Title: Merchant Shipping (Maritime Labour Convention) (Seafarer Employment Agreements) Regulations 2014 ("2014 Regulations") **IA No:** DfT00173 **Lead department or agency:** Maritime and Coastguard Agency (MCA) **Other departments or agencies:** Department for Transport	**Impact Assessment (IA)** **Date:** 06/03/2014 **Stage:** Final **Source of intervention:** International **Type of measure:** Secondary legislation **Contact for enquiries**: Michael Lines Tel: 023 8032 9246

Summary: Intervention and Options

RPC: GREEN

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB in 2009 prices)	**In scope of One-In, Two-Out?**	**Measure qualifies as**
£0.01m	NQ	NQ	Yes	Zero net cost

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

It is considered that all seafarers should have a fair and legally enforceable employment agreement. Employment conditions for seafarers vary across the world, with some seafarers working under unacceptable conditions and ship operators operating substandard ships can gain competitive advantage. Effective international standards are needed to address this. The Maritime Labour Convention 2006 (MLC) aims to provide minimum living and working conditions for seafarers that are globally applicable and uniformly enforced, including fair, enforceable employment agreements. This requires the MLC to be ratified by governments. The UK ratified the MLC on 7 August 2013, so UK legislation must be fully compliant.

What are the policy objectives and the intended effects?

The purpose of the 2014 Regulations is to promote decent living and working conditions for seafarers globally and an international level playing field for shipping, as part of the UK's implementation of the MLC by a) bringing UK legislation into line with the minimum global standards for seafarer employment agreements (SEAs) and to give seafarers equivalent protection through their employment agreement as workers ashore; b) fully complying with MLC standards under UK international obligations as a ratifying country, and c) enforcing these standards on non-UK ships calling at UK ports. Specific objectives for employment agreements can be found in the Evidence Base.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Doing nothing is not considered to be an appropriate course of action, as new UK legislation is required to fully comply with the MLC. Failure to ratify the MLC would have limited its effectiveness at addressing the issues on seafarer living and working conditions discussed above and UK ships would not have been able to obtain MLC certification. Two options to implement the MLC requirements for SEAs have been identified. Option 1 would require SEAs to include only the minimum contents specifically listed in the MLC. Option 2 would additionally require SEAs to include three extra pieces of information in line with the minimum requirements for contracts for UK workers under the Employment Rights Act, to ensure equivalent protection for seafarers, one of the principles of the MLC. Since Option 2 is not expected to incur significant additional cost, it is therefore the preferred option.

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

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** Yes	**< 20** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** NA	**Non-traded:** NA	

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

Signed by the responsible Minister: Stephen Hammond Date: 24/06/2014

Summary: Analysis & Evidence

Policy Option 1

Description: Introduce Regulations to implement the MLC requirements for SEAs, including requiring SEAs to contain only the minimum contents of an SEA specifically listed in the MLC.

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: NA	**High:** NA	**Best Estimate:** 0.01

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

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

Due to limitations in the available evidence base, it has not been possible to monetise any of the potential costs identified under Option 1. Consultees were invited to submit any additional evidence on the cost of introducing seafarer employment agreements which comply with these regulations at public consultation, however, no quantified evidence or costing was received.

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

1) There would be transitional costs for UK shipowners and manning agents of introducing SEAs. However, the scale of these costs are uncertain and would vary from one shipowner or manning agent to another. However, industry has stated that the costs, which are largely administrative, are manageable

2) There would be familiarisation costs for shipowners and manning agents.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NQ	NA	NQ	**NQ**
High	NQ		NQ	**NQ**
Best Estimate	NQ		0.002	**0.01**

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

The MCA would no longer be required to print or supply crew agreement stationary to companies. This would save the MCA around £1,500 per year in printing costs plus some additional non-monetised savings in storage and distribution costs. Due to limitations in the available evidence base, it has not been possible to monetise any of the potential benefits to shipowners or seafarers. Consultees were invited to submit any additional evidence on these benefits at public consultation, however, no quantified evidence was received.

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

1) Seafarers would have SEAs setting out their terms and conditions of employment and a single point of contact for concerns. 2) Where appropriate, shipowners would no longer have to administer both crew agreements and contracts of employment. 3) The MCA would no longer have to approve "non-standard" crew agreements. 4) Ratification of the MLC requires the implementation of all the constituent Regulations (including these Regulations), and provides additional benefits (see Annex 3).

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

Given the limitations of the available evidence base, it has not been possible to monetise any of the costs and a number of the benefits that have been identified in this impact assessment. Where it has not been possible to monetise a cost or benefit, a full qualitative description of the cost or benefit is provided in the evidence base of this impact assessment.

BUSINESS ASSESSMENT (Option 1)

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

Summary: Analysis & Evidence

Policy Option 2

Description: Introduce regulations to implement the requirements of the MLC on SEAs also taking into account the minimum requirements for UK employment contracts under the Employment Rights Act.

FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2012	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: NA	**High:** NA	**Best Estimate:** 0.01

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

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

Due to limitations in the available evidence base, it has not been possible to monetise any of the potential costs identified under Option 2. Consultees were invited to provide additional evidence on the additional costs of complying with Option 2 as compared to Option 1, but no quantified evidence was provided.

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

1) There would be transitional costs for UK shipowners and manning agents of introducing SEAs, as for Option 1. Under Option 2, SEAs would need to include more information than under Option 1, but as this is required for shore-based staff contracts, this requirement is expected to result in marginal additional costs compared to Option 1. 2) There would be familiarisation costs for shipowners and manning agents.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	NQ	NA	NQ	**NQ**
High	NQ		NQ	**NQ**
Best Estimate	NQ		0.002	**0.01**

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

The MCA would no longer be required to print or supply crew agreement stationary to companies. This would save the MCA around £1,500 per year in printing costs plus some additional non-monetised savings in storage and distribution costs. Due to limitations in the available evidence base, it has not been possible to monetise any of the potential benefits to shipowners or seafarers. Consultees were invited to submit any additional evidence on these costs at public consultation, however, no quantified evidence was received.

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

In addition to the benefits of Option 1, the SEA would include additional information, bringing seafarers' contracts into line with those for workers ashore in the UK. The additional information would further improve transparency about seafarers living and working conditions, and may have some administrative benefits for shipowners.

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

1) Given the limitations of the available evidence base, it has not been possible to monetise all of the costs and benefits that have been identified. Where this is the case, a full qualitative description is provided. 2) Only the direct costs and benefits to business related to any provisions that are deemed to go beyond the minimum requirements of the MLC would be within the scope of OITO under Option 2 (the preferred Option), and these are expected to be more than offset by the administrative savings in removing the requirement for crew agreements.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: NQ	**Benefits:** NQ	**Net:** NQ	Yes	Zero net cost

Evidence Base (for summary sheets)

Key Definitions

ILO = International Labour Organization

MCA = Maritime and Coastguard Agency

MLC = ILO Maritime Labour Convention 2006

SEA = Seafarer Employment Agreement

TITLE OF PROPOSAL

Merchant Shipping (Maritime Labour Convention) (Seafarer Employment Agreement) Regulations ("the 2014 Regulations")

1A. CONSULTATION ON THE PROPOSALS

Like all Conventions of the International Labour Organisation (ILO), the Maritime Labour Convention, 2006 (MLC) was drawn up on a tripartite basis in negotiations between shipowner organisations, seafarer organisations and governments, and the UK took a leading role in all three delegations. The 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. In addition, a meeting was held during the consultation period for the operators of small commercial vessels such as workboats and charter yachts, to consider the impact on smaller businesses. Seven written responses were received, five from significant players in the industry, one from a maritime college legal department and one from an individual senior officer in the Merchant Navy.

2. PROBLEM UNDER CONSIDERATION

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

The specific problem which the 2014 Regulations directly address is how to ensure that seafarers have fair and enforceable employment agreements. Commercially operated merchant ships and yachts are required under current Regulations to have a 'crew agreement'[1] in place. However, such crew agreements are extremely limited in their content and they rely on the application of provisions contained in other sets of Regulations. It can therefore be difficult for a seafarer to ascertain the exact terms and conditions under which he or she is being employed.

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

The MCA currently inspects any "non-standard" crew agreements which contain requirements additional to those set out in a "standard" crew agreement which accords with the current Regulations. In doing so, the MCA seeks to identify any provisions which are not acceptable under existing legislation and practice, and to have them amended accordingly prior to MCA granting approval for the use of the "non-standard" crew agreement.

The MCA deals with a small but significant number of enquiries each year from yacht crew members and other seafarers who either do not have the protection of approved crew agreements or who are unsure about their entitlements under UK law as regards holiday pay, repatriation arrangements or medical care. In addition, MCA receives complaints about non-payment of wages, for example, where the seafarer has no employment documents to confirm what is due or when payment can be expected. This suggests that, in the absence of government intervention, some shipowners may not ensure that seafarers have the minimum conditions of employment they are entitled to under UK and international law.

One potential explanation of this risk is that the existing international conventions requiring employers to provide such employment conditions and written agreements have not been widely ratified and so have not been widely enforced worldwide. Given that there are costs of providing seafarers with decent conditions of work (e.g. through employment agreements), this means that shipowners which operate substandard ships can potentially undercut shipowners which provide seafarers with decent conditions of work, and can consequently potentially gain a competitive advantage.

Under the current 'Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991' (the "1991 Regulations"), "pleasure vessels" which only travel around the coasts of the British Isles and Eire, without calling at ports outside those islands, are not required to have a crew agreement. Pleasure vessels operating outside those limits or which make calls at ports outside the UK or Ireland more than four crew members working on board are required to have a crew agreement. The 1991 Regulations do not define pleasure vessels specifically, but the term is intended to refer to vessels used solely in a private capacity for pleasure purposes. A commercially-operated yacht, for example, should not fall into this category, but the lack of a specific definition in the 1991 Regulations leaves this open to ambiguity. Consequently, some seafarers working in the commercial yachting sector may well be unaware of the terms and conditions, if any, under which they are being employed as well as the safeguards applicable to them.

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 employment agreements. 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 being 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 employment agreements. Doing nothing is therefore not considered to be an appropriate course of action.

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

The 2014 Regulations will bring existing legislation for UK registered ships into line with the minimum global standards for payment of wages provided for in the MLC. Regulation 2.1 and Standard A2.1 require that provisions be in place to ensure that every seafarer has an employment agreement signed by themselves and the shipowner in their possession, and specify the minimum contents of a seafarer's employment agreement and certain conditions which must be met to ensure that the seafarer understands the agreement before it is signed.

In addition, as the UK has ratified the MLC, the 2014 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 employment agreements for seafarers which is fully compliant with the MLC.

Although the primary reason for UK ratification of the MLC was the benefits it will bring to UK shipping, and to avoid the risks of not ratifying, it should also be noted that there is a European Social Partners Agreement which seeks to implement the MLC. Council Directive 2009/13/EC annexes the Agreement between the European Community Shipowners' Association (ECSA) and European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006 and the agreement on amendments to the Agreement on the Organisation of Working Time of Seafarers dated 30 September 1998 (set out at Annex A to the Annex). .Member States are required by virtue of Directive 2009/13/EC to implement the European social partners' agreement on the MLC. The provisions of Regulation 2.1 and Standard A2.1 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, 20 August 2013. The UK therefore has a duty to implement the social partners' agreement, which in practice will mean that the UK is under a European law requirement to implement some (but not all) MLC provisions in UK law. The transposition deadline is 12 months from the coming into force date i.e. 20 August 2014.

However, as explained above, to support the UK shipping industry, the UK needed to ratify the MLC by the time that it came into force internationally, which was earlier than the transposition deadline for the European Directive. Implementation of the minimum changes required to bring UK legislation fully into line with Title 2.1 of the MLC on seafarer employment agreements will also fully implement the provisions of the seafarer employment agreement aspects of directive 2009/13/EC. The Directive is not therefore considered further in this Impact Assessment.

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 primary purpose of the 2014 Regulations is to bring existing UK legislation into line with the requirements of the MLC related to SEAs (Regulation 2.1 and Standard A2.1) 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 requiring a fair and enforceable employment agreement for every seafarer.
- 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.

A secondary objective is to bring seafarers into line with workers in other sectors in respect of the minimum standards they can expect for their employment agreements. This will give effect to the principle of avoiding discrimination on the grounds of occupation, which underpins the MLC (Article III(d)).

In particular, the 2014 Regulations will:

- Ensure that every seafarer has an employment agreement signed by themselves and the shipowner (or a representative of the shipowner) in their possession;
- Ensure that the seafarer has the opportunity to review the agreement before signing it;
- Identify the name of the shipowner who is ultimately responsible for ensuring that seafarers on their ships are employed under employment agreements in accordance with the MLC;
- Specify the minimum contents of a seafarer's employment agreement and certain conditions which must be met;
- Ensure that copies are available on board in English which may be inspected by an authorised officer;
- Ensure that seafarers are not disadvantaged relative to shore-based workers in respect to the information required to be included in seafarers' employment agreements. (Employment agreements for shore-based workers are subject to provisions of the Employment Rights Act 1996 (section 1, *Statement of Initial employment particulars*) whereas these provisions are currently disapplied to seafarers employed under a Crew Agreement)).

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

5. DESCRIPTION OF POLICY OPTIONS

5.1. Do nothing

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

Only legislative options fulfil the MLC's requirement that each Member shall "adopt laws or regulations requiring that ships that fly its flag" comply with the requirements of the standard. Some other parts of the Convention provide for "laws or regulations or other measures" but that is not an option in respect of the requirements of the MLC on SEAs.

There is some uncertainty regarding the minimum requirements of the Maritime Labour Convention in respect to SEAs. Two policy options have therefore been considered in this impact assessment. These options are discussed below.

5.2. Option 1: Introduce Regulations to implement the MLC requirements for SEAs, including requiring SEAs to contain only the minimum contents of an SEA specifically listed in the MLC.

The minimum mandatory provisions from Regulation 2.1 and Standard A2.1 of the MLC are that seafarers must have a written employment agreement with the shipowner, which they must have the opportunity to review and agree before signing; employment agreements must be available for review by enforcement authorities of the flag state and port states; employment agreements must meet the minimum standards in Standard A2.1 of the MLC, which lists the minimum contents of such an agreement.

The minimum contents include, for example :

(a) the capacity in which the seafarer is to be employed;

(b) the amount of the seafarer's wages or the formula used for calculating them;

(c) the amount of paid annual leave (or where applicable the formula used for calculating it;

(d) arrangements for termination of the agreement;

(e) the health and social security protection benefits to be provided to the seafarer by the shipowner; and

(f) the seafarer's entitlement to repatriation.

Seafarers must also be given a record of their employment on board ship, which makes no reference to their wages or their performance on board.

Option 1 would introduce new Regulations to implement SEAs on UK ships. These Regulations would replace parts of the Merchant Shipping (Crew Agreement, List of Crew and Discharge of Seafarers) Regulations 1991, revoking those sections requiring crew agreements to be in force, and amending other parts of UK legislation to bring it into line with the minimum requirements on SEAs, including the minimum contents of an SEA specifically listed in the MLC.

Some additional UK legislation already exists on the question of records of employment, which are also required by Standard A2.1 and that would remain in force under Option 1.

This policy option would achieve the majority of the policy objectives outlined in Section 4 of this impact assessment. However, SEAs would not contain some of the information required by the Employment Rights Act to be included in the employment contracts of shore-based workers which the MLC Tripartite Working Group (i.e. the organisations representing both shipowners and maritime trades unions) have specifically requested be included in SEAs. Whilst Option 1 might do the minimum required to ratify the Convention, it could potentially be subject to challenge, on the grounds that it was not be in line with equivalent national provisions for those working ashore.

5.3. Option 2 (the preferred Option): *Introduce Regulations to implement the MLC requirements for SEAs, including requiring SEAs to contain the minimum contents of an SEA specifically listed in the MLC and three extra pieces of information in line with the minimum requirements for contracts for UK workers under the Employment Rights Act.*

In addition to the changes that would be introduced under Option 1, the 2014 Regulations under Option 2 would take into account the minimum contents for a "statement of particulars" required for those working ashore in the UK by the Employment Rights Act. This would require SEAs for seafarers working on UK ships to include three additional pieces of information, in line with UK legislation on employment particulars in Section 1 of the Employment Rights Act 1996. These additional items are as follows:

- Any terms and conditions relating to hours of work, including normal hours of work, which accord with the relevant Merchant Shipping Hours of Work Regulations already in force; Standard A2.3.5 (part of the MLC Standard on Hours of Work) states that in principle seafarers hours of work should be 48 hours a week, six days a week and excluding public holidays. While this statement is aspirational, it is included in the mandatory Standards in the MLC, and the requirement to include standard hours of work in an SEA goes some way to implementing that Standard.
- The grievance and disciplinary procedures applicable to a seafarer's employment. This may include where appropriate reference to the Code of Conduct for the Merchant Navy, produced by the Chamber of Shipping and the maritime Trades Unions or, where applicable, the shipowner's own Code of Conduct.
- Any terms and conditions relating to pensions and pension schemes where these are available to a seafarer.

In the MLC Standard A2.1, the list of minimum contents of an SEA includes "any other particulars which national laws may require". The UK seafarer and shipowner representatives on the Tripartite Working Group requested the inclusion of these additional items of information in order to ensure that seafarers on UK ships are not disadvantaged in comparison with shore-based workers. Additionally, it is a principle of the MLC that there should be no discrimination against seafarers in respect of their working and living conditions, in comparison with other occupations (Article III(d)). There is therefore a risk that, if no separate provision is made for the additional pieces of information required under the Employment Rights Act, the UK will be challenged as to whether it has fully implemented Standard A2.1. This could cause harm to the UK's reputation if the scrutiny committee at ILO reported against the UK.

5.4 Further information

As explained in Section 5.3 of this impact assessment, the Social Partners on the Tripartite Working Group have requested three additional items of information be included in SEAs. The question of whether or not requiring these three additional items to be included in UK SEAs would go beyond the minimum requirements of the Maritime Labour Convention is a difficult one to answer.

The three additional items come from the Employment Rights Act (ERA), and would be included on the basis of providing equivalent employment protection for seafarers as is enjoyed by workers ashore.

As currently enacted, the ERA covers workers employed in the UK, but section 199 of that Act specifically disapplies certain provisions, including the minimum contents of a "statement of particulars" as regards conditions of employment, to seafarers employed under crew agreements (see footnote 1 for the definition of a "crew agreement").

With the change from crew agreements to individual SEAs, it is reasonable to review the intended effect of this disapplication.

This disapplication appears to date back to at least the Employment Protection (Consolidation) Act 1978 which, inter alia, disapplied its provisions on ***terms and conditions relating to hours of work, pensions and pension schemes*** and ***disciplinary rules*** to seafarers on vessels over 80 tons. At that time, employment on UK ships was effectively controlled by National Maritime Board (NMB)[2] Agreements covering every aspect of the employment of seafarers including hours of work, discipline, and pensions. It is highly probable that the disapplication of Employment Protection (Consolidation) Act 1978 provisions to seafarers employed under Crew Agreements was predicated on the fact that NMB Agreements provided extensive (and at least equivalent) protection. It seems that when that disapplication was carried forward to the ERA, no account was taken of the fact that, with the dissolution of the NMB in 1990, the nature of crew agreements had significantly changed and no longer provided equivalent provisions to those in required by the ERA for workers ashore.

Notwithstanding that the NMB was dissolved in 1990, some companies that previously operated under the NMB Agreements continue to do so. Also many ITF[3] based Collective Agreements between employers and maritime trades unions are understood to contain provisions covering hours of work, pensions and pensions schemes and disciplinary and grievance procedures. It is also understood that, in addition to Crew Agreements which are rather basic in nature, many ship operators in addition have separate contracts of employment with their seafarers which are more detailed in nature than crew agreements and will normally contain provisions on hours of work, pensions and disciplinary rules.

Whilst these items of information are not included in the minimum contents of an SEA specifically listed in the MLC, there is a provision to include "any other particulars which national law may require". The MCA considers that the inclusion of the three items of information in UK SEAs would restore the equivalence between the content of seafarer terms and conditions of employment and those of workers ashore in the UK, which the legislation was originally intended to achieve, and therefore reflects national legislation on employment agreements, as required by A2.1.4(k) of the MLC.

6. COSTS AND BENEFITS OF OPTION 1 AND OPTION 2

For the purposes of this impact assessment, only the costs and benefits that would arise as a result of the changes that would be introduced by the two policy options have been assessed. Consequently, this impact assessment only assesses the costs and benefits of providing all seafarers working on UK registered ships with SEAs containing the necessary information required under each option. The costs and benefits that would arise as a result of changes to the employment conditions of seafarers that would be introduced by the other Regulations that are necessary to implement other MLC provisions (e.g. on annual leave, shipowners' liability and repatriation) and which would be reflected in SEAs, are not assessed in this impact assessment. These costs and benefits are assessed in the impact assessments covering the Regulations that implement those other provisions of the MLC.

The total number of seafarers working on UK ships is estimated at 89 000[4]. MCA has only very incomplete information on how many of these seafarers have a separate employment contract as well as signing onto the crew agreement or about how many of those contracts already in place comply in full, or nearly comply, with the requirements for an SEA. Nor does MCA have evidence of the cost of creating an SEA from scratch. In addition, the cost of updating an existing contract to comply fully would vary widely, depending on whether the changes required were extensive or minor, but the MCA does not have quantitative evidence regarding the range of these costs.

[2] The NMB comprised representatives of shipowners and trade unions and governed seafarers terms and conditions of service.

[3] International Transport Workers Federation – representing 690 transport workers' unions worldwide including seafarers' unions

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

Given the limitations of the available evidence base described in this impact assessment, it has not been possible to monetise any of the potential costs and some of the potential benefits of the two policy options that have been identified in this impact assessment. In particular, due to the limitations of the available evidence base, there is not sufficient evidence available to develop reasonable assumptions to provide a range of monetised potential costs. Where it has not been possible to monetise a cost or benefit, a full qualitative description of the cost or benefit has been provided in this impact assessment.

During the public consultation process, consultees were invited to submit additional evidence on the potential costs and benefits of both policy options. No quantified evidence was submitted. However, consultees' comments indicate that industry welcomes the move the SEAs because it will be more efficient than the current practice of crew agreements supplemented by an employment contract, and provides better transparency and therefore better employment protection for the seafarer.

Given that no additional quantified evidence was submitted by consultees and the factors discussed in Section 7, the level of monetisation in this impact assessment therefore remains the same as in the consultation-stage impact assessment.

6.1 Comparison against the "Do Nothing" scenario

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

The MLC came into force internationally in August 2013.

A large number of nations ratified by 20 August 2013 and many more are expected to do so. Being a Convention with worldwide application, and given that any UK ships visiting ports in ratifying countries (which are expected to be most countries within a fairly short timescale) will have to be compliant, its effects will be virtually impossible to escape for ships wishing to trade internationally.

In addition, the UK shipping industry recruits a very large proportion of its seafarers from outside the UK, and several large labour supplying states, notably the Philippines but also Eastern European countries (Bulgaria, Croatia and Latvia) have ratified the MLC. The manning agencies in those countries will therefore be required under their national legislation to ensure that seafarers are employed under SEAs which comply with the MLC, regardless of the flag of the ship on which they will be working.

Therefore, MCA expects that a proportion of any additional costs of complying with the minimum mandatory requirements of the MLC in respect of SEAs 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 SEAs are truly additional costs of the 2014 Regulations or whether they would have occurred anyway under the "Do Nothing" scenario.

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

6.2 Changes due to Option 1

Under the current Regulations, for commercially operated merchant ships, yachts etc, there must be a Crew Agreement in place. This is generally a single document which is signed by every member of the crew, and must be opened and closed at the end of each voyage, where a single voyage is undertaken. For ships undertaking multiple voyages, the Crew Agreement can run for periods ranging from 6 to 24 months depending on the trading pattern of the vessel concerned.

On some vessels with frequent crew changes, such as ferries, the shipowner may apply for an exemption from the requirement for the crew to sign off the crew agreement every time the leave the ship. There is no fee for consideration and issue of exemptions, but there is administrative cost for both MCA and the shipowner.

Apart from the time limitation, a standard Crew Agreement only covers very limited aspects of seafarers' employment and in many cases there will also be separate employment contracts (or statements of particulars) in place covering seafarers employed by the same employer for an extended period of time.

Under the 2014 Regulations under Option 1, all seafarers would be required to have an SEA. SEAs could run for the full period of employment a seafarer is employed by the same shipowner and need not be tied to a particular voyage or ship. SEAs establish the contract between individual seafarers and the shipowner or their representative, and whilst primarily intended to replace existing crew agreements would also offer the opportunity for shipowners to dispense with separate contracts where these exist. The MCA believes that some existing contracts of employment could potentially be used to form the basis of an SEA, and consultation responses indicate that in some cases existing employment contracts already comply with MLC requirements without amendments being required. However, many such contracts would need to be rewritten at least to some extent in order to comply with the requirements of the MLC. The extent to which they would need to be rewritten could vary substantially depending upon the information currently contained in them.

6.3 Costs of Option 1

6.3.1. Costs to business of creating, reviewing and issuing SEAs

Currently, except where specifically exempted, seafarers on UK registered ships are required to be employed either under a "standard pre-approved" crew agreement or a "non-standard" crew agreement which has been submitted to and approved by MCA. As mentioned in section 2 of this impact assessment, certain "pleasure vessels" are exempt from the requirements to have crew agreements, and seafarers on such vessels may be unaware of the terms and conditions, if any, under which they are being employed. These exemptions would still exist under the 2014 Regulations but a definition of a pleasure vessel will be included, making the extent of the application of the exemption more certain.

Under Option 1, most shipowners employing seafarers aboard UK-registered ships (to which the MLC will apply, and which are not specifically exempted in the 2014 Regulations) would be likely to incur some transitional costs as a result of the need to produce SEAs. This would involve a certain amount of work, even if, in addition to the minimum statutory crew agreements, a shipowner already has contracts of employment or collective bargaining agreements in place which are broadly compliant with the requirements of the MLC. Where a shipowner has only the statutory minimum crew agreements they may incur proportionately greater costs in complying with the 2014 Regulations, particularly in terms of a cost per employee.

The Chamber of Shipping has however stated that the ongoing or recurring costs of managing and updating SEAs, are likely to be less than the costs incurred by shipowners for the administration of crew agreements under the current Regulations, supplemented by employment contracts. However, there is some uncertainty about the frequency at which information in an SEA may need to be updated when compared to the frequency at which crew agreements need to be closed and opened. Bearing in mind that an SEA could potentially run for the whole career of a seafarer whereas a crew agreement will normally only run for between 6 and 24 months, it is considered that on balance the move to individual SEAs for seafarers would reduce the administrative effort required by shipowners, and that procedures would be more in line with those for land based workers. This is supported by indications from industry which suggest that most UK shipowners already have contracts of employment in place which largely meet the requirements of the MLC and that costs are not expected to be significant as a result.

Parts of the commercial yachting sector however are known to have less formal employment arrangements for crew members, including a failure to even have crew agreements in place, and it is therefore expected that some owners could incur proportionately greater costs as a result of the change to SEAs. In the main such costs are anticipated to fall on those owners who do not currently have satisfactory employment arrangements in place rather than those who do.

Under Option 1, the MCA would no longer print crew agreement stationary and supply this to shipowners. The saving this would represent to the MCA is discussed in section 6.4.3 of this impact assessment. These printing costs would not transfer to shipowners in full as the process of producing crew agreements in standard templates or submitting non-standard crew agreements to MCA for checking and approval would cease and all shipowners could issue MLC-compliant SEAs, containing the standardised content, in a format which suited them. Nonetheless, shipowners would still need to produce and maintain crew lists, although the MCA would no longer supply paper stationary for that purpose, which means that some of the negligible printing costs would be transferred to shipowners.

There is the potential for the costs to vary significantly between individual shipowners as a result of:

- Variations in the cost base of different shipowners due to the location of their operations;
- Whether the shipowner has separate contracts of employment in addition to crew agreements;
- Differences in contracts of employment, where such contracts are currently in place, and the differing amounts of adaptation they may need in order to meet SEA requirements

The MCA currently has no involvement with contractual arrangements for the employment of seafarers, other than the approval of crew agreements. Information on additional employment protection, such as that provided by contracts of employment, is not available as a result and it is not therefore possible to assess the likely compliance costs for shipowners as a result of the implementation of this aspect of the MLC. Consequently, it has not been possible to monetise any of these costs in this impact assessment.

Consultees were invited to submit any additional evidence on the costs of creating, reviewing and issuing SEAs, and in particular on costs per seafarer and how this is likely to vary under different circumstances. No additional quantified evidence was submitted. However, the Chamber of Shipping has subsequently commented that the administrative costs of bringing seafarer employment agreements into line with the requirements of the MLC are relatively minor compared to the costs to shipping of lost trade and delays to schedules that could result if the UK had not ratified the MLC before it came into force in August 2013. Since no information about the costs of creating, reviewing and issuing SEAs was submitted in response to the questions raised in the consultation-stage IA, and no published data has been identified which would provide evidence on which to base assumptions about these costs, it has not been possible to monetise the costs to business of creating, reviewing and issuing SEAs.

6.3.2. Familiarisation Costs

The MCA would publish information about the proposed changes. The MCA has discussed these proposals with seafarer and shipowner organisations and there have been a number of events publicising the changes resulting from the MLC as a whole. These actions would minimise the costs for shipowners and seafarers of becoming familiar with the new requirements, which are considered to be too small to quantify for this element alone.

Consultees were invited to submit any additional evidence on potential familiarisation costs. No quantified evidence was submitted, but industry has commented that it would take time to finalise SEAs in accordance with the Regulations, and that they needed to do this before the MLC comes into force internationally. There was therefore some urgency for publication of the final standards for UK SEAs and the supporting guidance. Provisional guidance has been made available on the MCA website.

6.3.3. Costs to the MCA

Inspection of SEAs will form an important part of the MLC survey, carried out by MCA surveyors. MLC surveys would be implemented in UK law by the draft 'Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations (DfT 00193). The cost of this inspection, which for the majority of ships a fee will be charged, is covered in the impact assessment on the 'Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations'.

6.4. Benefits of Option 1

6.4.1. Benefits to Seafarers

The purpose of the MLC requirement for an SEA is to provide each seafarer with a fair and legally enforceable employment agreement.

The benefits to seafarers of Option 1 would vary among seafarers depending on whether they are currently employed solely under a basic MCA crew agreement which would not meet MLC requirements for SEAs or are also covered by an employment contract or collective bargaining agreement which is broadly in line with MLC requirements.

For seafarers employed under crew agreements who additionally have employment contacts that largely meet the requirements of the MLC, the MCA considers that the benefits of Option 1 would be negligible. However, their contracts would be afforded more formal protection in law. For seafarers who do not currently have a contract of employment in addition to a crew agreement, or who are unfamiliar with the terms and conditions of their contract or who are employed informally, the benefits would be much greater, as Option 1 would make it illegal to employ someone on a ship without a compliant SEA.

In all cases, Option 1 would afford seafarers more formal protection in law and would make it much clearer to seafarers who they must contact when they have a question or dispute about pay, employment conditions or their contract. This is important as, on larger vessels, there are currently often complex chains of responsibility for the employment of seafarers. Because the shipowner would be named on the SEA, even where a seafarer is recruited by a manning agent for an employer who is not the shipowner (e.g. in franchised outlets on cruise ships), the shipowner would take responsibility for ensuring that the seafarer's terms and conditions are complied with. Therefore, in the event that a seafarer has a complaint that they are being unfairly treated or not receiving benefits in accordance with the terms of their SEA and are unable to obtain satisfaction from their immediate employer, seafarers would always be able to take this up directly with the shipowner. The MLC requirement to have published procedures to deal with seafarers' complaints about their working and living conditions will be implemented in UK law by the draft 'Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations and is therefore not assessed in this impact assessment.

Furthermore, the 2014 Regulations will remedy the ambiguity as regards the disapplication of the crew agreement regulations to "pleasure vessels" by including a specific definition of a "pleasure vessel". In principle, no additional seafarers would be covered by SEAs who should not already be covered by Crew Agreements, but the removal of the ambiguity in respect of commercially-operated yachts would make it clear to both seafarers and shipowners when an SEA is required, which would be beneficial to both parties.

Option 1 would not however bring seafarer employment agreements fully into line with the standards for UK employment agreements ashore.

Due to the level of variation in current employment contracts for seafarers and the lack of evidence on both the prevalence of different types of employment contracts and the level of benefits seafarers would derive from being employed under MLC-compliant SEAs, it has not been possible to monetise these benefits in this impact assessment. In particular, it should be noted that the MCA currently has no involvement with contractual arrangements for the employment of seafarers, other than the approval of non-standard crew agreements, and that information on the potential benefits to seafarers is consequently not available at this stage.

Consultees were invited to submit any additional evidence of the benefits that would arise specifically from the introduction of SEAs under Option 1. No evidence was provided.

6.4.2. Benefits to Shipowners

Under current arrangements, crew agreements typically last six months to two years, and a single agreement covers all seafarers aboard a specific vessel, or in some cases several vessels operated by the same shipowner between which seafarers may be periodically required to move in order to meet operational requirements.

In addition, a crew list is attached to the crew agreement containing details of the seafarers employed on the vessel and whether or not they are subject to the crew agreement. The Crew Agreement, List of Crew and Discharge of Seafarers Regulations 1991 require shipowners to hold paper copies of crew lists for either a specified period or for a particular voyage, which each seafarer must sign upon commencing employment on a particular vessel and again on ceasing to be employed on that vessel.

Under Option 1, instead of being covered by a single crew agreement, each seafarer would have an individual SEA which can potentially last for the duration of that individual's employment with the shipowner, regardless of the vessel, or vessels, on which they serve.

Exemptions from the requirement for crew to sign off the ship on ferry-type services would therefore no longer be required. There administrative costs of applying for approval of a non-standard agreement would no longer be incurred.

Shipowners would however still need to produce and maintain crew lists and the MCA would no longer supply paper stationary for that purpose. Whilst it would still be necessary for seafarers to sign on and off the lists of crew, there would be nothing to prevent shipowners producing and completing most of the Crew Lists electronically, from existing crew records, rather than requiring all entries to be made manually. Although shipowners would now incur the costs of printing off Crew Lists, there could potentially be some administrative cost savings to shipowners as a result of being able to create crew lists from existing electronic records and the removal of the need to hold stocks of hard copies of the

crew agreements and crew lists. Many shipowners also choose to purchase their stationary elsewhere, so allowing the flexibility for shipowners to produce their own documents is likely to introduce savings.

However, no evidence on the scale of these potential benefits is available, so it has not been possible to monetise these potential benefits in this impact assessment.

Consultees were invited to submit any additional evidence on these potential benefits. Responses supported the MCA's view that the introduction of SEAs will improve transparency so that seafarers have greater confidence in enforcing their entitlements under their employment agreements. There was also support for the view that administrative costs for shipowners and employers will be lower for issuing and maintaining SEAs than for the current system of crew agreements supplemented by contracts of employment. However, no quantified evidence was provided.

6.4.3. Benefits to the MCA

Standardising the minimum content of SEAs would considerably simplify the enforcement of this aspect of the MLC (formerly covered by ILO 178 Inspections), which would allow more effective checking of the minimum standards by MCA as the enforcement arm of the flag State.

The MCA would no longer have to print or supply crew agreement stationery to shipowners. This would represent a saving of around £1,500 per year in printing and additionally associated storage and distribution costs. Over the 10 year appraisal period, the present value of this benefit would be around £13,000, with a discount rate of 3.5%, excluding the associated storage and distribution savings, which it has not been possible to monetise. It is not assumed that these printing costs would simply transfer to industry as a cost because Option 1 would give shipowners discretion over how to hold crew lists, allowing them to store and complete such lists electronically and printing when required.

Standard forms of crew agreements are set out in Marine Guidance Notice MGN 148. The current Regulations ('Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991' (SI 1991/2144)) state that the Secretary of State (in practice, the MCA) must inspect and approve "non-standard" crew agreements and may also issue exemptions from the requirement to have a crew agreement[5]. Under Option 1, there would be no provision for the issuance of exemptions from the requirement to have an SEA or to inspect and approve non-standard SEAs, as anyone employed aboard a UK sea-going Ship must have an MLC-compliant SEA (this would include all ships as defined in the glossary at Annex 5 of this impact assessment). However, a check and approval service may be offered on a "full cost recovery" basis. These proposed changes would potentially represent a cost saving to MCA. It is not possible to quantify the benefit to MCA as the time currently taken to check and approve non-standard crew agreements or issue exemptions varies considerably depending upon the amount of work required. Given the more detailed content of an SEA, it would not in any event be possible to use crew agreement check times as a guide to check times for SEAs.

6.5. Changes due to Option 2

In addition to the changes required under Option 1, the proposed Regulations under Option 2 would also require SEAs for seafarers working on UK ships to include three additional items of information as mentioned in section 5.3 of this impact assessment.

6.6. Costs of Option 2

The MCA do not anticipate that there will be significant additional costs under Option 2 compared to Option 1.

According to the UK Ship Register, about half of companies operating UK ships are UK based and therefore have shore-based workers in the UK, and so will be providing this information in the contracts for those workers. Furthermore, any companies using UK Collective Bargaining Agreements or National Maritime Board (NMB) agreements would already include this information.

Where it is necessary to include this information, the information specified is not onerous to obtain or provide, it reflects provisions required under other sections of the MLC and may be readily available on the ship. Accordingly including the additional information may constitute including no more than a single sentence on each topic explaining to the seafarer where the information can be found on board. For the

[5] Exemptions may be issued by the Secretary of State if satisfied that the seamen will be adequately protected in the absence of a crew agreement. An example could be a vessel operating mainly on inland waterways or in sheltered waters but which occasionally operates at sea.

purposes of this impact assessment, no significant additional costs have been assumed as a result of this aspect.

However, the MCA has no information available on how many, if any, shipping companies operate under NMB Agreements or Collective Agreements or have separate contracts of employment in addition to Crew Agreements, and therefore it is not possible to quantify the cost to industry of including the three additional items.

More detailed information on the three additional items is included at section 6.8 below.

Consultees were invited to submit any additional evidence on the costs of including the additional information in SEAs under Option 2. No quantified evidence was supplied. There were no objections to including the additional information, some consultees confirmed is already included in contracts for office personnel.

6.7. Benefits of Option 2

In addition to the benefits that have been identified for Option 1, implementing the proposed Regulations under Option 2 would ensure that seafarers have the same information on terms and conditions of employment as is provided to UK workers ashore with regard to a clear statement of their hours of work, disciplinary and grievance procedures and any pension provisions that apply to them or pension schemes for which they may be eligible. There may be some additional benefits under Option 2 to those seafarers whose existing contracts of employment do not currently provide information on [normal hours of work], grievance and disciplinary procedures, pension provisions or pension schemes, by ensuring they are more aware of what is applicable or available to them. As for Option 1, seafarers' SEAs would be afforded more formal protection in law.

Due to a lack of available evidence on any benefits that seafarers might derive from these additional provisions and uncertainty over the extent to which existing contracts of employment already fulfil these requirements, it has not been possible to monetise this benefit.

In bringing SEAs into line with those for workers ashore, there could be minor efficiency savings for shipowners in having a common framework for terms and conditions for workers ashore and at sea. However, there is no evidence currently available on this issue, so it has not been possible to monetise this benefit. Consultees were invited to provide any additional evidence on the benefits of including the additional information in SEAs under Option 2. No quantified evidence was provided, but some responses acknowledged that it is desirable that seafarers should have the same information on their terms and conditions as workers ashore.

6.8 "One-in, Two-out" (OITO)

6.8.1 Option 1

Option 1 implements the minimum Seafarer Employment Agreement requirements of the Maritime Labour Convention. The Maritime Labour Convention is an international instrument and thus Option 1 falls outside the scope of "One In - One Out".

6.8.2 Option 2

6.8.2.1 Provisions covered by OITO

Option 2 primarily implements the Seafarer Employment Agreement requirements of the Maritime Labour Convention. The Maritime Labour Convention is an international instrument and thus the provisions of Option 2 which directly implement Maritime Labour Convention requirements fall outside the scope of "One-In, Two-Out". There are however three additional items for inclusion in the SEA contained in Option 2 which do not originate directly from the Maritime Labour Convention provisions relating to SEAs but have instead been requested for inclusion in all UK SEAs by the UK's Social Partners; the Maritime Trades Unions and the Chamber of Shipping. Since these three items are not specifically required by the MLC, they are being treated as in scope of "OITO".

This takes into account Article III of the MLC, which establishes as one of the fundamental rights of seafarers the elimination of discrimination in respect of employment and occupation and Standard A2.1.4., which specifies the minimum contents of an SEA, lists 10 specific items for inclusion, and then adds "any other particulars which national law may require". UK law on employment agreements for any

worker other than mariners is contained in the Employment Rights Act 1996 sections 1 & 3, but these provisions are disapplied to any person working under crew agreement (to be amended by the 2014 Regulations to disapply these provision to those working under a seafarer employment agreement).

Sections 1 & 3 include three items which are not specifically mentioned in the MLC provisions on SEAs:

- Hours of work (however see section 5.3 above as regards Standard A2.3.5);
- Grievance and disciplinary procedures;
- Pensions and pension schemes.

The UK social partners agreed that SEAs should be modified to include these 3 provisions, at least 2 of which relate in part to other sections of the MLC. This is to ensure that seafarers have the same level of protection in relation to their employment agreements as workers ashore.

6.8.2.2 Hours of Work (MLC A2.3)

For seafarers employed on UK registered sea-going ships requirements governing hours of work, or more correctly minimum hours of rest to be provided, are contained in the Merchant Shipping (Hours of Work) Regulations 2002 (SI 2002/2125) (as amended). These Regulations require the posting up, in a prominent and easily accessible place in the ship, a table of scheduled hours of rest showing for every position at least the following information:

- the daily schedule of duties at sea and duties in port; and
- the daily minimum hours of rest as required by the Regulations or any collective or workforce agreements in force.

which accord with the provisions of the Hours of Work regulations.

As a minimum it seems that all that would be necessary would be an entry in the SEA stating that hours of work (or rest) would be in accordance with the Merchant Shipping (Hours of Work) Regulations 2002 (as amended), or where appropriate, any collective or workforce agreement in force. Under Option 1 and Option 2, one of the MLC requirements is that the SEA must include information about wages, and may include how wages are calculated where applicable. In some cases that will include information about normal hours of work, overtime etc. On the basis that SEAs are likely to be similar for many seafarers on a ship, this could easily be covered by simply including the relevant wording in a “standard” SEA which could be produced electronically thus reducing to the absolute minimum any costs arising. Should a shipowner choose to include more detailed information regarding specific hours of work for individual seafarers that would be their choice and being non-statutory this would fall outside the scope of OITO.

Consultees were invited to provide any evidence regarding the potential for costs to result from the inclusion, in SEAs, of information on Hours of Work. None were identified.

6.8.2.3 Grievance and Disciplinary Procedures (cf Complaints MLC A5.1.5 and A5.2.2)

The requirement regarding the provision of information on grievance procedures falls under Standard A5.1.5.4 of the MLC which requires the shipowner to have an effective complaints procedure for seafarers on board the ship, and that information about this is made available to seafarers. This does not therefore fall within the scope of OITO. (The costs of setting up the complaints procedure will be covered in the impact assessment of the draft ‘Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations’). In the case of the requirement regarding the provision of information on disciplinary procedures, there is currently no requirement for shipowners to have disciplinary codes, although many choose to do so by utilising either the Code of Conduct for the Merchant Navy, produced by the Chamber of Shipping and the maritime Trades Unions or their own Code of Conduct. The inclusion of this provision in the Seafarer Employment Agreement does not require a shipowner to introduce a Code of Conduct but merely to state if one exists and where it can be found, or to provide copies to each crew member.

On the basis that SEAs are likely to be similar for many seafarers on a ship, this could easily be covered by simply including the relevant wording in a “standard” SEA which could be produced electronically thus reducing to the absolute minimum any costs arising. This would seem likely to be normal procedure. However, should a shipowner choose to include more detailed information regarding grievance or

disciplinary procedures that would be his choice and being non-statutory would fall outside the scope of OITO.

Consultees were invited to provide any evidence regarding the potential for costs to result from the inclusion, in SEAs of information on Disciplinary Procedures. None were identified.

6.8.2.4 Pensions and Pension Schemes

The MCA has been advised that inclusion of this requirement does not actually require shipowners or employers to establish a pension scheme for seafarers but merely requires them to state if a pension scheme does or does not exist and, if it does exist, what the terms and conditions of the scheme are.

Where a pension scheme does not exist, the most a shipowner would need to do would be to enter a note in the SEA to the effect that no pension scheme exists. However where a pension scheme does exist the shipowner may cover the requirement to provide information by simply including a note in the SEA of what scheme(s) is/are available and where information on it/them can be obtained. This requirement would not be onerous and would not generate significant additional costs. SEAs are likely to be similar for many seafarers on a ship, meaning information such as this could easily be covered by simply including the relevant wording in a "standard" SEA which could be produced electronically.

It could be argued that an employer pension scheme is part of the "social protection" information required to be included in the SEA by A2.1.4(h)

Consultees were invited to provide any evidence regarding the potential for costs to result from the inclusion, in SEAs, of information on Pensions and Pension Schemes. None were identified.

6.8.2.5 Conclusion

Consultees were invited to submit views on:-

(a) whether requiring these 3 additional items of information to be included UK SEAs would go beyond the minimum requirements of MLC A2.1.4, including the provision on national requirements;

(b) whether there would be significant additional costs to business if these 3 additional items of information were required to be included in UK SEAs; and

(c) whether there would be significant additional benefits to seafarers and to shipowners if the three additional items of information were required to be included in UK SEAs.

There were no adverse comments about inclusion of the three items, and no additional costs were identified.

On the basis of the above, the MCA does not consider that requiring these 3 additional items of information to be included in UK SEAs would result in any significant additional costs to business. There could be marginal benefit in using a common framework for terms and conditions for those working ashore and at sea within the same company (see section 6.7 above). In addition, shipowners have commented that there will be administrative benefits in moving from the current system of crew agreements supplemented by contracts of employment to individual, potentially long-running SEAs. MCA considers that this is likely to more than offset any minor costs of including these three additional items. Under current UK regulations, crew agreements must be opened and closed for each voyage or for limited periods on every ship (these are UK requirements, not specified in the ILO Convention). In contrast, although SEAs will be issued to individuals, each company will be able to include standard wording for these items, so the administrative costs will only occur when changes are made to the standard agreements (which is not likely to happen often in respect of these three items, two of which are simply cross-references to other documents or arrangements).

Option 2 therefore falls within the scope of OITO as an IN but would qualify as zero net cost.

6.9. 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. Introduction of the 2014 Regulations is required in order for these benefits to be realised. However, a range of new legislation is required to give full effect to UK ratification of the MLC. Therefore, it is not possible to determine the precise contribution of the 2014 Regulations to realising these benefits.

Consultees were invited to provide additional evidence on these benefits. However, no evidence was submitted.

6.10. Costs of MLC Ratification for non-UK registered ships

As the UK has ratified the MLC, once these regulations are made, the MCA would have the authority to enforce these minimum global standards for health and safety on non-UK registered vessels that call at UK ports under the no more favourable treatment clause. This could potentially lead to additional costs for the owners and operators of non-UK registered ships registered in countries which have not ratified the MLC both in terms of the costs of complying with the MLC and the potential to face delays when calling at UK ports. However, the extent that the 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 the case is uncertain. The costs for non-UK registered ships are discussed in detail in the impact assessment for the "Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013 (DfT 00193).

Consultees were invited to provide additional evidence on these costs. However, no evidence was submitted.

6.11. 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, including the requirements relating to SEAs, and are investigated in the Impact Assessment for the Merchant Shipping (Maritime Labour Convention)(Survey and Certification) Regulations. Those regulations also include a complaints procedure for seafarers who feel they are not receiving their entitlements under the MLC, including the provisions on SEAs.

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 SEAs at the MLC Tripartite Working Group have been largely non-controversial, with both sides agreeing that the introduction of mandatory SEAs has significant advantages for both shipowners and seafarers. The Chamber of Shipping and seafarer unions jointly produced a model SEA, which is the basis for the current proposals, including the three additional items in Option 2. Further analysis of the impacts is not therefore considered necessary.

8. RISKS

The 2014 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 MLC, and of not ratifying the MLC, 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 Option 1 is outside the scope of OITO because it implements only the minimum requirements of an international Convention.

It is considered that Option 2 (the preferred Option) is within the scope of OITO as an IN, in so far as it includes three items to be shown in a seafarer's SEA which are not required by Standard A2.1.4 of the MLC. These are included because they are required in the employment agreement for any other worker in the UK, in order not to disadvantage seafarers. However, they qualify for zero net cost for the reasons explained in section 6.8.

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 regulations

Introducing the requirements without recourse to legislation has been considered, particularly since the provisions regarding seafarer employment agreements presuppose a private contractual arrangement between the seafarer and the shipowner. However, as the measures are designed to mitigate the effects of the parties having unequal bargaining positions, and the Convention explicitly requires ratifying states to take action to deliver the measures, no satisfactory alternative mechanism has been identified.

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 ILO. Parties to the MLC 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 take) 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 on 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 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 2014 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 MLC is based on the fundamental rights and principles of workers (Article III):

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

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

10.2 Competition Assessment

The 2014 Regulations would bring existing UK legislation into line with the requirements of the MLC. The MLC aims to provide a benchmark for the decent employment of seafarers globally, and it is expected that 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. 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, members of the Tripartite Working Group and other consultees have indicated an expectation that the 2014 Regulations would not cause significant additional costs 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 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 2014 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 proposals would inevitably have the greatest impact on small firms with a small turnover. As the MLC sets minimum standards for “decent work”, it does not generally make concessions in those standards. The UK is making use of any flexibility in the MLC designed for smaller vessels or likely to apply to small companies. However, there is very little scope for flexibility in Standard A2.1, and the inclusion of the text in full in the European Social Partners’ agreement on the MLC in Directive 2009/13/EC further limits the granting of any concessions for small businesses.

The MCA has discussed the implications of the MLC with the Domestic Passenger Ship Steering Group and representatives of the Small Commercial Vessel sector, who represent the majority of small firms operating vessels affected by the Regulations. A meeting was held with representatives of the small commercial vessel sector during the consultation period on these Regulations. A significant proportion of small commercial vessels operate on domestic voyages within 60 miles of a safe haven in the UK and recruit seafarers within the UK. They are therefore either required to comply with the current requirements for crew agreements, or with UK employment law, including the requirement for a “statement of particulars” under the Employment Rights Act 1996. The introduction of SEAs is therefore expected to have the same sort of impact on operators of such vessels as for the rest of the Merchant Navy. However, a large number also operate internationally, and these will already comply with the current requirements for crew agreements. It is not expected that the new requirements will therefore introduce significant new costs or benefits for this group other than those already identified in this IA. No quantified evidence was provided.

The model SEA produced by the two sides of industry is designed to assist with the transition to SEAs, and will be of particular value to small businesses without the in-house expertise to prepared their own employment agreements.

10.4 Human Rights

The 2014 Regulations would implement provisions of the MLC which requires respect for the following fundamental rights and principles of workers (Article III):

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

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

Option 2 would ensure that seafarers on UK ships had equivalent information in their SEA as a worker ashore has in their contract, in line with the fourth bullet point.

10.5 Justice System

The main enforcement mechanism for these 2014 Regulations would be through the inspection and certification of UK ships under the MLC by MCA surveyors. There are however also offences and penalties laid down in the draft Regulations. These are in line with the penalties in place for corresponding or similar offences in existing Regulations on crew agreements. MCA has reviewed these offences and penalties with the Ministry of Justice as part of the Gateway Clearance process ensure a consistent approach in all sets of regulations implementing the MLC.

10.6 Greenhouse Gas Emissions

As the proposed measure only affects seafarer employment agreements and no significant additional costs are anticipated, it is not expected to affect maritime transport volume. Therefore, no change in greenhouse gas emissions is expected

11. SUMMARY AND PREFERRED OPTION

The proposals would implement in legislation the minimum changes required to ensure that seafarers on UK ships have a fair and legally enforceable written employment agreement, incorporating at least the minimum terms and conditions set out in the MLC. This would replace the current crew agreement made between the shipowner and the entire crew for a particular ship and voyage or period of time and covering only provisions relevant to that period, and so introduces modern employment practice.

Two policy options have been considered in this impact assessment:

Policy Option 1: Introduce Regulations to implement the MLC requirements for SEAs, including requiring SEAs to contain only the minimum contents of an SEA specifically listed in the MLC.

Policy Option 2: Introduce Regulations to implement the MLC requirements for SEAs, including requiring SEAs to contain the minimum contents of an SEA specifically listed in the MLC and three extra pieces of information in line with the minimum requirements for contracts for UK workers under the Employment Rights Act.

Whilst Policy Option 1 might go far enough to permit ratification of the Convention, it would not give seafarers equivalent protection to workers ashore as regards the information in their employment agreement. It would also not address the issues raised by the social partners.

Policy Option 2, which is supported by the shipowner and seafarer representatives on the Tripartite Working Group would bring UK legislation into compliance with the MLC and would ensure that seafarers on UK ships have the same standard of employment agreement as workers ashore, thus achieving the policy objectives. Implementing Policy Option 2 would not involve significant additional costs but has the potential to bring additional benefits and would result in consistent treatment of seafarers compared with land-based workers with respect to employment agreements.

Although Option 2 incorporates additional information at the request of both sides of industry, it may be considered that it goes beyond the minimum requirements of the MLC. To summarise, a table showing whether each of the policy options would achieve the two policy objectives set out in Section 4 is included below.

Policy Objectives	Policy Option 1	Policy Option 2
Bring existing UK legislation into line with the minimum requirements of the MLC related	Yes	Yes

to SEAs in accordance with UK obligations as a ratifying country		
Bring seafarers into line with workers in other sectors in respect of the minimum standards they can expect for their employment agreements	No	Yes

Option 2 does not incur significant additional costs, is supported by both sides of industry and is the only option to fully meet the Policy Objectives set out in Section 4. Option 2 is therefore the preferred Option.

12. IMPLEMENTATION PLAN

The 2014 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 would be published to accompany the 2014 Regulations which would explain the provisions and give guidance on their practical interpretation. Information, including the model SEA prepared by the two sides of industry, would also be available on the MCA website.

The primary enforcement mechanism for the 2014 Regulations on UK ships would be through Flag State inspections for issue or renewal of a Maritime Labour Certificate. MCA surveyors would check the provisions for issue of employment agreements in the shipowners' declaration of maritime labour compliance Part II and will examine SEAs as part of the inspection of UK ships. Further details about this regime are given in the consultation document on draft 'Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations' (DfT 00193), which have been consulted on separately.

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

13. CHANGES TO FINAL STAGE IA IN RESPONSE TO THE RPC OPINION

The RPC concluded that "The IA is fit for purpose." However, with regards to the costs that are out of scope of OITO, the RPC commented that "although these costs are out of scope of OITO, the Department should have used the consultation and reasonable assumptions to provide at least a range of monetised potential costs."

Some changes have been made to the explanation of these costs in this impact assessment in response to the RPC's comment to further clarify the limitations of the available evidence base which have prevented the monetisation of these costs. In addition, when making these changes, some further minor changes have been made to the IA. In particular, as the UK has now ratified the MLC, the IA has been updated to reflect this; and some other minor drafting changes have been made, principally for consistency with other MLC IAs.

Annex 1 – References

No.	Legislation or publication
1	Maritime Labour Convention, 2006 http://www.ilo.org/global/What_we_do/InternationalLabourStandards/MaritimeLabourConvention/lang--en/index.htm
2	Council Directive 2009/13/EC implementing the agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers Federation (ETF) on the Maritime Labour Convention, 2006 and amending Council Directive 1999/63/EC
3	The Merchant Shipping (Crew Agreements, List of Crew and Discharge of Seamen) Regulations 1991 http://www.opsi.gov.uk/si/si1991/Uksi_19912144_en_1.htm
4	Employment Rights Act 1996 section 1 Statement of Employment Particulars (Option 1) http://www.opsi.gov.uk/acts/acts1996/ukpga_19960018_en_2#pt1-pb1-l1g1
5	ILO (2001) http://www.ilo.org/public/english/dialogue/sector/techmeet/jmc01/jmc-r3.pdf
6	European Commission (2006) Communication from the Commission under Article 138(2) of the EC Treaty on the strengthening of maritime labour standards. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0287:FIN:EN:PDF.
7	ILO (2006a) Maritime Labour Convention, 2006: Frequently asked questions. http://www.ilo.int/global/What_we_do/InternationalLabourStandards/MaritimeLabourConvention/FAQs/lang--en/index.htm.
8	ILO (2006b) Advantages of the Maritime Labour Convention, 2006. http://www.ilo.int/global/What_we_do/InternationalLabourStandards/MaritimeLabourConvention/Advantages/lang--en/index.htm

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

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

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

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

Title 1: Minimum requirements for seafarers to work on a ship (minimum age; medical certification; training; recruitment and placement).
Title 2: Conditions of employment (employment agreements; wages; hours of work; annual leave; repatriation; compensation for ship's loss; manning; career development).
Title 3: Accommodation, recreational facilities, food and catering.
Title 4: Health protection, medical care, welfare and social provision (medical care on board and ashore; shipowners' liability; health and safety; welfare facilities; social security).
Title 5: Compliance and enforcement

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

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

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

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

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

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

A.3.1. Context

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

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

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

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

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

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

A.3.2. Scope of impacts

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

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

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

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

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

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

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

Table 1 – Main impacts of MLC ratification

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

Whilst it is expected that the MLC will indeed be widely ratified internationally, it is not possible to predict precisely to what extent it will be ratified. Consequently, the scale of the costs and benefits of UK ratification is uncertain. For example, the benefits to UK registered ships of the system of MLC certification would mainly apply to UK registered ships that call at ports in MLC-ratifying states.[6] 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A.3.4. Risks of UK ratification of the MLC

The MLC will come into force in August 2013, after ratification by 30 flag states representing at least 33% of the world fleet tonnage. The benefits arising from ratification of the MLC will depend on how widely the MLC is implemented. Therefore, the main risk associated with ratifying the MLC is that the UK introduces new legislation to implement the MLC, but that subsequently the MLC only achieves a low take-up internationally. This would reduce the potential benefits and could potentially put UK-registered ships at a competitive disadvantage. However, it is likely that the MLC will be widely ratified internationally due to the high level of commitment from all sides.[7]

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

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

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

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

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

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

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

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

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

A.3.6. Conclusion

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

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

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

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

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

Annex 4 - Shipowner and seafarer representatives

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

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

The members of the TWG are:

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

Shipowner representatives
The British Chamber of Shipping
The British Tugowner Association

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

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

P&I Clubs

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

Annex 5 - Glossary of Terms

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"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)*