

**EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING AND FISHING VESSEL (HEALTH AND SAFETY AT
WORK) (ASBESTOS) REGULATIONS 2010**

S.I. 2010 No. 2984

1. This explanatory memorandum has been prepared by the Maritime and Coastguard Agency and is laid before Parliament by Command of Her Majesty.

2. Purpose of Instrument

2.1 These Regulations do what is necessary to complete implementation of Council Directive 1983/477/EEC of 19 September 1983, as amended by Directives 1991/382/EEC, 1998/24/EC, 2003/18/EC and 2007/30/EC, on the introduction of measures to protect workers from risks related to exposure to asbestos agents at work, by extending to the maritime sector the duty on employers to reduce the risk to their employees' health resulting from exposure to asbestos at work. Regulations introduced by the Health and Safety Executive and the Health and Safety Executive (Northern Ireland) have already implemented the Directive for land based workers.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 In implementing an EC Directive, the normal policy is to go no further than is necessary to fully implement the Directive provisions i.e. there is no "gold-plating" of those provisions. In the case of the Asbestos Directive however it has been necessary to impose a limit value for exposure (0.1 fibres per cm³ as a four hour time-weighted average, instead of 0.1 fibres per cm³ as an eight-hour time-weighted average as provided for in the Directive) in order to ensure that the provisions of the proposed the Merchant Shipping and Fishing Vessel (Health and Safety at Work) (Asbestos) Regulations 2010 are consistent with those of HSE's Control of Asbestos Regulations, given that there could be circumstances where both land-based workers and seafarers are present on a ship when asbestos work is undertaken. It is not considered however that this reduction will have any significant effect for operators of UK ships as use of asbestos apart from special purposes e.g. high temperature resistant gaskets, has effectively been prohibited on new ships being built for the UK register for some 27 years. There is however the possibility that asbestos could be found on older ships or on ships that were built for other registers but have subsequently transferred to the UK register. Given the very hazardous nature of asbestos and the serious diseases it can cause, this change is considered justified.

4. Legislative Context

4.1 Council Directive 89/391/EEC (the "Framework Directive") introduced general measures to encourage improvements in the safety and health of workers at work and was implemented by the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (SI 1997/2962) (the "General Duties" Regulations).

4.2 Council Directive 1983/477/EEC introduced minimum safety and health requirements for the protection of workers from risks related to exposure to asbestos at work. However this Directive and Directives 1991/382/EEC and 1998/24/EC which amended were initially disapplied to the maritime sector. Directive 2003/18/EC, which further amended Directive 1983/477/EEC, however removed the disapplication to the maritime sector and it became

necessary to apply all 4 Directives, together with further amending Directive 2007/30/EC, to the maritime sector including fishing vessels.

- 4.3 The requirements of Directive 1983/477/EEC, as amended, build on the general safety and health provisions contained in the Framework Directive, and are to be implemented for workers in the maritime sector by means of the Merchant Shipping and Fishing Vessel (Health and Safety at Work) (Asbestos) Regulations 2010. The Control of Asbestos Regulations 2006 and the Control of Asbestos Regulations (Northern Ireland) 2007 introduced by the Health and Safety Executive and the Health and Safety Executive (Northern Ireland) respectively have already implemented the Directive for land based workers and these new Merchant Shipping and Fishing Vessel Regulations, which follow the requirements of Directive 1983/477/EEC (as amended), complete the United Kingdom's implementation of this Directive.

5. Territorial Extent and Application

- 5.1 This instrument applies to all United Kingdom ships whether in the United Kingdom or anywhere else in the world, to all seafarers on such vessels irrespective of nationality, ethnic origin, religion, gender etc. They also apply to non-UK ships when in UK waters.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

- 7.1 The Merchant Shipping and Fishing Vessel (Health and Safety at Work) (Asbestos) Regulations 2010 complete the UK implementation of Council Directive 1983/477/EEC, as amended, concerning the introduction of minimum safety and health requirements for the protection of workers from risks related to exposure to asbestos at work. A Transposition Note is at Annex 1. As mentioned above, corresponding Regulations have already been introduced for land based workers. It is therefore necessary to make these Regulations to ensure application of the Directive to workers in the Merchant Shipping and Fishing Sectors to avoid disparity of regulatory coverage between land based workers and those working on ships. This is especially the case at the water margin, i.e. in dock and port areas, where land based workers (e.g. stevedores and other dock workers) could be working on board a ship alongside members of the crew.

- 7.2 The policy objectives of Directive 1983/477/EEC, as amended, is to protect the health of workers from the risks arising from exposure to asbestos at work. The use of asbestos on new ships being built for the UK register has however been severely restricted for the last 27 years. The only permitted applications were that, if there were no adequate substitutes available, components of machinery or plant made of compound materials containing white asbestos could be used. These applications included some jointings/gaskets, gland packings, brake linings and other friction materials. However where these parts were used, great care was required to be taken to ensure that crew (and passengers) did not inhale asbestos dust when, for example, overhauling braking mechanisms. When working on or adjacent to these parts, specific precautions were required to be taken.

- *Consolidation*

- 7.3 No legislation, other than a general requirement to safeguard health and safety contained in the General Duties Regulations, previously existed to protect of workers in the maritime sector from the risks to their health and safety arising from exposure to asbestos at work. There is therefore no scope for consolidation of existing legislation.

8. Consultation outcome

- 8.1 Initial Consultation on draft Regulations was undertaken in the second quarter of 2006 and included some 225 organisations, companies and individuals covering the Merchant Shipping sector including the Chamber of Shipping (the trade association for the majority of UK shipowners) as well as associations representing small vessel owners/operators. A further 124 consultees covered the fishing sector, ranging from local associations to those at national level. These consultees were sent hard copies of the consultation documents. Separate Government specific consultation was not undertaken as those Government Departments and Agencies, including those in the devolved administrations, appearing to have a direct interest in what was proposed were consulted as part of the general consultation process.
- 8.2 Responses were received from 14 consultees of which five were either content with what was proposed or offered no comment. The remaining comments were considered to be capable of resolution and appropriate responses were made to the consultees concerned to address their comments. However following consultation, the Health and Safety Executive somewhat belatedly expressed concern that the Merchant Shipping and Fishing Vessel (Asbestos) Regulations then being proposed had the potential to undermine their Asbestos Regulations because, whilst following the requirements of the Directive, they did not appropriately reflect provisions contained in the HSE Regulations which in some instances were more stringent than the Directive requirements.
- 8.3 Following negotiations with HSE, their concerns were been addressed and revised Regulations produced which met with their agreement. However given the changes that had been made to the draft Regulations, and the length of time since consultation was initially undertaken, it was considered appropriate to consult industry again.
- 8.4. The second round of consultation took place between 15 January and 26 April 2010 and involved a similar range of consultees to the original consultation. On this occasion however only 7 responses were received of which only four offered comments on the Regulations themselves. The remaining three were either content with the proposals; offered no comments or confined their comments to the related guidance. The responses have as far as possible been addressed in the final version of the Regulations and the associated guidance.

9. Guidance

- 9.1. In line with usual practice a Marine Guidance Note, produced by the Maritime and Coastguard Agency, will be issued to industry and will provide guidance on the requirements of the Merchant Shipping and Fishing Vessel (Health and Safety at Work) (Asbestos) Regulations 2010. Further guidance will be included in the “Code of Safe Working Practices for Merchant Seamen published by The Stationery Office.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is likely to be low as the existing Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 already require risk assessments to be undertaken, and appropriate measures to be taken to alleviate any risks identified. The Merchant Shipping and Fishing Vessel (Health and

Safety at Work) (Asbestos) Regulations 2010 build on the requirements of those earlier Regulations by introducing provisions specifically relating to Asbestos. In addition the use of asbestos has effectively been banned for the last 27 years on new ships being built for the UK register, although it is possible some older ships, or those which have joined the UK register from other Flag States, might potentially have some asbestos on board.

- 10.2 The impact on the public sector is considered to be minimal as reviewing the application of the provisions of the Regulations on ships will be carried out as part of MCA's normal survey regime.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 There is little scope for minimising the impact of the requirements on firms employing up to 20 people, as EC Health and Safety Directives are required to be applied to all workers irrespective of the size of the company employing them. It is normal policy when implementing an EC Directive to go no further than is necessary to implement the provisions of that Directive i.e. there is no "gold-plating" of the Directive requirements. In this case however it has been necessary to reduce the exposure limit value in order to align with HSE's Regulations but it is not considered this will have any significant effect on small businesses given the lengthy ban on the use of asbestos that already exists and additionally they are considered unlikely to operate the types of vessel most likely to be affected.

12. Monitoring & review

12.1 The Maritime and Coastguard Agency will evaluate how the regulations have changed working practices. This will be assisted by any relevant data collected as a result of the implementation by the UK of the ILO Maritime Labour Convention 2006 which will require the Maritime and Coastguard Agency to be notified of any occupational seafarer injuries/diseases.

12.2 All health and safety Directives are also subject to a regular review by the EC to which MCA will contribute as appropriate. In addition it is proposed to monitor compliance to see if any problems arise which need to be resolved by amending the regulations, or associated guidance, to make matters clearer to those organisations/persons covered by the Directive's provisions.

13. Contact

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can answer any queries regarding the instruments.

Title: Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Asbestos) Regulations 2010 Lead department or agency: Maritime and Coastguard Agency Other departments or agencies:	Impact Assessment (IA)
	IA No: DfT00036
	Date: 08/10/2010
	Stage: Final
	Source of intervention: EU
	Type of measure: Secondary legislation
Contact for enquiries: Michael Lines 02380 329246	

Summary: Intervention and Options

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

Workers exposed to asbestos at work can suffer adverse effects to their health which, depending upon the extent, and type of asbestos to which they were exposed can have serious or even fatal consequences. To address these health issues, EC Directive 1983/477/EEC of 19 September 1983 (as amended by Directives 1991/382/EEC, 1998/24/EC, 2003/18/EC and 2007/30/EC) introduced measures intended to protect all workers from the risks related to exposure to asbestos at work. Government intervention is necessary as the UK is obliged to fully implement these Directives for the maritime, fishing and small vessel sectors by means of legislation. Failure to implement the Directive could result in infraction proceedings being taken against the UK.

What are the policy objectives and the intended effects?

The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Asbestos) Regulations 2010 are intended to complete the UK's implementation of Directive 1983/477/EEC (as amended) by extending the protection provided by it to workers in the maritime, fishing, yachting and coded-vessel sectors. Regulations covering land-based workers are already in place.

The intended effect of these Regulations is to reduce the risk of workers on ships, fishing vessels, yachts and coded-vessels from developing asbestos related diseases by preventing as far as possible their exposure to asbestos whilst at work.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)

"Do Nothing" is not an option as this would not implement this Directive and could result in infraction proceedings against the UK for non-implementation.

Two policy options have been identified:

Option 1 - Introduce new Merchant Shipping Regulations to implement Directive 1983/477/EEC (as amended) ; or

Option 2 - Extend the Health and Safety Regulations for land-based workers to the maritime sectors.

Option 2 is not viable as the Regulations covering work involving asbestos on land address different issues to those raised by work involving asbestos on ships, and those Regulations also cease to apply outside the UK. Introducing new Merchant Shipping Regulations (Option 1) is therefore the only valid policy option.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved?	It will be reviewed 01/2013
Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	No

Ministerial Sign-off For final proposal stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister: Mike Penning

Date: 14th December 2010

Summary: Analysis and Evidence

Policy Option 1

Description:

Introduce new Merchant Shipping Regulations to implement Directive 1983/477/EEC (as amended) (Preferred Option).

Price Base Year 2009	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: £-0.2	High: £0	Best Estimate: £0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0	1	£0
High	£0.2	1	£0.2
Best Estimate	£0	1	£0

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

Option 1 could potentially introduce some familiarisation costs for businesses. Familiarisation costs have been estimated at between £0 (Low estimate) and £0.2 million (High estimate). Given that familiarisation costs will only be incurred where asbestos is present or suspected to be present on board vessels, and the use of asbestos on board UK-registered new-build ships has been effectively prohibited for some 27 years, the Best estimate of familiarisation costs is therefore £0.

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

Some ship operators might incur costs for testing for, or removing / safeguarding asbestos, as well as training seafarers and providing safety equipment. Significant costs are not expected for most UK vessels as asbestos use on new builds for the UK register has been prohibited for 27 years apart from certain high temperature gaskets. However, vessels that have joined the UK register from other registers might incur costs if they do contain asbestos.

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

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

No monetised benefits have been identified in this impact assessment.

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

1.) If Option 1 resulted in a reduction in seafarer exposure to asbestos, there could be a benefit in terms of the reduction in the costs of asbestos related diseases (e.g. lost output and human costs). No evidence on the level of this benefit is available, but significant benefits are not expected as asbestos is not present on most ships. 2.) UK ships could be less likely to face sanctions for non-compliance with the Directive in other EU ports. 3.) The UK would comply with its EU obligations.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

1.) Asbestos has effectively been prohibited on new UK-registered new-build ships for 27 years so the benefits of further interventions are unlikely to be significant. 2.) The extent to which asbestos may be present on vessels that have joined the UK flag from other registries is unclear. 3.) It is assumed the cost of HSE inspectors undertaking inspections relating to asbestos aboard ships would be greater than the cost of MCA surveyors, since HSE inspectors would require training on ship inspections and some duplication of effort would be entailed should both sets of inspectors have to visit the same ship. 4.) The limitations of the available evidence base mean that it has not been possible to monetise some of the costs and benefits that have been identified in this impact assessment.

Impact on admin burden (AB) (£m):			Impact on policy cost savings (£m):	In scope
New AB:	AB savings:	Net:	Policy cost savings:	Yes/No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	Other				
From what date will the policy be implemented?	01/11/2010				
Which organisation(s) will enforce the policy?	MCA				
What is the annual change in enforcement cost (£m)?	£0				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A		Non-traded: N/A		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: 0%		Benefits: 0%		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro £0	< 20 £0	Small £0	Medium £0	Large £0
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties¹ Statutory Equality Duties Impact Test guidance	No	16
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	15
Small firms Small Firms Impact Test guidance	No	15
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	16
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	16
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	16
Human rights Human Rights Impact Test guidance	No	16
Justice system Justice Impact Test guidance	No	16
Rural proofing Rural Proofing Impact Test guidance	No	16
Sustainable development Sustainable Development Impact Test guidance	No	16

¹ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 2

Description:

Extend the Health and Safety Regulations for land-based workers to the maritime sectors.

Price Base Year 2009	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: £-0.2	High: £0	Best Estimate: £0

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0	£0	£0
High	£0.2	£0	£0.2
Best Estimate	£0	£0	£0

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

For the purposes of this impact assessment, it is assumed that the familiarisation costs of Option 2 would be the same as the familiarisation costs of Option 1.

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

1.) Extending the land-based regulations to ships would effectively transfer responsibility for asbestos issues from the MCA to HSE. Potential consequences could include the need to train land-based inspectors and the duplication of effort between HSE and MCA inspectors. 2.) The non-monetised costs identified for Option 1 would also apply under Option 2. 3.) In addition, HSE Regulations go beyond the requirements of the Directive as they cover asbestos removal, so there could be other costs.

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

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

No monetised benefits have been identified in this impact assessment.

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

It is considered that the non-monetised benefits of Option 2 would be the same as the non-monetised benefits of Option 1.

Key assumptions/sensitivities/risks

Discount rate (%)

1.) Asbestos has effectively been prohibited on new UK-registered new-build ships for 27 years so the benefits of further interventions are unlikely to be significant. 2.) The extent to which asbestos may be present on vessels that have joined the UK flag from other registries is unclear. 3.) It is assumed the cost of HSE inspectors undertaking inspections relating to asbestos aboard ships would be greater than the cost of MCA surveyors, since HSE inspectors would require training on ship inspections and some duplication of effort would be entailed should both sets of inspectors have to visit the same ship. 4.) The limitations of the available evidence base mean that it has not been possible to monetise some of the costs and benefits that have been identified in this impact assessment.

Impact on admin burden (AB) (£m):		Impact on policy cost savings (£m):		In scope
New AB:	AB savings:	Net:	Policy cost savings:	Yes/No

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	Other				
From what date will the policy be implemented?	01/11/2010				
Which organisation(s) will enforce the policy?	MCA				
What is the annual change in enforcement cost (£m)?	£0				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A		Non-traded: N/A		
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: 0%		Benefits: 0%		
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro £0	< 20 £0	Small £0	Medium £0	Large £0
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties² Statutory Equality Duties Impact Test guidance	No	16
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	15
Small firms Small Firms Impact Test guidance	No	15
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	16
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	16
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	16
Human rights Human Rights Impact Test guidance	No	16
Justice system Justice Impact Test guidance	No	16
Rural proofing Rural Proofing Impact Test guidance	No	16
Sustainable development Sustainable Development Impact Test guidance	No	16

² Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No.	Legislation or publication
1	Directive 1983/477/EEC (as amended)
2	Control of Asbestos Regulations 2006
3	Control of Substances Hazardous to Health Regulations 2002 (as amended)
4	Control of Asbestos Regulations (Northern Ireland) 2007
5	Control of Substances Hazardous to Health Regulations (Northern Ireland) 2003 (as amended)
6	Health and Safety Executive for Northern Ireland (HSE(NI))
7	Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Asbestos) Regulations 2010

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0
Annual recurring cost	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0
Total annual costs	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0
Transition benefits	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0
Annual recurring benefits	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0
Total annual benefits	£0	£0	£0	£0	£0	£0	£0	£0	£0	£0

* For non-monetised benefits please see summary pages and main evidence base section

Evidence Base (for summary sheets)

SECTION 1. PROBLEM UNDER CONSIDERATION

Current medical knowledge indicates that exposure to free asbestos fibres can give rise to several asbestos related diseases which can have a debilitating effect on those affected and can lead to premature death. In an endeavour to protect workers whose health and safety may be put at risk by carrying out work potentially involving exposure to asbestos, the EC produced Directive 83/477/EEC, as amended by Directives 91/382/EEC, 1998/24/EC, 2003/18/EC and 2007/30/EC, which introduced measures intended to protect workers from risks related to work potentially involving exposure to asbestos. Directives 83/477/EEC and 91/382/EEC were initially disapplied to sea transport, but Directive 2003/18/EC removed this disapplication and it is now necessary to implement them for all vessels with workers on board whether operating at sea or on inland waters.

The Health and Safety Executive and the Health and Safety Executive for Northern Ireland have already implemented Directive 1983/477/EEC (as amended) for land based workers in Great Britain by means of the Control of Asbestos Regulations 2006 and the Control of Substances Hazardous to Health Regulations 2002 (as amended) and for Northern Ireland by the Control of Asbestos Regulations (Northern Ireland) 2007 and the Control of Substances Hazardous to Health Regulations (Northern Ireland) 2003 (as amended) introduced by the Health and Safety Executive (HSE) and the Health and Safety Executive for Northern Ireland (HSE(NI)). The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Asbestos) Regulations 2010 are intended to give effect to Directive 1983/477/EEC (as amended) in respect of the maritime, fishing and small vessel sectors in order to complete the UK's implementation of them.

1.1. EVIDENCE ON RISKS ARISING FROM EXPOSURE TO ASBESTOS AT WORK

According to Health and Safety Executive figures, some 4000 deaths per year occur amongst land based workers as a result of asbestos-related disease, especially mesothelioma and asbestos related lung cancer, although many are the result of past heavy industrial exposures among those who manufactured and installed asbestos products. However, HSE are concerned also about lower exposures that may still lead to disease, particularly since specific exposure incidents could form part of a pattern of repeated exposure among some workers (such as electricians, plumbers and carpenters), leading to a substantial cumulative exposure.

No information is currently required to be submitted or kept in respect of injuries / diseases occurring to seafarers on UK registered ships. It is not therefore possible to estimate the potential reduction in such injuries / diseases as a result of the introduction of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Asbestos) Regulations 2010. However, relevant literature³ suggests that exposure to free asbestos fibres can give rise to the following diseases:

- **Asbestosis** - A progressive scarring of the lungs (pulmonary fibrosis) due to exposure to any type of asbestos dust. It may take some years for the disorder to be noticeable. It produces increasing breathlessness and a dry cough. A thickening of the lung surface can also occur in those exposed to asbestos—this may also result in noticeable disability. The scarring and thickening may get worse after the person concerned has ceased to be in contact with asbestos.
- **Mesothelioma** - A rare but dangerous tumour which responds poorly to medical treatment. Usually it occurs in the lining of the chest (pleura) but it can occur in the abdominal cavity. It is usually associated with exposure to crocidolite (blue asbestos); but it can be caused by other types of asbestos. Some people develop the tumour after relatively little exposure to asbestos. The tumour does not usually occur until at least 15 years after first exposure and it is common for this period (known as the “latent period”) to extend to 40 years.
- **Bronchial Carcinoma** - A cancer of the lung usually associated with people who have had asbestosis. Smoking increases the likelihood of this cancer.

³ <http://www.hse.gov.uk/asbestos/>

- Gastro-Intestinal Carcinoma - Gastro-intestinal cancers including those of the colon, rectum (colorectal), stomach (gastric), oesophagus, pancreas, liver and bile duct.

It is not possible to assess the effect of asbestos exposure on seafarers as, whilst asbestos has been for the most part been prohibited for 27 years on new ships being built for the UK register, seafarers presenting now with asbestos related diseases may well have been exposed prior to the ban being introduced. There is currently no requirement for occupational diseases, including those arising from asbestos exposure, to be notified to the Maritime and Coastguard Agency (MCA), although such a requirement should be introduced as part of the implementation by the UK of the ILO Maritime Labour Convention 2006.

A further complication is that, unlike land based workers, seafarers can serve on a variety of ships registered in different countries during the course of their sea-going career and such countries may not necessarily have similar bans on asbestos in place or have had them in place as long as the UK. For example, it is possible that a seafarer working on a UK ship who develops an asbestos related disease may actually have been exposed to asbestos on a non-UK ship as apart from an unknown number of UK seafarers serving on non-UK ships, nearly 17,000 seafarers on UK ships are nationals of other EEA countries or are from countries outside the EEA.

1.2. REGULATORY BACKGROUND

The Regulations already introduced by the Health and Safety Executive and the Health and Safety Executive for Northern Ireland implement the asbestos Directives for land based workers within the United Kingdom and apply to all work involving potential exposure to asbestos carried out in the United Kingdom except where such work is carried out on board a ship as part of the normal shipboard activities of the ship's crew, and is carried out under the direction of the master; and is not liable to expose persons at work other than the master and crew to a risk to their safety. In effect this means that the HSE and HSE (NI) Regulations will apply to all work carried out on a UK ship in a port or dock in the UK, unless it is only carried out by the master and crew and cannot adversely affect anyone else. Where work is carried out in a port outside the UK, land based workers are likely to be subject to their own national legislation whilst the master and crew will remain subject to the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Asbestos) Regulations 2010.

The Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (the "General Duties" Regulations), which implemented the EC "Framework" Health and Safety Directive are considered to already cover exposure to asbestos, albeit in a more generalised way, as they require employers to ensure the health and safety of workers by complying with certain general duties set out in those Regulations. These duties include the following:

- (a) the avoidance of risks;
- (b) the evaluation of unavoidable risks and the taking of action to reduce them;
- (c) adoption of work patterns and procedures which take account of the capacity of the individual;
- (d) adaptation of procedures to take account of new technology and other changes in working practices, equipment, the working environment and any other factors which may affect health and safety;
- (e) adoption of a coherent approach to management of the vessel or undertaking, taking account of health and safety at every level of the organisation;
- (f) giving collective protective measures priority over individual protective measures; and
- (g) the provision of appropriate and relevant information and instruction for workers.

Without prejudice to the generality of the duties set out in (a) to (g) above, the matters to which those duties extend includes in particular:

- (i) provision and maintenance of plant, machinery and equipment and systems of work that are, so far as is reasonably practicable, safe and without risk to health;

- (ii) arrangements for ensuring, so far as is reasonably practicable, safety and absence of risk to health in connection with the use, handling, stowage and transport of articles and substances;
- (iii) such arrangements as are appropriate, having regard to the nature of, and the substances used in, the activities and size of the operation, for the effective planning, organisation, control, monitoring and review of preventive and protective measures;
- (iv) provision of such information, instruction, training and supervision as is necessary to ensure the health and safety of workers and that of other persons aboard ship who may be affected by their acts or omissions;
- (v) maintenance of all places of work in the ship in a condition that is, so far as is reasonably practicable, safe and without risk to health;
- (vi) arrangements to ensure, so far as is reasonably practicable, that no person has access to any area of the ship to which it is necessary to restrict access on grounds of health and safety unless the individual concerned has received adequate and appropriate health and safety instruction;
- (vii) provision and maintenance of an environment for persons aboard ship that is, as far as is reasonably practicable, safe and without risk to health; and
- (viii) collaboration with any other persons upon whom a duty is placed by the Regulations to protect, so far as is reasonably practicable, the health and safety of all authorised persons aboard the ship or engaged in loading or unloading activities in relation to that ship.

Directive 1983/477/EEC (as amended) builds on those requirements by introducing specific requirements relating to the health and safety of workers likely to be exposed to asbestos at work. Directive 1983/477/EEC was initially disappplied to the maritime sector but this disapplication was removed by Directive 2003/18/EC with the result that it is now necessary for the provisions of all the Directives to be implemented by means of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Asbestos) Regulations 2010 in order to meet the UK's obligations to give effect to them.

SECTION 2. RATIONALE FOR INTERVENTION

As discussed above, workers exposed to asbestos at work can suffer adverse effects to their health which, depending upon the extent, and type of asbestos to which they were exposed can have serious or even fatal consequences. It is possible that some employers might not take adequate precautions to mitigate the risks from asbestos. To address these health issues, EC Directive 1983/477/EEC of 19 September 1983 (as amended by Directives 1991/382/EEC, 1998/24/EC, 2003/18/EC and 2007/30/EC) introduced measures intended to protect **all** workers from the risks related to exposure to asbestos at work.

It is a requirement that EC Directives be implemented by means of legislation in all Member States and HSE/HSE(NI) have already done so for land-based workers in the UK. The Merchant Shipping and Fishing Vessel (Health and Safety at Work) (Asbestos) Regulations 2010 complete implementation for the UK by extending the Directives' provisions to all seafarers on UK registered ships, fishing vessels, yachts and other craft both sea going and on inland waters on which there are employed workers. Failure to introduce these Regulations could leave the UK open to infraction proceedings by the EC and leave UK ships and other vessels open to enforcement action for non compliance in other EC ports. Non-implementation could also render the Government liable to pay compensation to all those affected under the Francovich principle of state liability whereby the TEuropean Court of Justice, in the case of *Andrea Francovich and Others v. Italian Republic*, developed a general principle of state responsibility for compliance with EC law in a case in the field of employment rights: *Andrea Francovich and Others v. Italian Republic*.

SECTION 3. POLICY OBJECTIVE

The UK is committed to implementing EC Health and Safety Directives and implementation of the EC Asbestos Directive is intended to ensure that any seafarers who may be at risk of exposure to asbestos are appropriately protected as is already the case for workers on land.

The intended effect of the Regulations is to reduce the risk of workers on ships, fishing vessels, yachts and coded-vessels from developing asbestos related diseases by preventing as far as possible their exposure to asbestos whilst at work.

SECTION 4. DESCRIPTION OF OPTIONS CONSIDERED

Given the requirement that EC Directives must be given the force of law in Member States, 'Do Nothing' is not an option and is therefore not considered further in this part of the Impact Assessment. The implications of not giving effect to Directive 1983/477/EC (as amended) are discussed in Section 2 above.

Non-regulatory measures or guidance would not be sufficient to give full effect to the Directive 1983/477/EEC (as amended). Therefore, the only implementation options identified for Directive 1983/477/EEC (as amended) that will meet EC requirements involve amending existing HSE/HSE(NI) legislation or introducing new Merchant Shipping legislation.

Two options for giving effect to Directive 1983/477/EEC (as amended) for the Maritime sector by amending existing UK legislation, or introducing new legislation, have been identified in this impact assessment:

Option 1: Introduce new Merchant Shipping Regulations, the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Asbestos) Regulations 2010, to implement Directive 1983/477/EEC (as amended); or

Option 2: Extend the Health and Safety Regulations for land-based workers to the maritime sectors.

Both options are discussed below.

(i) Option 1 – Introduce a single set of Merchant Shipping Regulations to implement Directive 1983/477/EEC (as amended) for the maritime sectors – the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Asbestos) Regulations 2010.

Option 1 is the preferred option for the following reasons:

- (a) Merchant Shipping Regulations are applicable to UK ships and other types of vessel wherever they may be in the world. They are also applicable to non UK ships when in UK waters on a "no more favourable treatment" basis.
- (b) Merchant Shipping Regulations are specifically drafted with ships in mind and whilst they can contain provisions brought forward from earlier Merchant Shipping Regulations, on the basis of no lowering of existing standards, they do not normally "gold plate" Directive requirements except where there are sound health and safety grounds for doing so.
- (c) The policy of implementing EC Directives for the maritime and fishing sectors by means of regulations specific to merchant shipping and fishing vessels is a well established and widely used practice with which industry is both familiar and in agreement.
- (d) Maritime and Coastguard Agency surveyors are familiar with ships, their operation and the substances etc that may be found on them either within the ship itself or carried as cargo.

The costs and benefits of Option 1 are considered in Section 5 below.

(ii) Option 2 - Extend the application of HSE's land-based regulations to the maritime sectors

There are several problems with adopting Option 2 which are set out below:

- (a) There are separate Regulations covering land-based workers in Great Britain (produced by HSE) and Northern Ireland (produced by HSE(NI)). They also apply to certain offshore installations within UK waters. These Regulations do not however apply outside the UK but even if they did it could be questionable which of the two sets of Regulations (HSE or HSE(NI)) would apply to a particular incident which occurred outside the UK and therefore who had jurisdiction.
- (b) The HSE/HSE(NI) Regulations are intended to cover work involving potential exposure to asbestos carried out at premises on land or offshore installations. They may also contain more detailed provisions which have either been carried forward from earlier HSE/HSE(NI) Regulations or have been specifically introduced by HSE/HSE(NI), to cover specific situations known to arise on land but which may not be relevant to ships, such as asbestos removal and licensing, implementation of which would amount to "gold plating" of the Directive for the maritime sector. As a result the Regulations may not be entirely compatible with the differing requirements of ship operation and could also put UK shipping at a commercial disadvantage compared to its competitors.
- (c) HSE/HSE(NI) Inspectors are not familiar with the operation of ships or their crews and would require appropriate training to enable them to undertake this work. MCA surveyors are however already fully conversant with ships and their operation.
- (d) The policy of implementing EC Directives for the maritime and fishing sectors by means of regulations specific to merchant shipping and fishing vessels is a well established and widely used practice with which industry is both familiar and in agreement.
- (e) HSE/HSE(NI) inspectors will not in most cases be familiar with ships, their operation and the substances etc that may be found on them either within the ship itself or carried as cargo and will require training to undertake such inspections.
- (f) Using HSE/HSE/NI inspectors to carry out asbestos inspections on ships, with MCA surveyors undertaking all other inspections could result in duplication of effort plus increased costs for the Exchequer especially where such inspections are undertaken outside the UK.

For these reasons, it is not considered appropriate to adopt Option 2. The costs and benefits of Option 2 are considered in Section 6 below.

SECTION 5. COST AND BENEFITS OF MERCHANT SHIPPING AND FISHING VESSELS (HEALTH AND SAFETY AT WORK) (ASBESTOS) REGULATIONS 2010 (OPTION 1)

The maritime sector consists of some 1400 merchant ships, 6500 fishing vessels (of varying sizes) and 6000 small commercial vessels. However, whilst Option 1 will apply to all UK vessels, not all of them will be directly affected (e.g. because there are no employed workers on board or because they do not have asbestos on board). There is however no information available centrally regarding the number of vessels that would be likely to be directly affected by Option 1. In addition, respondents to the consultation exercise provided no information that would have assisted in identifying the number of such vessels or the likely resultant costs to owners and operators of those vessels. It is, however, considered likely that the number of vessels that will be directly affected will be very small and that even where asbestos is present it is likely to be closely monitored.

5.1. SECTORS AND GROUPS AFFECTED

Option 1 will apply to all UK ships and other vessels on which workers are employed irrespective of whether they are Merchant Ships, Yachts, Fishing Vessels, Pilot Vessels, Inland Waterway Vessels or any other type of vessel. The main groups affected by Option 1 (the Regulations) will be the owners and operators of UK ships, etc, as well the employers of the workers working on those ships and the workers themselves.

5.2. COSTS OF MERCHANT SHIPPING AND FISHING VESSELS (HEALTH AND SAFETY AT WORK) (ASBESTOS) REGULATIONS 2010(OPTION 1)

Given the requirements of the General Duties Regulations, which requires employers to investigate and mitigate against risks, and the current ban on the use of asbestos except in very limited circumstances, it is considered that introduction of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Asbestos) Regulations 2010 will only have a very limited additional effect on the UK maritime sector. This is because the sector should already have been considering, albeit perhaps in a more generalised way, the risks arising from asbestos, if there are any, and the measures required to alleviate them. In particular, Merchant Shipping Notice M1080 of June 1983 and subsequent Merchant Shipping Notices that have replaced it, effectively banned the use of Asbestos on board ships except for certain exceptional applications, meaning that the impact on ship operators and employers is likely to be limited.

A formal consultation exercise was carried out in April 2006 to seek comments, as well as information on costs, in respect of an earlier draft proposal for implementing Directive 1983/477/EEC (as amended). Some 349 consultees were included in the previous consultation exercise of which 225 covered the Merchant Shipping sector, including the Chamber of Shipping (the trade association for the majority of UK ship owners) as well as associations representing small vessel owners/operators. The remaining 124 consultees covered the fishing sector, from local associations to those at national level. Only 14 responses were received of which 5 offered no comment at all and none of the remaining 9 provided any indication of potential additional costs.

As a result of the 2006 consultation, and in particular comments received from the Health and Safety Executive, it became necessary to revise the draft of the Regulations that was consulted upon in 2006. The revised draft Regulations were formally consulted upon in 2010, and 8 responses were received of which 3 offered no specific comments and none of the remaining 5 provided any further evidence on the costs or benefits arising from the Regulations.

It is considered that introduction of the Regulations could require some ship operators to incur costs for testing, removing or safeguarding asbestos, as well as for training of seafarers and provision of safety equipment. Significant costs are not expected to arise in respect of most UK vessels, especially those built specifically for the UK register, as asbestos use has effectively been prohibited on UK ships for 27 years, apart from specifically exempt applications including high temperature gaskets, gland packings, brake linings and other such high friction materials. However, some vessels that have joined the UK register from other registers might incur costs if they contained asbestos at the time they joined the UK register and it has not subsequently been removed.

a) Familiarisation with the Regulations

Introducing the Regulations could potentially require an employer, or another person acting on their behalf, to familiarise themselves with the requirements of the Regulations and analyse their effect either on a specific ship or on the company / organisation as a whole. However, the Regulations would not involve every vessel / company as the majority of vessels will have been constructed since the ban on asbestos was introduced and should therefore have no asbestos on them other than that currently specifically permitted. In addition, many small vessels (e.g. RIBs, open work boats etc) especially are not likely, by virtue of their design, age, etc, to have had asbestos on board to which workers could potentially have been exposed.

Information on the number of vessels where asbestos is present on board, and which businesses would as a consequence be required to familiarise themselves with the Regulations, is not known. However, to illustrate the order of magnitude of the potential costs, data from the ONS Annual Business Inquiry has been used to produce two indicative estimates of the potential familiarisation costs. The number of businesses engaged in *Water Transport* activities in the UK was 1,529 in 2008, with a further 3,535 businesses engaged in *Fishing* activities in the UK in 2008.

The two scenarios that have been considered in this impact assessment are as follows. Firstly, as an illustration of the potential order of magnitude if all of the businesses in these sectors in the UK incurred familiarisation costs, the familiarisation costs have been estimated at up to around £200,000. This assumes that one member of staff would have to spend two hours familiarising themselves with the Regulations, and assumes a wage rate of £20 per hour ('Activities of head offices', ASHE 2009, up-rated by 1.21 for non wage costs as per DfT Webtag guidance.) Secondly, however, it is considered that the

more likely scenario is that in fact very few businesses in the UK would face this familiarisation cost. Consequently, in the absence of information on the number of businesses affected, the Low estimates and the Best estimates included in the 'Summary: Analysis and Evidence' sheets are both £0. However, it is recognised that this is likely to be a small underestimate and that familiarisation costs could be incurred by a few businesses.

b) Training

It is not possible to assess whether training will be required and if so at what cost, to meet the requirements of the Regulations. This is because no information is available on how many workers are potentially exposed to asbestos whilst at work on UK ships, or to which type of asbestos they are potentially exposed, as such data is not required to be provided to MCA. As no evidence on this was provided in the consultation responses, it has not been possible to monetise this cost in this impact assessment.

c) Costs of using alternatives to asbestos

Directive 1983/477/EEC (as amended) and the Regulations require that where risks from exposure to asbestos are identified they should be alleviated by the use of alternative materials which are either non hazardous or are less hazardous. It is not possible to assess what costs will be incurred by industry as no central information is held by MCA regarding the presence of asbestos on board vessels and the potential for workers to be exposed to asbestos where it is present. However, it is assumed that the costs of using alternative to asbestos are likely to be negligible for most ships, given the existing ban on the use of asbestos, and the related requirement that on UK registered vessels being overhauled or repaired:

- (a) asbestos or asbestos based materials should be removed where they present a risk to health—for example, friable or flaking asbestos insulation; and,
- (b) any replacement structure or totally new structure must not include asbestos or asbestos based materials.

d) Costs to the MCA

The Regulations will require MCA surveyors to verify compliance during routine vessel inspections/surveys. The Regulations are unlikely to add significant time to this inspection process as the Risk Assessment completed by the employer will remain the focus of the inspection. MCA surveyors would not physically be checking for Asbestos during routine vessel surveys, hence it is unlikely that these Regulations would introduce additional costs compared to the status quo. Potentially, a small number of the 50-strong workforce of MCA surveyors could be required to become familiar with the Regulations but given that they are already experts in the field of ship inspection, and would be aware of the risks arising from asbestos and the need for an employer to mitigate risks as part of the general duties Regulations, the need to understand these Regulations in detail would only be likely to arise in isolated cases.

5.2 BENEFITS OF MERCHANT SHIPPING AND FISHING VESSELS (HEALTH AND SAFETY AT WORK) (ASBESTOS) REGULATIONS 2010 (OPTION 1)

There could be a potential benefit to seafarers and society if the Regulations reduce exposure to asbestos amongst seafarers. However, no information is available on the number of deaths or occupational diseases that currently arise amongst seafarers due to exposure to asbestos on UK ships. In any event, given the current ban on use of asbestos, and given the fact that it can take up to 40 years for asbestos related diseases to manifest themselves, it is considered likely that most such deaths or asbestos related diseases appearing now are the result of exposure prior to the current ban on use of asbestos being introduced. The underlying risk to seafarers on UK ships, fishing vessels etc, of developing asbestos related diseases from exposure to asbestos now is small and the extension of Directive 1983/477/EEC (as amended) to working at sea will have negligible to small beneficial impact on this risk. However, **any** reduction would represent a benefit to society if it leads to a reduction in lost output and / or the human and medical costs arising from such diseases.

The HSE impact assessment of the 2007 Control of Asbestos Regulations for land based work estimated that the number of lives saved could be in the range of 18-72 over a 100 year period (<http://www.hse.gov.uk/ria/chemical/asbestosregria.pdf>). The potential number of Asbestos related deaths from all sources over the next 100 years was estimated to be 7,800. All of the estimated lives saved by the 2007 Regulations are workers engaged in the removal of asbestos (i.e. they would be exposed to asbestos over a significant period of their working lives). DfT webtag guidance suggests that the value of avoiding a fatality is £1.6 million in 2007 prices based on the lost output and human costs; this illustrates the potential for the benefits to be significant where legislation leads to fatalities avoided.

However, no evidence is available on the number of ships which contain asbestos, nor is there a basis for making suitable assumptions to estimate this number, meaning that it is not possible to estimate the benefits of intervention in this case. Merchant shipping notice M 1080 of June 1983 introduced the requirement to avoid using asbestos except in certain prescribed circumstances, meaning its use has effectively been limited for over 27 years. The number of UK ships build more than 27 years ago is not known (figures are available for merchant vessels, but this Regulation also affects thousands more small commercial craft and other vessels as well) and in any case asbestos could have been removed in the interim period. Equally, the number of vessels built less than 27 years ago in other countries and transferring to the UK ship register is also not known; since the ban would not have applied to them there could be some risk that they contain Asbestos.

In order to gauge whether this was likely to be the case, the 350 consultees referred to, in sub-paragraph 2 of paragraph 5.1 above, were asked to quantify any benefits that might accrue from the introduction of the draft Regulations. The number of responses was the same and the view of all eight of them was that no benefits would accrue to them from the draft Regulations that were consulted on. This ties in with the MCA view that either employers will have already addressed the issue themselves as part of their general risk assessment under the General Duties Regulations or that there is little or no asbestos still present on UK ships that will be subject to the Regulations.

It should be noted however that the 350 consultees approached for comments in the recent consultation exercise are in the main already familiar with UK merchant shipping legislation and its requirements in so far as it affects them. However, as part of the exercise to grow the UK register, there will be ships joining the UK register from outside the EU whose operators are not familiar with the health and safety requirements applicable to UK ships, including those relating to asbestos. There is therefore potential for the Regulations and the related guidance to assist in preventing exposure to asbestos and thus asbestos related diseases on such vessels. It is however not possible to quantify any such benefits given that it cannot be proved conclusively that exposure to asbestos would be prevented by the introduction of the Regulations as such exposure might not have occurred irrespective of whether or not the Regulations are introduced.

In addition to the potential benefits if the Regulations reduce exposure to asbestos amongst seafarers, UK vessels serving ports in other EC States could potentially benefit from the introduction of the Regulations in so far as they would be less likely to face sanctions or delays for non-compliance with the requirements of the Directive 1983/477/EEC (as amended).

Introduction of the Regulations would also remove the risk to the Government of infraction proceedings for failing to implement the Directive as well as the risk that the Government could, under the Frankovich principle, be liable to pay compensation to all those affected by the failure to implement Directive 1983/477/EEC (as amended).

SECTION 6. COST AND BENEFITS OF OPTION 2

As for Option 1, no information on any potential costs was provided by respondents to the consultation exercise.

6.1. COSTS OF OPTION 2

It is considered that the costs to the employer of complying with the relevant Regulations would in the case of Option 2 be similar to those for Option 1. It is however envisaged that the following non-monetised costs would also arise under Option 2 as extending the land-based regulations to ships would effectively transfer responsibility for asbestos issues from the MCA to HSE.

Firstly, it is assumed that land-based inspectors would require training on inspecting ships. No evidence is available on this issue, but it is assumed that the cost of training HSE inspectors to conduct the necessary inspections would be greater than the cost of training MCA surveyors who are already familiar with similar legislation for ships.

Secondly, there could also be duplication of inspections where land-based inspectors carry out asbestos related inspections whilst MCA surveyors undertake inspections relating to other health and safety issues. For example, HSE/HSE(NI) inspectors could need to visit a ship at the same time as an MCA surveyor as MCA would remain responsible for the health and safety legislation which gives effects to other EC health and safety Directives. This could potentially result in a cost to Government especially where inspections have to be undertaken outside the UK.

Thirdly, the HSE Regulations are understood to be more stringent than the Regulations in so far as they also include HSE provisions intended to cover organisations undertaking asbestos removal work which would not be relevant to ships. This could potentially result in additional costs for ship operators.

6.2, BENEFITS OF OPTION 2

As with Option 1, the prevention of exposure to asbestos might have benefits for the seafarers concerned; their next of kin and the relevant authorities in their countries of domicile, if as a result they do not develop asbestos related diseases and thus have their working, or indeed actual, lives curtailed prematurely. However, given that employers are already required to consider and mitigate risks under the General Duties Regulations, and given the assumption that Asbestos is considered unlikely to be present on many vessels, any benefits are not expected to be significant. It should be noted that no evidence is available on the scale of the benefits.

SECTION 7. SPECIFIC IMPACT TESTS

7.1. COMPETITION ASSESSMENT

EC Directives are required to be implemented by all 27 Member States and apply to all workers within those States which includes on board a UK registered ship wherever it may be. In the case of the maritime sectors, the provisions of a Member State's national legislation which gives effect to a Directives applies to all vessels flying its flag on which workers are employed. The requirements of that legislation is also applied, on a "no more favourable treatment" basis to vessels flying the flag of a non-member when within the waters of a Member State. It is not envisaged that introduction of the Regulations will have any negative effect on competitiveness. Indeed the contrary is likely to be the case as failure to implement the Directive could actually affect the competitiveness of UK ships as because of 'no more favourable treatment' UK ships could be subject to delay or even detention in ports in other EC countries if the UK has not implemented the Directive.

By introducing health and safety legislation in the EU, there could, at a theoretical level, potentially be some impact on competition if this legislation exceeds the legislation that is applicable internationally and if non-EC flagged vessels consequently have lower costs as a result. However, as discussed in this evidence base, the number of vessels with asbestos on board is thought to be small, and under the General Duties Regulations, employers are already required to undertake risk assessments and put in place appropriate measures to address any risks identified, including asbestos risks. In addition, in EU waters, non- EU vessels would be subject to the 'no more favourable treatment' provision. Furthermore, other non-EC countries, given the dangers of asbestos, may well have their own safety measures in place. Therefore, no impact on competition internationally is expected.

7.2. SMALL FIRMS IMPACT TEST

The Regulations apply to businesses of any size. However, given the assumption that asbestos is unlikely to be present, or that risk will already be mitigated for, the cost burden on businesses of any size is likely to be small. MCA's consultees on the Regulations included small, medium and large businesses - a number of consultees including the British Chamber of Shipping, RYA and BMF have small business members, and a number of the specific consultees would be classified as small or medium enterprises. No comments were received from the formal consultation on the impact on small firms, suggesting that disproportionate impacts are not expected.

7.3. GREENHOUSE GAS ASSESSMENT

The Regulations have no relevance to greenhouse gas issues as they relate only to health and safety of seafarers in relation to exposure to asbestos

7.4. WIDER ENVIRONMENTAL ISSUES

The Regulations have no relevance to wider environmental issues as they relate only to health and safety of seafarers in relation to exposure to asbestos

7.5. HEALTH AND WELL-BEING IMPACT

The Regulations could potentially have a beneficial impact on the health and well-being of any seafarers employed on a vessel on which asbestos is present. However, as indicated elsewhere, it is considered that the number of vessels on which asbestos is present is likely to be very low, and no evidence is available on the likely magnitude of the health impacts.

7.6. RACE EQUALITY

The Regulations are applicable to all seafarers on UK ships irrespective of their race, nationality or ethnic origin.

7.7. DISABILITY EQUALITY

The Regulations are applicable to all seafarers on UK ships. They do not however include any provisions relating directly to disability as this is covered by other legislation.

7.8. GENDER EQUALITY

The Regulations are applicable to all seafarers on UK ships irrespective of their gender. However the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (SI 1997/2962), which implemented the EC Framework Directive of which Directive 1983/477/EEC (as amended) is a daughter Directive, requires employers to give particular attention to any effects concerning the health and safety of workers belonging to particularly sensitive risk groups including new or expectant mothers.

7.9. HUMAN RIGHTS

The Regulations do not raise any human rights issues. In addition as the Regulations are subject to negative resolution procedure and do not amend primary legislation, no formal statement is required.

7.10. JUSTICE SYSTEM

Specific approval for any offences or penalties arising as a result of the directive must be sought from the Ministry of Justice. The MCA are in consultation with the Ministry of Justice on this issue.

7.11. RURAL PROOFING

The Regulations have no relevance to rural proofing as they relate solely to the health and safety of seafarers in relation to exposure to asbestos.

7.12. SUSTAINABLE DEVELOPMENT

The Regulations have no relevance to sustainable development as they relate only to the health and safety of seafarers in relation to exposure to asbestos.

SECTION 8. ENFORCEMENT SANCTIONS AND MONITORING

Inspections to ensure compliance will be integrated into MCA's existing inspection system which includes regular inspections of UK ships for compliance with regulatory requirements. It is not envisaged that additional costs will be incurred by MCA as a result. If however vessels are found to be not in compliance any further visits, to confirm that compliance has been achieved, will be charged to the

employer. In addition the Regulations provide for sanctions for non-compliance including provision for fines up to the statutory maximum (currently £5,000) on summary conviction. In the case of conviction in a Crown Court, the Regulations do not impose any limit on the amount of the fine and there is also the possibility of imprisonment for up to two years. These penalties are in line with those for other health and safety offences and are considered to be proportionate to the nature of the offences. Provisions also exist whereby a ship may be detained when in UK waters where a surveyor of ships suspects that an offence has been committed which can, potentially, result in loss of revenue for the shipowner.

SECTION 9. SUMMARY AND PREFERRED OPTION WITH DESCRIPTION OF IMPLEMENTATION PLAN

9.1. SUMMARY

EC Directive 1983/477/EEC introduces a requirement that all workers are to be protected from any risks to their health or safety that might arise as a result of their actual or potential exposure to asbestos whilst at work. Currently the only information regarding health hazards of asbestos and precautions to be taken is set out in a Merchant Shipping Notice dating back to 1990, which replaces an earlier Merchant Shipping Notice. This Merchant Shipping Notice however basically only has "guidance" status and the Regulations are therefore required to give full effect to the Directive and associated guidance will advise on what must be done to comply with the requirements of the Regulations. Introducing new Merchant Shipping Regulations, the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Asbestos) Regulations 2010, to implement Directive 1983/477/EEC (as amended) (Option 1) is the preferred policy option because it would meet the UK's European commitments and it would be likely to realise any potential benefits arising from reduced exposure to asbestos at a lower cost than the other option that has been identified (Option 2).

9.2. IMPLEMENTATION AND DELIVERY PLAN

Some 339 individuals, companies and organisations in the maritime, fishing, yachting and coded vessel sectors were consulted on the likely costs and any potential benefits of the introduction of the new regulations. Included in the consultation were the UK Chamber of Shipping who, in turn, would have forwarded details to their 140+ members. The consultation documents were also placed on the MCA website. Despite this, only 8 responses were received of which 3 offered no comments on the proposals or were content with them. The remaining 5 responses raised queries regarding the content of the Regulations or the supporting guidance. None of the respondents, however, provided any comments regarding costs or benefits likely to result from the Regulations. In the absence of any evidence to the contrary it is therefore considered that introduction of the Regulations will result in costs or benefits that are likely to be minimal.

SECTION 10. RISKS AND ASSUMPTIONS

The key assumption in this impact assessment is that very few vessels will be affected by the Regulations as it is assumed that very few vessels have asbestos on board. However, it should be noted that only one consultee from the 2006 consultation, and no consultees from the 2010 consultation, indicated that they might have asbestos on board their vessel.

In addition, another significant assumption is that it is assumed that familiarisation costs for vessels that do not have asbestos on board will be £0.

The key risks are due to the uncertainty around the number of vessels that will be affected by the Regulations. If a significant number of vessels do have asbestos on board, more vessels might be required to undertake monitoring assessments of the level of asbestos or to provide training for staff if appropriate safety measures and staff training have not already been put in place.

In addition, it should be noted that it has only been possible to monetise the familiarisation costs in this impact assessment – therefore, the estimates of the monetised costs do not reflect the other costs of compliance that have been identified in this impact assessment.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];</p> <p>Every five years Member States are required to provide the European Commission with a report on the practical implementation of this Directive, indicating the points of view of the social partners. The next review is due in 2013 and will provide a suitable initial opportunity to review the application and effectiveness of these Regulations</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p> <p>The objective of the review will be to ensure that the Regulations are doing what is required by the Directive to ensure that workers on ships are protected against risks arising from exposure to asbestos.</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p> <p>The MCA will monitor compliance with the Regulations, both during routine inspections of UK ships and surveys to evaluate how the Regulations have changed working practices and to see if any problems arise which need to be resolved by amending the Regulations, subject to maintaining compliance with the requirements of the Directive, or the associated guidance, to make matters clearer to those organisations or persons covered by the Regulations. Such monitoring/evaluation will be assisted by any relevant data collected as a result of the implementation by the UK of the ILO Maritime Labour Convention 2006 which will require MCA to be notified of any seafarer occupational injuries/diseases. The absence of any data relating to asbestos on ships suggests that a post implementation review will require at least 5 years of data to provide a meaningful evidence base. Even then it could prove difficult to attribute any change to the new regulations given seafarers can and do move between ships of different flags and consequently different legislative regimes which may, if the vessels are not registered in an EC country, not include legislation covering asbestos.</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p> <p>There is no baseline against which the changes introduced by the legislation can be measured as there is currently no requirement for notifying the Maritime and Coastguard Agency of any diseases that may have resulted from exposure to asbestos.</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p> <p>Success will be measured by reviewing the number of cases recorded each year where ships have been found to not be in compliance with the requirements of the Regulations. A drop in the number of cases or a nil record would indicate that the Regulations were being complied with.</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]</p> <p>A record of inspections undertaken on UK ships, and the type, of deficiencies found, if any, is recorded on a central database which can be interrogated to see how many cases related to asbestos have been recorded. Implementation of the Maritime Labour Convention will also require notification to MCA of any occupational diseases including those that are asbestos related.</p>
<p>Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]</p> <p>N/A</p>

