erroneously provided in SI 1998/2771 as amended by S.I. 2014/1614) from all the standards set by S.I. 2014/1613.
Impact on shipowners	None. The error has not been implemented in practice, as the guidance to industry explains application of the MLC regulations correctly.
Impact on MCA/certifying authorities	None. The error has not been implemented in practice, as the guidance to industry explains the application of the MLC regulations correctly.

3. Amendment (update) required to: The Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013 (SI 2013/1785)	
Effect of amending legislation	That the standards to be applied for survey and inspection of ships, and issue of certificate under the Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013 (SI 2013/1785) should be those specified in the UK implementing legislation, rather than, as currently, in MSN 1848(M). The UK implementing legislation and supporting MSNs, which replace the Appendix to MSN 1848(M), are listed in the schedule to the [draft] regulations.
Impact on shipowners	There were only very minor (mostly editorial) differences between the standards in MSN 1848(M) and the implementing legislation, which would not have any quantifiable impact. MCA has undertaken that if, as a result of changes between MSN 1848(M) and the legislation as finally implemented required practical changes to ensure compliance, shipowners would be given reasonable time to comply to minimise costs. The impact of the implementing legislation compared to existing practice was assessed at the time the legislation was introduced.
Impact on MCA	No significant costs (some familiarisation costs for surveyors, which will be mitigated by issuing guidance).

4. Amendment (correction) required to: The Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014 SI 2014/1613) Part 7 Reg 30	
Effect of the amending legislation	Correction. Crew accommodation standards should apply as follows: <ul style="list-style-type: none"> • to ships built prior to 1 July 1979, Schedule 6 of the Merchant Shipping (Crew Accommodation) Regulations 1978 (SI 1978/795) as if they had not been revoked; • to ships built or on which the crew accommodation has been substantially constructed or altered on or after 1 July 1979, but before 11 July 1997, the (standards laid out in the <u>main body</u> of the Merchant Shipping (Crew Accommodation) Regulations 1978; • to ships built or on which the crew accommodation has been significantly modified on or after 11 July 1997; • to ships built or on which the crew accommodation has been significantly modified after the MLC came into force, the standards in MSN 1844(M) (Reg 29 – no change).
Costs to shipowners, shipbuilders	None. The incorrect legislation has not been applied. MCA policy is that the standards applicable at the time of its build apply to an existing ship until such time as the ship undergoes substantial modification.
Costs to MCA	None

5. Amendment required to: The Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014 (SI 2014/1613) regulation 50(4) – (6)	
Desired Outcome	1) That a provision is made to allow for alternative arrangements to the arrangements in Reg 50(4)(a) and (5) to (9) implementing A4.2.3 of the

	<p>MLC, to be specified in a collective bargaining agreement (CBA), provided that:</p> <p>The seafarer is entitled to be paid wages in whole or in part for up to 16 weeks commencing on the day following the date of the injury or the first day of sickness;</p> <p>If any individual seafarer is disadvantaged by the alternative arrangements, the overall package of remuneration in the case of sickness is agreed by the MCA to be better than the arrangements that would otherwise apply under Regulation 50</p> <p>The same protections apply to payments made under such arrangements as would apply to wages paid under regulation 50.</p> <p>The CBA may be existing (i.e. created prior to the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014 (SI 2014/1613)) or may come into force or agreed at any future time.</p> <p>The CBA must be recognised in UK law, in accordance with the Trade Union and Labour Relations (Consolidation) Act 1992.</p> <p>The same exclusions may apply to such arrangements as apply under Reg 50(11).</p> <p>2) The shipowner will no longer be liable for wages after the SEA would naturally have expired (i.e. the seafarer is no longer employed).</p> <p>Reg 50(4)(b) currently has the effect of extending the duration of a Seafarer Employment Agreement (SEA) which would have expired during the period after the seafarer is repatriated until the end of the 16-week period from the start of the incapacity or until recovery of the seafarer, whichever is earlier.</p> <p>3) That the obligation on the seafarer in r50(8) be amended from the seafarer being required to report to the shipowner on request any benefits received, to an active obligation on the seafarer to report benefits received to the shipowner regardless of whether they are asked to do so.</p>
<p>Background</p>	<p>This text in MLC Standard A4.2.3 was problematic during transposition because, although consideration was given to allowing wages to be paid in part, there did not appear to be a mechanism for doing this, because:</p> <p>a) legal advice indicated that there was no existing legislation to determine the extent of payment “in part”; to copy out the MLC provision would not have given sufficient certainty for legislation dealing with workers’ entitlements.</p> <p>b) the Department of Business, Innovation and Skills (BIS) which has policy responsibility for CBAs and Workforce Agreements (WA) has a general policy that where CBAs are mentioned in legislation, WAs must be allowed as an alternative. The Unions in the Tripartite Working Group do not accept that WAs are a valid alternative to CBAs. In something as fundamentally important to the well-being of seafarers and their families as their wages, MCA also felt it was not satisfactory to rely on WAs, where the bargaining position of the workers has considerably less weight than in a CBA.</p>

	BIS has since agreed that in this limited area, the legislation may refer only to CBAs.
Impact on shipowners	<p>Four ferry companies estimated that the regulation 50 as drafted could cost them £4m in total in sick pay.</p> <p>The potential costs came from liability for wages for up to 16 weeks for short term staff who could claim sick pay extending beyond the end of their contract.</p> <p>The amendment allows sick pay to end when the contract ends, in line with arrangements for workers ashore.</p> <p>In addition, the companies in question all have CBAs allowing payment of wages in part, which would be acceptable under the new legislation.</p> <p>The majority of the liability identified above will therefore now no longer be incurred.</p>
Impact on seafarers	<p>Some individual seafarers would be disadvantaged compared to their entitlements under regulation 50 unamended. However, the new entitlements will be much more in line with workers employed ashore, making the arrangements fairer to all.</p> <p>The potential liability on some shipowners of regulation 50 unamended may have persuaded them to restructure pay rates to reduce those liabilities to the detriment of seafarers.</p> <p>The companies involved employ primarily UK nationals, many of whom work for the company for many years. There was a risk that this commitment to employing UK seafarers may have been undermined by the impacts of regulation 50 unamended.</p>

5. Amendment required to: The Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations 2014 (SI 2014/1615)	
Effect of amending legislation	Employment Agencies and Employment Businesses which recruit and/or place seafarers will be required to examine and respond to any complaint concerning their activities and advise the competent authority (SoS/MCA) of any unresolved complaint. (This arises from MLC Standard A1.4.5(c)(v)).
Existing legislation	<p>This was not included when the MLC was originally transposed as the seafarer has recourse in any case to both MLC complaints and complaints to the Employment Agency Standards inspectorate (EAS) of BIS, and the Employment Agency Inspectorate (EAI) of the Department for Employment and Learning in Northern Ireland, and this was thought to be sufficient.</p> <p>However, strictly speaking the lack of a duty to examine and respond to any complaint and report any unresolved complaint is a gap in the UK's implementation of the MLC.</p> <p>S.I. 2014/1615 contains the current MLC provisions applying to UK employment agencies and employment businesses with respect to seafarers.</p>

	<p>Regulation 13(1) of S.I. 2013/1785 gives the provisions relating to on-board procedures for seafarers complaints, and could form the basis of the proposed amendment, with the following modifications:</p> <p>Any duty placed on “the shipowner or master of a ship to which this regulation applies” to be replaced by a duty on the employment agency or employment business introducing or supplying a work-seeker to a hirer for the purposes of employment as a seafarer on a sea-going ship;</p> <p>A duty to report unresolved complaints to the MCA to apply to any complaint not resolved at the time that the seafarer ceases to be employed or represented by the employment agency or employment business.</p> <p>Complaints process to be in accordance with a [new] MSN – including contact details for MCA, provision for others to represent the seafarer in a complaint. See SN 1849(M). But we will need to be careful not to “gold-plate” as there is no detail in the Convention, even in the Guidelines.</p>
Impact for recruitment and placement services	None.
Impact for seafarers	

6. Amendment (correction) required to: Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers, etc.) Regulations 2014 Reg 59(5)	
Effect of amending legislation	Technical correction to drafting: “on summary conviction by a fine not exceeding <u>the statutory maximum</u> or on conviction on indictment to imprisonment.”
Existing legislation	Reg 59(5) reads “... on summary conviction by a fine not exceeding <u>level 5 on the standard scale</u> or on conviction on indictment to imprisonment...”
Impact for shipowners	None
Impact on the courts	None - this reflects a global change to policy on fines on summary conviction.