



# Summary: Analysis & Evidence

# Policy Option 1

**Description:** Introduce the proposed Regulations to implement the minimum mandatory requirements of the Maritime Labour Convention, 2006 in respect of medical care.

## 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'

Due to the limitations of the available evidence base (e.g. no quantitative evidence was submitted by consultees), it has not been possible to monetise any of the costs that have been identified in this impact assessment.

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

The Regulations will require shipowners to ensure that the cost of medical treatment of seafarers in the UK is met, and to allow seafarers to visit a doctor in ports of call. These are new statutory requirements and could potentially increase costs to the UK shipping industry. However, the MCA does not expect the costs for UK shipowners to be significant in practice, as it has been confirmed through consultation that the majority of UK shipowners already provide the standard of medical care required by the Convention.

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'

Due to the limitations of the available evidence base (e.g. no quantitative evidence was submitted by consultees), it has not been possible to monetise any of the benefits that have been identified in this impact assessment.

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

- 1.) The changes would improve the statutory rights of seafarers on UK ships to access medical care free of charge. This could benefit some seafarers by improving their access to medical care. However, the MCA consider that existing good practice in the industry already allows for the provision of medical care ashore.
- 2.) Ratification of the MLC requires the implementation of all the constituent Regulations (including the proposed Regulations), and would provide additional benefits (see Annex 3).

### Key assumptions/sensitivities/risks

Discount rate (%) N/A

Due to the limited available evidence, it has not been possible to monetise the costs and benefits identified, and several assumptions have been made for the purposes of this impact assessment. In particular, it is assumed that the overwhelming majority of employers on UK ships comply with existing requirements for medical care for seafarers, and also as good practice provide medical care for non-UK nationals working on their ships in the UK, where necessary. Public consultation responses did not question these assumptions.

## BUSINESS ASSESSMENT (Option 1)

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

# Evidence Base (for summary sheets)

## Key Definitions

ILO = International Labour Organization

MCA = Maritime and Coastguard Agency

MLC = ILO Maritime Labour Convention 2006

## TITLE OF PROPOSAL

The Merchant Shipping (Maritime Labour Convention) (Medical Care) Regulations (“the 2014 Regulations”)

## 1. CONSULTATION ON THE PROPOSALS

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

The impact assessment for these proposals, issued as part of the public consultation package, invited consultees to submit additional evidence on the costs and benefits of the proposed regulations. 176 organisations and companies were directly notified of the consultation exercise, including the UK Chamber of Shipping which represents a broad cross section of UK shipping companies in all sectors, and other trade associations such as the British Marine Federation and International Marine Contractors Association. Ten written responses were received, from significant players in the industry. Some consultees confirmed MCA’s view that in general the proposals reflect current good practice. The responses on specific aspects of the proposals are included in Section 6 below, but in summary, there was no opposition in principle to implementation of the MLC standards, and no evidence was provided of costs or benefits arising from the requirements which MCA had not foreseen. There were some concerns raised on details of UK implementation which can be addressed through improved guidance, rather than substantive changes to the requirements. No quantified evidence of costs or benefits was provided.

## 2. PROBLEM UNDER CONSIDERATION

It is considered that all seafarers should have acceptable employment conditions, including on access to medical care. However, employment conditions for seafarers vary across the world, with some seafarers working under unacceptable conditions and shipowners operating substandard ships, thus gaining a competitive advantage. In particular, ILO (2012) suggests that “seafarers often have to work under unacceptable conditions, to the detriment of their well-being, health and safety and the safety of the ships on which they work.” In addition, ILO (2012) suggests that flag States and shipowners which provide seafarers with decent conditions of work “face unfair competition in that they pay the price of being undercut by shipowners which operate substandard ships.”

The specific problems under consideration which the proposed Regulations would directly address are how to ensure that seafarers on ships are covered by adequate measures for the protection of their health, and have access to prompt and adequate medical care when they are away from home.

The aspiration is to ensure that seafarers have, as far as practicable, the same access to medical care and health protection when away at sea as UK workers do at home. The MCA occasionally receives inquiries from seafarers who require medical treatment, repatriation or other social protection measures, but who do not have a contract of employment or whose employment contract does not cover such matters. These seafarers are usually not working on UK registered vessels, but call the MCA for advice on their entitlements under international law. The MCA does not keep records of such calls, but estimates that there is on average one call per three months. This suggests that, in the absence of government intervention, shipowners may not ensure that seafarers have access to such care, which

could put seafarers and the ships they work on at risk.

One potential explanation of this risk is that the existing international conventions requiring employers to provide such protection measures have not been widely ratified. Given that there are costs of providing seafarers with decent conditions of work (e.g. paying for urgent medical and dental treatment), this means that shipowners operating substandard ships can potentially undercut shipowners which provide seafarers with decent conditions of work, and can consequently potentially gain a competitive advantage.

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

Given the international nature of the shipping industry, it is considered that effective international standards are needed to address the issues and risks that have been raised in Section 2. This is why the MLC has been developed in the ILO by government, employer and seafarer representatives as a global instrument to address these issues and risks. The MLC aims to provide minimum rights for all seafarers that are globally applicable and uniformly enforced, including on access to medical care. In particular, the MLC updates the existing ILO Conventions on medical care, and provides for the first time a robust enforcement mechanism to facilitate compliance. 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 provisions of the MLC regarding access to medical care. Doing nothing is therefore not considered to be an appropriate course of action.

Although shipowners' and seafarers' organisations have advised that in general the minimum global standards on medical care are already provided for on UK registered merchant vessels, MCA considers that the proposed Regulations would be likely to improve compliance on a number of other UK registered vessels such as commercial yachts, some of which have less formal employment arrangements.

The 2014 Regulations would bring existing legislation for UK registered vessels into line with the minimum global standards for medical care provided for in the MLC.

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

Furthermore, UK ratification of the MLC has avoided the costs of not ratifying the MLC. In particular, regardless of whether the UK ratified the MLC, UK registered vessels would still be subject to the provisions of the MLC on a "no more favourable treatment" basis when operating in foreign ports in countries that have ratified the MLC. If the UK had not ratified the MLC, this could have resulted in UK registered vessels being delayed due to inspections to check their compliance with the MLC. UK ratification has enabled UK registered vessels to benefit from the system of MLC certification, avoiding or reducing the likelihood of delays related to inspections in foreign ports in countries that have ratified the MLC. As a ratifying country, these regulations are needed to ensure that UK fulfils its international obligations as a ratifying country, by having legislation on medical care which is fully compliant with the MLC.

Although the primary reason for UK ratification of the MLC is 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). Now that it is in force, Member States are required by virtue of Directive 2009/13/EC to implement the European social partners' agreement on the MLC. The provisions of the MLC on medical care (Regulation 4.1 and Standard A4.1 and part of Standard A4.2) are transposed in full into the Annex to the agreement. The Directive came into force on the date on which the MLC came into force, which was 20 August 2013. The UK has a duty to implement the social partners' agreement,

which in practice means that the UK is under a European law requirement to implement some (but not all) MLC provisions in UK law. The transposition deadline is 12 months from the coming into force date i.e. 20 August 2014. However, as explained above, to support the UK shipping industry, the UK needed to ratify the MLC when it came into force internationally, which was earlier than the transposition deadline for the European Directive. Implementation of the minimum changes required to bring UK legislation fully into line with Title 4.1 of the MLC on medical care will also fully implement the provisions of the medical care aspects of Directive 2009/13/EC. The Directive is not therefore considered further in this IA.

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

## **4. POLICY OBJECTIVES**

The MLC updates the existing ILO Conventions on medical care, and provides for the first time a robust enforcement mechanism to facilitate compliance.

The purpose of the 2014 Regulations is to bring existing UK legislation into line with the requirements of Regulation 4.1, Standard A4.1 and part of Standard A4.2 of the MLC related to Medical Care, 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 access to medical care.
- 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.

The proposed Regulations would secure health protection and medical care for seafarers on board UK ships, which will in turn ensure that seafarers are fit to perform their duties, so furthering the safety of UK ships. In particular:

(a) Seafarers on UK ships are currently entitled to urgent medical or dental treatment at the expense of the shipowner when the ship is outside the UK. The proposals would extend that right, when seafarers need immediate medical care, to treatment within the UK;

(b) Seafarers would have a statutory right to seek medical attention ashore when needed wherever practicable;

(c) Seafarers on UK ships would have their necessary medical expenses arising during or from their period of employment covered until such time as they recover from the illness or injury, or are repatriated or their condition is declared "of a permanent character" (i.e. when other sources of financial support are likely to become available to them, including the compensation and social security provisions – where applicable - laid down elsewhere in this Convention); and

(d) A country which has ratified the MLC is able to enforce the same standards for medical care on non-UK ships calling at UK ports, since the Convention provides that ships of non-ratifying countries should have "no more favourable treatment" in the ports of ratifying countries. The Regulations would give the UK surveyors this power. This would remove the competitive advantage to shipowners operating into UK ports of flagging with a non-ratifying country.

## **5. DESCRIPTION OF POLICY OPTIONS**

### **5.1. Do nothing**

Existing UK legislation is not currently in compliance with the MLC in respect of Medical Care. A 'Do nothing' Option would not achieve the policy objectives that are outlined in Section 4 above, and is not therefore considered to be an appropriate course of action.

There are some provisions in Title 4.1 for which non-legislative measures are sufficient such as, for example, the requirement for a standard medical report form, and the requirement for health protection measures to extend to preventive measures, which is being taken forward through education and guidance (e.g. health education leaflets for seafarers and their employers). For these provisions, the

MCA has not proposed legislative changes and as no new costs will be incurred as a result of the MLC provisions, the measures are outside the scope of this Impact Assessment. (MCA already publishes a medical report form, as part of the Ship Captain's Medical Guide. This will be reviewed next time the Ship Captain's Medical Guide is reviewed, but this would have been done under the Do nothing option as part of MCA's continuous updating of publications. Similarly, the MCA already has a range of leaflets on health and fitness issues and would be likely to maintain that range and possibly publish future leaflets whether or not the UK ratified the MLC. However, the majority of the provisions to which the 2014 Regulations relate are already in part contained in existing legislation. In order to comply fully with the MLC that legislation must be amended and supplemented. The MCA considers that administrative provisions would not fully implement these MLC provisions, and that amending UK legislation is the only option.

## **5.2. Proposed Regulations (Option 1) – Introduce the proposed Regulations to implement the minimum mandatory requirements of the MLC in respect of medical care.**

One policy option has been considered. The proposed Regulations (Option 1) introduce the minimum amendments required to the existing UK legislation to bring it into line with Regulation 4.1 and Standard A4.1, and part of Standard A4.2 of the Maritime Labour Convention 2006 (MLC) in respect of medical care, and so fully achieve the policy objectives outlined in Section 4 above. This includes extending the current entitlement to medical care to cover medical treatment in the UK, to ensure that non-UK seafarers on UK ships would not be disadvantaged if they require medical treatment and medical care while the ship is in the UK, and providing a statutory entitlement to seek medical treatment in ports of call.

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

Given the limitations of the available evidence base, it has not been possible to monetise any of the costs and benefits of the proposed Regulations (Option 1) that have been identified in this impact assessment. For example, it has not been possible to estimate how many cases there may be on UK registered ships where seafarers have met their own costs for medical care because the shipowner was not obliged or did not make provision to do so under the 'Do Nothing' scenario. A full qualitative description of each of the costs and benefits that have been identified is therefore provided below. This description draws on information that has been received from the UK shipping industry. For the purposes of this impact assessment, it is assumed that the information received is representative of the current situation for UK registered ships more generally.

The impact assessment issued for public consultation invited consultees to submit additional evidence on the costs and benefits of the proposed Regulations (Option 1). However, no additional evidence was submitted.

To put this impact assessment in context, there are currently 1081 ships on the UK register<sup>1</sup>, and an estimated 89 000 seafarers<sup>2</sup> working on them. On average, 32% of the ships calling at UK ports over the last five years have been UK-flagged ships<sup>3</sup>.

### Comparison with 'Do Nothing' scenario

The 'Do Nothing' scenario represents what would happen if the Government does not take any action. Under the 'Do Nothing' scenario, the MLC came into force internationally in August 2013 regardless of whether the UK was ready or not.

A large number of nations have already ratified. 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.

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<sup>1</sup> Data extracted from the UK Ship Register in April 2013

<sup>2</sup> Source: Estimated using administrative data from the MCA Seafarer documentation system and from an industry survey undertaken by the Chamber of Shipping.

<sup>3</sup> DFT statistics compiled from multiple commercial sources.

Therefore, MCA expects that a proportion of the additional costs of complying with the minimum mandatory requirements of the MLC would have been 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 in respect of medical care are truly additional costs of the proposed Regulations or whether they would have occurred anyway under the Do Nothing scenario.

Given these uncertainties, this impact assessment assesses the additional costs to business of complying with the minimum mandatory requirements of the MLC in respect of medical care relative to the requirements of existing UK legislation or existing industry practice as applicable. MCA does not expect significant costs to UK shipowners as a result of these Regulations. However, as discussed above, we do not know the extent to which any additional costs of complying with the minimum mandatory requirements of the MLC in respect of medical care would truly be additional costs of the proposed Regulations.

## **6.1. Key Assumptions**

It is assumed that the UK shipping industry complies with existing provisions in respect of providing health protection measures and medical care for seafarers on UK ships when outside the UK, since this is an existing UK requirement arising from ILO Convention No.164. However, as the industry has changed, with more seafarers on UK ships being recruited overseas, this provision – which relates only to treatment outside the UK – has become outdated. From discussions with the Tripartite Working Group (see Annex 4) which is advising MCA on implementation of the Maritime Labour Convention, and discussions with representatives of P&I (Protection and Indemnity) clubs, we understand that insurance packages have evolved to reflect the current situation and that the extension of the requirement to provide medical care to the UK would not impose any significant additional costs on the UK shipping industry, particularly since the NHS would treat any seafarer on a UK-flagged ship requiring immediate care without charge. These assumptions have not been questioned by those responding to the public consultation exercise.

## **6.2. Costs of the proposed Regulations (Option 1) to the owners and operators of UK registered ships**

The proposed Regulations would have some impacts on the legislation that UK registered ships operate under. The following costs to the owners and operators of UK registered ships of complying with the MLC standards on medical care have been identified in this impact assessment. However, it should be noted that these costs would only represent a cost to the UK when they fall on UK entities (e.g. UK businesses or consumers). The extent that this would be the case is uncertain. This is because (for example) UK registered ships are not necessarily UK owned, and UK registered ships do not necessarily operate to and from UK ports.

Furthermore, it should be noted that UK ratification of the MLC would mean that the Regulations would also affect non-UK registered ships, some of which are UK-owned. The potential costs for the owners and operators of non-UK registered ships are discussed in Section 6.6 below.

### *6.2.1. Costs of providing health protection and medical care at no cost to seafarers (Regulation 3 of the proposed Regulations)*

(1) Currently section 45(1) of the Merchant Shipping Act 1995 provides that the reasonable expenses of any surgical or medical treatment or such dental or optical treatment (including the repair or replacement of any appliance) received outside the UK by a person employed in a UK ship, and which cannot be postponed without affecting efficiency, will be borne by the person(s) employing him/her.

(2) The changes to be introduced by the proposed Regulations would amend section 45(1) of the Merchant Shipping Act 1995 to:

(i) remove the restriction that payment would only be made in respect of treatment received outside the UK;

(ii) bring section 45(1) of the Merchant Shipping Act into line with the MLC by applying the provision to seafarers as defined by the MLC and by placing the onus for paying for treatment on to the shipowner instead of the employer. However, this would not preclude the shipowner from subsequently recovering costs from the employer under contractual agreements; and

(iii) remove the words “as cannot be postponed without impairing efficiency”, which currently limits the type of treatment for which shipowners must meet the reasonable expense. This is because this limitation is not provided for in the MLC.

The MCA are not aware that care is being withheld from seafarers on UK registered ships because of the limitations under the current legislation. NHS treatment is available without charge in the UK to UK nationals and to any seafarer working on a UK-flagged ship. So although many UK ships may no longer have seafarers on board who are UK nationals, no additional costs are expected to be incurred as a result of this change.

It is therefore envisaged that the above changes would not result in significant costs for the UK shipping industry. Representative shipowner and seafarer organisations advising MCA on the implementation of the Convention have confirmed this view. However, it should be noted that there is currently no data available on the number of instances where care is currently being withheld from seafarers. Given the limitations of the available evidence base, it has not been possible to monetise this cost in this impact assessment.

In the consultation version of this IA, consultees were specifically invited to submit evidence on whether the removal of this qualification would result in treatment being provided more often and therefore in additional costs to the UK shipping industry, in order to confirm or qualify the views expressed by industry representatives. There were no responses to this question, although consultees asked for some tightening up of the drafting of the regulations and guidance to make clear that medical expenses must be reasonable and do not include (for example) cosmetic treatment. This is being addressed through improved guidance, rather than substantive changes to the requirements.

#### *6.2.2. Costs of the right to visit a doctor or dentist in ports of call (Regulation 5 of the proposed Regulations)*

There is currently no specific right in Merchant Shipping legislation for a seafarer to visit a doctor or dentist in ports of call. However, there was no suggestion from responses to the consultation exercise that, even without a statutory duty, that masters refuse seafarers permission to visit doctors or dentists where there is a need to do so. It is not therefore envisaged that significant additional costs to the UK shipping industry would arise from giving seafarers on UK registered ships the statutory right to visit a doctor or dentist in ports of call.

What cannot be guaranteed, however, is that the Port State in which the ship is located would permit the seafarer to leave the ship. For that reason, it has been necessary to include a provision providing for the seafarer to make such a visit “where it is reasonably practicable to do so”.

Within the UK, the NHS (Charges for Overseas Visitors) Regulations 1989 (“the NHS Regulations”), as amended, state that it is generally the patient who is liable for charges. However, there are the following exemptions which are relevant for seafarers:

- Any seafarer working on a UK-registered ship is exempt from charges, regardless of their nationality.
- For non-UK registered ships, the following seafarers are exempt from charges:
  - o UK residents;
  - o Former UK residents in certain circumstances – see S.I. 1989/306 Reg4(k);
  - o Residents of an EEA country or Switzerland; and
  - o Residents of a non-EEA bilateral healthcare agreement country, if the need for treatment arose in the UK or on a voyage to the UK.

Given the above exemptions, the MCA, supported by representative seafarer and shipowner organisations, does not consider that there be would significant additional costs to the UK shipping industry as a result of giving seafarers on UK registered ships the right to visit a doctor or dentist in ports of call.

In the public consultation version of this IA, consultees were specifically invited to submit evidence on whether this explicit duty would result in more cases of seafarers being able to visit a doctor or dentist ashore, and whether this would entail additional costs for the UK shipping industry. There were no responses to this question, although respondents did ask that the regulation be clarified so that, where adequate medical care is available on board, the right to go ashore for treatment does not apply. The regulations have been amended accordingly.

However, it should be noted that this is one area where UK ratification of the MLC could impact on non-UK registered ships. When a seafarer working on a non-UK registered ship is treated in an NHS hospital, and does not qualify for an exemption from the charges as above, he or she is currently liable for the



charges under UK healthcare arrangements. Under the current ILO Convention covering healthcare for seafarers (ILO 164), seafarers must receive such care free of charge, and so the shipowner should bear the costs. However, under the MLC, it will be easier for the seafarer to assert his rights, because the MLC provisions on shipowner liability in Standard A4.2.1 (a) of the MLC require medical costs to be covered, and this would be documented in documents which the Convention requires to be carried on board. In addition, the Seafarer's Employment Agreement must stipulate the social protection provided by the shipowner (this includes medical care) Under the MLC, non-ratifying ships will also be given "no more favourable treatment" (i.e. must comply with the same MLC standards as ratifying states) by Port States. Therefore, implementation of the MLC in the UK empowers UK inspectors to enforce these provisions on non-UK registered ships. The costs of MLC Ratification to the owners and operators of non-UK registered ships are discussed further in Section 6.6 below.

#### *6.2.3. Costs of the requirement for ship's doctor or other trained personnel to be on board (Regulation 4 of the proposed Regulations)*

For compliance with the MLC, the proposed Regulations would apply to any ship with 100 or more persons on board (compared to any ship with more than 100 persons on board under the current UK legislation).

The only category of ships that would be affected by this change would be ships currently operating with exactly 100 persons on board, and on a type of voyage covered by the proposed Regulations. Such a ship would be required to carry a ship's doctor as a result of the proposed Regulations. Based on May 2013 survey data, there are no UK ships certificated to carry exactly 100 persons and therefore none which would be directly affected by this provision.

The only other change being proposed regarding the carriage of a qualified doctor on board a UK ship is, for the sake of transparency, to change the wording of the regulations from specifying periods of "three days" or "one and a half days from a port with adequate medical equipment" to "72 hours" and "36 hours" respectively to bring the requirement into line with the European Social Partners Agreement which gives effect to this part of the MLC. There is no material change involved, so this would not result in any additional costs.

In the public consultation version of this IA, consultees were specifically invited to submit evidence on any circumstances where additional costs might be incurred by the UK shipping industry. Some respondents expressed concern, as a result of the broad application of the MLC, that the requirement to carry a ship's doctor might apply to ships not currently required to carry them (e.g. offshore installations, which when working on the UK continental shelf, where legislation made under the Health and Safety at Work etc. Act 1974 (enforced by the Health and Safety Executive) applies, have different but equivalent arrangements for medical care). Further discussions with the industry has led to agreement that the arrangements in place for those working on offshore installations on the UK Continental Shelf provide at least the same level of protection as the MLC standards, and can therefore be accepted as a substantial equivalent. This will ensure that the requirement for a ship's doctor does not impact on those offshore installations already complying with HSE standards for provision of medical care.

As a result of the public consultation responses, the definition of a medical practitioner has also been clarified to ensure that suitably qualified doctors from outside the UK can be employed as ship's doctors on UK ships.

#### *6.2.4. Costs of the requirement that the medical expenses arising during or from a seafarer's period of employment on a UK ship would be met by the shipowner until such time as they recover from the illness or injury, or are repatriated or their condition is declared "of a permanent character" (Regulation 8 of the proposed Regulations)*

This extends an existing duty in the Merchant Shipping (Repatriation) Regulations 1992, which includes among the expenses to be borne by the shipowner: "surgical, medical, dental or optical treatment (including the repair or replacement of any appliance) for any condition requiring immediate care". That existing duty currently ceases once the seafarer is repatriated, but there is no other limitation on this duty.

Standard A4.1.2 of the MLC allows national laws to limit the extended liability to no less than 16 weeks. It is proposed to include that limitation in the UK regulations, but with the proviso that, if the seafarer has not been repatriated within that 16 week period, then the shipowner's liability would continue until the seafarer is duly repatriated. However, where the cost of medical care is met by public authorities under national law, the shipowner would be exempt from such liabilities.

Discussions with shipowner and seafarer representatives, and discussions with representatives of the P&I Clubs, have suggested that this would have a minimal impact on the overall costs that would be borne by UK shipowners. Many employment contracts already provide for medical care for upwards of 12 weeks, so it is expected that the bulk of costs would already be met by standard P&I cover. In addition, MCA expects that the number of cases where medical care is required for the full 16 weeks is likely to be small. However, it should be noted that no qualitative and quantitative evidence is available on the number of cases where medical care is required that would be affected by this provision in the proposed Regulations. Given the limitations of the available evidence base, it has not been possible to monetise this cost in this impact assessment.

In the public consultation version of this IA, consultees were specifically invited to submit evidence on any circumstances where additional costs might be incurred by the UK shipping industry. There were no responses to this question.

#### *6.2.5. Familiarisation costs*

The MCA will publish information about the proposed changes. The MCA has also been in touch with the P&I clubs (who provide the insurance cover to meet shipowners' medical expenses) and there have been a number of events publicising the changes that would result from the MLC as a whole. These actions will minimise the costs for shipowners and seafarers of becoming familiar with the new requirements, which are considered to be too small to quantify for the proposed Regulations alone.

### **6.3. Benefits of the Regulations (Option 1) to seafarers working on UK registered ships**

The following benefits to seafarers working on UK registered ships have been identified in this impact assessment. However, it should be noted that both UK nationals and non-UK nationals work on UK registered ships. The extent that the proposed Regulations would result in benefits for UK nationals working on UK registered ships is uncertain.

Furthermore, it should be noted that UK ratification of the MLC would mean that the Regulations would also affect non-UK registered ships, some of which have some UK nationals working on board. The potential benefits of the Regulations for UK nationals working on non-UK registered ships are covered in Annex 3 of this impact assessment.

#### *6.3.1. Benefits of the provision of health protection and medical care at no cost to seafarers (Regulation 3 of the proposed Regulations)*

There is already a requirement for employers to provide health protection and medical care at no cost to seafarers on UK registered ships outside the UK. The MCA are not aware of any poor practice in relation to non-UK seafarers employed aboard UK ships in the UK (apart from a recent case of bankruptcy and subsequent abandonment which Title 4.1 of the MLC on its own would not have addressed). Therefore, the MCA consider that the change would be unlikely to result in significant benefits for the majority of seafarers on UK ships. However, in isolated cases, the MCA believes that there would be a benefit to seafarers from the identification of the shipowner (who would be named on the seafarer's employment agreement) as having responsibility to ensure that the seafarers are provided with adequate health protection and medical care, although it should be noted that no data is currently available on this issue. If there were cases where medical treatment is currently being withheld, or where seafarers are currently being required to carry their own medical insurance in case of illness or injury, the seafarers concerned are unlikely to be UK nationals, and therefore the MCA has no means of identifying such cases once the seafarer has been repatriated. It is considered that the provisions of the proposed Regulations and accompanying guidance would remove the scope for confusion and deliberate obfuscation by unscrupulous employers who wish to avoid their responsibilities in this respect. However, given the limitations of the available evidence base, it has not been possible to monetise this benefit in this impact assessment.

In the public consultation version of this IA, consultees were specifically invited to submit evidence of these or other benefits that might accrue for seafarers or shipowners as a result of this change. There were no responses to this question.

#### *6.3.2. Benefits of the right to visit a doctor or dentist in ports of call (Regulation 5 of the proposed Regulations)*

This right is already implied by section 45 of the Merchant Shipping Act 1995, but the explicit provision in the proposed Regulations could potentially result in some benefits to the seafarers. However, there is no data currently available on this point. In particular, it is not clear whether seafarers currently experience

problems in visiting a doctor or dentist in ports of call, other than where the Port State bars them from going ashore. Given the limitations of the available evidence base, it has not been possible to monetise this benefit in this impact assessment.

In the consultation version of this IA, consultees were specifically invited to submit evidence on whether seafarers on UK ships have difficulty in obtaining leave and practical assistance to go ashore to visit a doctor or dentist in ports of call, and whether this provision would address the issue. There were no specific responses to this question. The question was raised whether a seafarer has the right to go ashore for treatment if the same treatment is available on board the vessel. This will be clarified in guidance.

#### *6.3.3. Benefits of the requirement for ship's doctor or other trained personnel on board (Regulation 4 of the proposed Regulations)*

For similar reasons to those stated under costs, the MCA do not envisage that the changes in respect of the carriage of a qualified doctor in specified circumstances would have any benefits.

#### *6.3.4. Benefits of the requirement that medical expenses arising during or from a seafarer's period of employment on a UK ship would be met by the shipowner until such time as they recover from the illness or injury, or are repatriated or their conditions is declared "of a permanent character" (Regulation 8 of the proposed Regulations)*

For similar reasons to those stated under costs, the MCA do not envisage that the changes in respect of the coverage of medical costs in specified circumstances would be significant – although there may be some isolated cases where individual seafarers would benefit. However, it should be noted that no data is available on the number of cases where medical care is required that would be affected by this provision. Given the limitations of the available evidence base, it has not been possible to monetise this benefit in this impact assessment. The MCA also considers that the reassurance that the provision would provide would be beneficial to seafarers' well-being.

In the public consultation version of the IA, consultees were specifically invited to submit any evidence on this benefit. There were no responses to this question.

### **6.4 "One in Two-out" (OITO)**

Option 1 introduces the minimum requirements to implement the provisions of the MLC on medical care. The MLC is an international instrument and thus Option 1 falls outside the scope of "One-in Two-out".

### **6.5. Benefits of UK Ratification of the MLC**

Section 3 and Annex 3 of this impact assessment discuss the overall benefits of UK ratification of the MLC. It is necessary to introduce the Regulations in order for these benefits to be realised. However, it is not possible to determine the precise contribution of the proposed Regulations to realising these benefits. Consultees were invited to provide evidence of these benefits but there were no responses to this question.

### **6.6. Costs of MLC Ratification to the owners and operators of non-UK registered 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 the 2014 Regulations 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. 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'.

Consultees were invited to provide evidence of these costs but there were no responses to this question.

### **6.7. Monitoring and Enforcement**

The requirements contained in the 2014 Regulations will be monitored and enforced by the MCA 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 for UK registered ships 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' (DfT00193). Those regulations also include a complaints procedure for seafarers who feel they are not receiving their entitlements under the MLC, including the provisions on medical care.

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

The MLC was developed on a tripartite basis and is strongly supported by UK shipowner and seafarer representative organisations, which also supported UK ratification of the MLC. Discussions on the proposals for implementing the MLC provisions for medical care at the MLC Tripartite Working Group have been non-controversial, with both sides of industry stating that they reflect current good practice.

Consultation responses have confirmed that implementation of the MLC provisions on medical care are supported by industry, reflect current best practice and, with the adjustments made as a result of consultation, will affect a small number of businesses. Further analysis of the impacts is not therefore considered necessary.

## **8. RISKS**

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

The risks of ratifying the Convention, and of not ratifying the Convention, are explored in Annex 3 of this impact assessment.

## **9. REDUCING REGULATION POLICY**

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

It is considered that the Regulations are outside the scope of OITO.

### **9.2 Copy out**

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

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

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

### **9.3 Alternatives to regulation**

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

### **9.4 Review clauses**

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

The basis of this review will be the "Article 22 report" required by the International Labour Organisation (ILO). Parties to the Maritime Labour Convention, 2006 will be required to submit a report to the ILO, under Article

22 of the ILO Constitution, providing evidence of effective implementation of the Convention. Preparing for this review will enable the UK to establish the effectiveness of the policy (enforcement action taken) and identify any necessary amendments to UK legislation or to the Convention.

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

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

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

## **10. SPECIFIC IMPACT TESTS**

### **10.1. Equalities Assessment**

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

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

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

### **10.2. Competition Assessment**

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

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

It is likely that this would reduce the competitiveness of ship operators that are currently less compliant with the requirements of the MLC and improve the competitiveness of ship operators that are currently more compliant with the requirement of the MLC. UK shipowners are generally more compliant with the MLC than many of their competitors particularly from non-European flags because of the body of pre-existing legislation applying to UK 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 2014 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 throughout the development of the package of measures implementing the MLC have indicated an expectation that the additional costs introduced by these measures are manageable and would be outweighed by the benefits of UK ratification of the MLC for UK flagged vessels.

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

Consultees were invited to offer any additional evidence on the potential for the Regulations to impact on competition. However, no evidence was provided.

### **10.3. Small Firms Impact Test**

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

MCA has discussed the implications of the Convention 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 the UK’s implementation of the inspection and certification aspects of the MLC. However where existing legislation is already in place covering vessels in this area, the relevant MLC standards will apply. Additionally the crews of small vessels operating around the UK coast will probably be recruited in the UK and will be eligible for National Health care. It is therefore unlikely that employers of those working on such vessels will incur additional costs for medical care as a result of the Regulations. However, where any vessels do operate internationally, they would be subject to the standards discussed in this impact assessment.

During the public consultation exercise on the proposed Regulations, consultees included small, medium and large businesses.

Consultees were invited to provide any additional evidence on the potential impacts of the proposed Regulations on small firms. There were no responses to this question.

### **10.4. Health Impact Assessment**

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

Regulation 4.1 and Standard A4.1, and part of Standard A4.2 of the Maritime Labour Convention 2006 (MLC) could, at the margins, improve the healthcare offered to some seafarers by their employer or the ease with which they can access healthcare, although the extent of any benefits is expected to be limited on UK ships.

### **10.5. Human Rights**

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

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

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

### **10.6. Justice System**

The main enforcement mechanism for these proposed Regulations would be through the inspection and certification of UK ships under the MLC by MCA surveyors. While MCA’s preferred method of enforcement where deficiencies are found on board ships is to use improvement notices, prohibition notices, and in very serious cases detention of the ship, in order to secure rapid rectification of the deficiency, there are also offences and penalties laid down in the Regulations, which are available to MCA to take enforcement action after the event if this is considered justified. These are in line with the penalties in place for corresponding or similar offences in pre-existing Regulations. The MCA is reviewing these offences and penalties with the Ministry of Justice to ensure a consistent approach in all

sets of regulations implementing the MLC.

## **10.7 Greenhouse Gas Emissions**

As the Regulations only affect seafarer medical care and no significant additional costs are anticipated, it is not expected to affect maritime transport volumes. Therefore, no change in greenhouse gas emissions is expected.

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

The proposed Regulations will implement in legislation the minimum changes required to ensure that seafarers on UK ships have a legal entitlement to free medical and dental treatment on board ship and ashore. They introduce only the amendments required to the existing legislation in order to bring it into line with Regulation 4.1 and Standard A4.1 of the MLC, and so achieve fully the policy objectives.

Consultation has confirmed that the changes required to implement the MLC reflect current practice on those UK ships represented by the respondents.

## **12. IMPLEMENTATION PLAN**

The 2013 Regulations are part of a package of Regulations that are required to support UK ratification of the MLC. There were 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 already been met, and the MLC came into force 12 months after both thresholds were passed, on 20 August 2013. The UK ratified the MLC on 7 August 2013.

A Marine Guidance Note will be published to accompany the Regulations which will explain the provisions and give guidance on their practical interpretation. Information will also be available on the MCA website.

The primary enforcement mechanism for these regulations on UK ships will be through Flag State inspections for issue or renewal of a Maritime Labour Certificate. MCA surveyors will check the provisions for medical care in the shipowners' declaration of maritime labour compliance Part II and in seafarer employment agreements as part of the inspection of UK ships. Furthermore, shipowners must have published procedures to deal with seafarers' complaints about their working and living conditions and seafarers will also have the right to complain to an MCA surveyor in the UK or to any port state control officer in other countries, if they are not receiving their entitlements.

Further details about this regime are given in the impact assessment on the proposed Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations (DfT00193).

Furthermore, shipowners must have published procedures to deal with seafarers' complaints about their working and living conditions, and seafarers have the right to complain to an MCA surveyor in the UK or to any port state control officer in other countries, if they are not receiving their entitlements. This requirement is implemented in UK law by the draft 'Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations (DfT00193) and is therefore not assessed in this impact assessment.

## **13. REGULATORY POLICY COMMITTEE (RPC OPINION) ON CONSULTATION STAGE IA**

The RPC commented that it is essential that the MCA works proactively with industry during the consultation period to develop robust monetised costs and benefits of this measure. Further information was sought through the public consultation exercise, but no quantitative evidence was provided by consultees. The changes required by the regulations are quite subtle, extending existing seafarers' entitlements to reflect best practice, rather than making significant changes. It would not therefore be a straightforward exercise to identify the associated costs and their precise impact will depend on current practice by employers and shipowner. However, as noted above, industry has confirmed that they do not think that UK shipowners will incur significant additional costs for medical care to comply with the MLC.

The RPC also asked for clarification regarding whether there would be transition costs associated with training enforcement staff on the new requirements of this measure. MCA surveyors have already been used to inspecting compliance with current medical care requirements under the inspection of UK ships in compliance with ILO Convention 178. The cost of training surveyors to undertake MLC inspections is

considered in the Impact Assessment for the 'Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations' (DfT00193). Under the MLC, the "social security provisions" provided by the shipowner (which would include medical care) must be set out in the seafarer's Seafarer Employment Agreement (also a new requirement introduced by the MLC), which would simplify the inspection process. Given the limited changes to medical care requirements as a result of these regulations, and the integration of the inspection process with inspection of other MLC requirements, it would not be possible to disaggregate the cost of training surveyors to inspect for this item in isolation.



## References

No.	Legislation or publication
1	Maritime Labour Convention, 2006 <a href="http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_090250/lang--en/index.htm">http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_090250/lang--en/index.htm</a>
2	Merchant Shipping Act, 1995 section 45
3	Merchant Shipping (Ship's Doctors) Regulations 1995 S.I. No 1995/1803 <a href="http://www.opsi.gov.uk/si/si1995/Uksi_19951803_en_1.htm">http://www.opsi.gov.uk/si/si1995/Uksi_19951803_en_1.htm</a>
4	ILO (2001) The impact of seafarers' living and working conditions of changes in the structure of the shipping industry. Report JMC/29/2001/3 <a href="http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_PUBL_9221122379_EN/lang--en/index.htm">http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_PUBL_9221122379_EN/lang--en/index.htm</a>
5	European Commission (2006) Communication from the Commission under Article 138(2) of the EC Treaty on the strengthening of maritime labour standards. <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0287:FIN:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0287:FIN:EN:PDF</a>
6	ILO (2012) Maritime Labour Convention, 2006: Frequently asked questions. <a href="http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_177371/lang--en/index.htm">http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_177371/lang--en/index.htm</a>
7	ILO (2011) Advantages of the Maritime Labour Convention, 2006. <a href="http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_153450/lang--en/index.htm">http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_153450/lang--en/index.htm</a>

## 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 came into force internationally on 20 August 2013.

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

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

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

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

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

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

**Title 5:** Compliance and enforcement

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

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

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

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

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

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

## **A.3.1. Context**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Whilst it is expected that the MLC will indeed be widely ratified internationally, it is not possible to predict precisely to what extent it will be ratified. Consequently, the scale of the costs and benefits of UK ratification is uncertain. For example, the benefits to UK registered ships of the system of MLC certification would mainly apply to UK registered ships that call at ports in MLC-ratifying states.<sup>4</sup> Monetising this impact would require additional evidence on which to base assumptions regarding the operational patterns of UK registered ships, and the extent of MLC ratification amongst the port states that these ships call at. The associated risks are discussed in section A.3.4 of this annex.

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

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

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

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

<sup>4</sup> The MLC Certification regime, together with the “no more favourable treatment” clause, will bring competitive benefits to all UK ships to the extent that they are competing globally, as explained in A3.3. section 3.

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

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

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

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

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

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

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

The MLC came into force in August 2013, twelve months after ratification by 30 flag states representing at least 33% of the world fleet tonnage. The benefits arising from ratification of the MLC will depend on how widely the MLC is implemented. Therefore, the main risk associated with ratifying the MLC is that the UK introduces new legislation to implement the MLC, but that subsequently the MLC only achieves a low take-up internationally. This would reduce the potential benefits and could potentially put UK-registered ships at a competitive disadvantage. However, it is likely that the MLC will be widely ratified internationally due to the high level of commitment from all sides.<sup>5</sup>

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

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

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

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

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<sup>5</sup> See Question A18 in ILO (2012).

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

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

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

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

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

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

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

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

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

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



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

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

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

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

The members of the TWG are:

### Government Representatives

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

The Maritime and Coastguard Agency

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

### Shipowner representatives

The UK Chamber of Shipping

The British Tugowner Association

### Seafarer representatives

Nautilus International

National Union of Rail Maritime and Transport Workers

Unite

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

### **P&I Clubs**

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

## Annex 5 - Glossary of Terms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"sea-going" in relation to a United Kingdom ship means—

- (a) a ship which operates outside the waters specified as Category A, B, C and D waters in Merchant Shipping Notice 1837(M),
- (b) a ship to which the Merchant Shipping (Survey and Certification) Regulations 1995 apply and in respect of which no exemption granted under regulation 2(2) of those Regulations applies,
- (c) a ship to which regulation 4 of the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998 applies and which falls within the description given in paragraph (3) of that regulation, or
- (d) a high speed craft in respect of which a permit to operate outside waters of Categories A, B, C or D has been issued in accordance with regulation 8 of the Merchant Shipping (High Speed Craft) Regulations 2004. (*Merchant Shipping (Maritime Labour Convention)(Survey and Certification) Regulations 2013*)