

Title: The Equality Act 2010 (Work on Ships and Hovercraft) Regulations 2011 formerly known as The Equality Act 2010 (Application of Part 5 to Seafarers) Regulations 2011 Lead department or agency: Department for Transport Other departments or agencies:	Impact Assessment (IA)
	IA No: DfT00084
	Date: 09/05/2011
	Stage: Final
	Source of intervention: Domestic
	Type of measure: Secondary legislation
	Contact for enquiries: Chris Ellis 020 7944 5151

Summary: Intervention and Options

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

It is necessary to specify in regulations how Part 5 of the Equality Act 2010 ("the Act") – which offers protection from discrimination, harassment and victimisation in the context of work – applies in relation to ships, hovercraft and seafarers.

In addition, current UK legislation which permits seafarers to be paid differential rates of pay on the basis of nationality is in breach of EU law. The UK is being infringed on this issue. While applying Part 5 of the Act to work on ships and hovercraft, and seafarers, the Regulations can change the law on differential pay to bring it in line with EU law. In doing so, however, it is necessary to have consideration of shipping pay practices which are common globally, and the competitiveness of the UK shipping industry.

What are the policy objectives and the intended effects?

There are two policy objectives:

1. Ensure that as broad a range of seafarers as practically possible are offered the same level of protection against discrimination, harassment and victimisation in the workplace, as employees working in other sectors on land; and
2. Bring the UK law on differential pay in line with EU law, while minimising the costs to the UK shipping industry as much as possible.

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

Option 1. Apply Part 5 of the Act to: seafarers working onboard UK registered ships operating in GB waters; and EEA/designated state seafarers whose employment is sufficiently linked/located in GB, working onboard EEA registered vessels operating in GB waters; and EEA/designated state seafarers whose employment is sufficiently linked/located in to GB, working on UK registered vessels operating wholly outside of GB waters. AND make it unlawful for employers to pay seafarers from EEA and designated states differential rates of pay on the basis of their nationality.

Option 2. Same as Option 1 but do not include any exception permitting the differential pay of seafarers covered by Part 5.

The preferred policy is Option 1 as this would achieve both of the policy objectives, including minimising as much as possible the impact on the UK shipping industry of changing the law on differential pay.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** 5/2016

What is the basis for this review? Duty to review. **If applicable, set sunset clause date:** Month/Year

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?	No
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Ministerial Sign-off For final proposal stage Impact Assessments:

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

Signed by the responsible Minister:

Mike Penning

Date: 10 May 2011

Summary: Analysis and Evidence

Policy Option 1

Description:

Apply Part 5 of the Act to seafarers (as proposed) and make it unlawful to pay seafarers from EEA and designated states differential rates of pay on the basis of their nationality.

Price Base Year 2010	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: -£492.2

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	£0.2 million	£57.2 million	£492.3 million

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

1.) It is estimated the additional employment costs for employers of seafarers working on GB registered internationally trading vessels would be around £57m per year as a result of prohibiting differential pay with regards seafarers from EEA and designated states assuming these vessels remain on the UK flag. There may also be additional employment costs for some other employers of seafarers. 2.) Total one-off familiarisation costs for UK enterprises with employees are estimated at around £0.2m.

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

1.) It is possible that owners could change the registration of their vessels to another country. In which case, employers would not face additional employment costs, but the owners and operators of these vessels would incur other costs (e.g. registration fees) and there could be other costs to the UK. 2.) There could be costs due to impacts on employment tribunal cases. 3.) There could be costs for employers that need to make changes to recruitment and working practices.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	£0.0 million	£0.1 million

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

1.) The simplification benefits for UK enterprises with employees have been estimated at around £9,600 per year. 2.) The simplification benefits for UK seafarers have been estimated at around £2,700 per year.

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

1.) Seafarers would benefit from the greater protection Part 5 of the Act offers against discrimination, harassment and victimisation under Option 1. 2.) Due to the law being simpler, there could be benefits associated with employment tribunal cases for employers, claimants and the taxpayer and benefits for some employers when recruiting. 3.) There could be benefits for some non-UK seafarers as a result of prohibiting differential pay with regards seafarers from EEA and designated states.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

1.) Due to the limitations of the available evidence base and the significant uncertainties, it has not been possible to monetise all of the costs and benefits identified in this IA, and a number of assumptions have had to be made. These assumptions are described in the Evidence Base. 2.) The estimates of the monetised costs and benefits to the UK that are presented in this IA are sensitive to the assumptions that have been made, and should therefore be interpreted as indicative estimates of the order of magnitude of these costs and benefits. In particular, the monetised costs assume vessels would remain on the UK flag. However, there is the potential that owners could change the registration of their vessels to another country. 4.) Other limitations are discussed in the Evidence Base.

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs: 0.02	Benefits: 0.01	Net: 0.01	Yes	IN (domestic only)

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	Other See evidence base				
From what date will the policy be implemented?	2011				
Which organisation(s) will enforce the policy?	Employment Tribunals				
What is the annual change in enforcement cost (£m)?	NQ				
Does enforcement comply with Hampton principles?	Yes				
Does implementation go beyond minimum EU requirements?	No				
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A		Non-traded: N/A		
Does the proposal have an impact on competition?	Yes				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs: 0%		Benefits: 0%		
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	Micro NQ	< 20 NQ	Small NQ	Medium NQ	Large NQ
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

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

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

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties¹ Statutory Equality Duties Impact Test guidance	Yes	30
Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	30
Small firms Small Firms Impact Test guidance	Yes	30
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	N/A
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	N/A
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	N/A
Human rights Human Rights Impact Test guidance	No	N/A
Justice system Justice Impact Test guidance	No	N/A
Rural proofing Rural Proofing Impact Test guidance	No	N/A
Sustainable development Sustainable Development Impact Test guidance	No	N/A

¹ Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Summary: Analysis and Evidence

Policy Option 2

Description:

Same as Option 1 but make it unlawful for employers to pay seafarers, whatever their nationality, differential rates of pay on the basis of their nationality.

Price Base Year 2010	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: -1664.5

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	£0.2 million	£193.4 million	£1664.6 million

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

1.) It is estimated the additional employment costs for employers of seafarers working on GB registered internationally trading vessels would be around £193m per year as a result of prohibiting differential pay assuming these vessels remain on the UK flag. There may also be additional employment costs for some other employers of seafarers. 2.) Total one-off familiarisation costs for UK enterprises with employees are estimated at around £0.2m.

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

1.) It is possible that owners could change the registration of their vessels to another country. In which case, employers would not face additional employment costs, but the owners and operators of these vessels would incur other costs (e.g. registration fees) and there could be other costs to the UK. 2.) There could be costs due to impacts on employment tribunal cases. 3.) There could be costs for employers associated with making changes to recruitment and working practices.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate	N/A	£0.0 million	£0.1 million

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

1.) The simplification benefits for UK enterprises with employees have been estimated at around £9,600 per year. 2.) The simplification benefits for UK seafarers have been estimated at around £2,700 per year.

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

1.) Seafarers would benefit from the greater protection Part 5 of the Act offers against discrimination, harassment and victimisation under Option 2. 2.) Due to the law being simpler, there could be benefits associated with employment tribunal cases for employers, claimants and the taxpayer and benefits for some employers when recruiting. 3.) There could be benefits to some non-UK seafarers as a result of prohibiting differential pay.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

1.) Due to the limitations of the available evidence base and the significant uncertainties, it has not been possible to monetise all of the costs and benefits identified in this IA, and a number of assumptions have had to be made. These assumptions are described in the Evidence Base. 2.) The estimates of the monetised costs and benefits to the UK that are presented in this IA are sensitive to the assumptions that have been made, and should therefore be interpreted as indicative estimates of the order of magnitude of these costs and benefits. In particular, the monetised costs assume vessels would remain on the UK flag. However, there is the potential that owners could change the registration of their vessels to another country. 4.) Other limitations are discussed in the Evidence Base.

Direct impact on business (Equivalent Annual) £m):			In scope of OIOO?	Measure qualifies as
Costs: 127.88	Benefits: 0.01	Net: 127.87	Yes	IN (domestic only)

Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?			Other See evidence base		
From what date will the policy be implemented?			2011		
Which organisation(s) will enforce the policy?			Employment Tribunals		
What is the annual change in enforcement cost (£m)?			NQ		
Does enforcement comply with Hampton principles?			Yes		
Does implementation go beyond minimum EU requirements?			Yes		
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	Non-traded: N/A	
Does the proposal have an impact on competition?			Yes		
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?			Costs: 0%	Benefits: 0%	
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	Micro NQ	< 20 NQ	Small NQ	Medium NQ	Large NQ
Are any of these organisations exempt?	No	No	No	No	No

Specific Impact Tests: Checklist

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

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

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
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Economic impacts		
Competition Competition Assessment Impact Test guidance	Yes	30
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Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	N/A
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	N/A
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	N/A
Human rights Human Rights Impact Test guidance	No	N/A
Justice system Justice Impact Test guidance	No	N/A
Rural proofing Rural Proofing Impact Test guidance	No	N/A
Sustainable development Sustainable Development Impact Test guidance	No	N/A

¹ Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

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

References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No.	Legislation or publication
1	Equality Act 2010
2	Government Equalities Office (GEO) (2010) Equality Act Impact Assessment
3	
4	

+ Add another row

Evidence Base

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

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

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

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs	0.2	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Annual recurring cost	57.2	57.2	57.2	57.2	57.2	57.2	57.2	57.2	57.2	57.2
Total annual costs	57.4	57.2	57.2	57.2	57.2	57.2	57.2	57.2	57.2	57.2
Transition benefits	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Annual recurring benefits	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total annual benefits	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

Evidence Base (for summary sheets)

1. Problem under Consideration and Reason for Intervention

The rights of seafarers not to be discriminated against, victimised, or harassed while working onboard ships and hovercraft, are currently protected in a plethora of different pieces of equalities legislation in the UK. The level of protection offered to the different protected groups working onboard vessels varies across the piece, and the existing legislation is often unclear – including in relation to its application to work on ships and hovercraft, and seafarers – for both employers of seafarers and seafarers themselves.

The majority of the Equality Act 2010 (“the Act”) became law in October 2010 and repealed much of the previous equalities legislation. The provisions in Part 5 of the Act strengthen, simplify, harmonise and consolidate the protection offered to protected groups from discrimination, harassment and victimisation in relation to work. However, the provisions in Part 5 of the Act do not automatically apply to employment onboard ships and hovercraft, or seafarers. Section 81 of the Act contains a power to make Regulations to specify which seafarers, working on which ships/hovercraft, operating in which waters, Part 5 of the Act applies. The section 81 power has not yet been used. Instead, when the main provisions of Part 5 were commenced, the previous equalities legislation was saved in as far as it applies to work on ships and hovercraft, and seafarers. This means that, until new Regulations are made, seafarers do not receive the same level of protection as employees working in other sectors on land, and neither they nor their employers will benefit from the simplification and harmonisation offered by the Act. Government intervention is, therefore, required to specify which seafarers, working on which vessels, operating in which waters, Part 5 of the Act applies.

In applying equalities legislation to the shipping industry, it is necessary to have consideration of common shipping practices. It is common practice, globally, for seafarers’ pay to reflect the country where they are based and, therefore, where their wages are most likely to be spent. This practice of pay differentiation is currently lawful in the UK by virtue of the Race Relations Act (RRA) 1976 (while most of the RRA has been superseded by the Equality Act 2010, section 9 has been saved so that it remains in force until new Regulations are made). However, section 9 of the RRA is not in line with European law in as far as it does not prohibit the practice of paying differential rates of pay on the basis of nationality to seafarers from the European Economy Area (EEA) and designated states (states outside of the EEA whose citizens are entitled to protection under EU law by virtue of association agreements with the EU). The European Commission has received a complaint regarding section 9 of the RRA, and in April 2009 started infraction proceedings against the UK on this issue. On 27 January 2011, the European Commission issued a Reasoned Opinion under article 258 of the Treaty of the Functioning of the European Union, to the UK. This gives the UK two months to act. Government intervention is also required, therefore, to ensure UK law is in line with European law.

Changing the UK law on differential pay is likely to impose financial costs on the UK shipping industry, which could potentially cause businesses to change the registration of their ships from the UK to other countries where the practice of differential pay is permitted. In applying Part 5 of the Act to shipping, it is therefore necessary to find the appropriate balance between - on the one hand - applying equalities legislation to the work on ships and hovercraft, and seafarers, and ensuring that UK law is in line with European law; and - on the other - protecting the future of the UK shipping industry.

2. Policy objectives and Intended effect

The policy objectives and intended effects are to:

- Ensure that as broad a range of seafarers as practically possible are offered the same level of protection against discrimination, harassment and victimisation in the workplace, as employees working in other sectors on land; and
- Bring the UK law on differential pay in line with EU law, while minimising the costs to the UK shipping industry as much as possible.

3. Background

3.1. The Equality Act 2010

The Act provides a new cross-cutting legislative framework to update, simplify and strengthen the previous legislation; and to deliver a simple, modern and accessible framework of discrimination law which protects individuals from unfair treatment. The majority of the provisions of the Act came into force on 1 October 2010 and largely repeal existing equalities legislation.

The Act offers protection to individuals in respect of the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

The following pieces of legislation (as amended) primarily constituted equalities legislation prior to the commencement of the Act: the Equal Pay Act 1970; the Sex Discrimination Act 1975; the Race Relations Act 1976; the Disability Discrimination Act 1995; the Employment Equality (Religion or Belief) Regulations 2003; the Employment Equality (Sexual Orientation) Regulations 2003; the Equality Act 2006, Part 2; the Employment Equality (Age) Regulations 2006; the Equality Act (Sexual Orientation) Regulations 2007.

3.2. Applying Part 5 of the Act to work on ships and hovercraft, and seafarers

Part 5 of the Act specifically deals with work - offering protection to those with protected characteristics from discrimination, harassment and victimisation. The provisions in Part 5 of the Act aim to strengthen and harmonise the protection that is offered to different protected groups when applying for work, and when in work. More detail on the provisions in Part 5 of the Act is provided in section 3.4 of this impact assessment.

Most of Part 5 was commenced on 1 October 2010. The previous equalities legislation was largely repealed at that time but saved in as far as it applies to employment on ships and hovercraft, and seafarers, to ensure there was no gap in protection.

In considering how to apply Part 5 of the Act to employment on ships and hovercraft, and seafarers, it is necessary to have consideration of the UK's international obligations under the United Nations Convention on the Law of the Sea (UNCLOS). UNCLOS recognises the rights of foreign flagged vessels to innocent passage through a states' territorial sea and restricts the ability of states to impose and enforce legislation on foreign flagged vessels while in their territorial sea.

As all EEA states are subject to the same obligations under EU law, it is possible to apply provisions in Part 5 that do not go beyond EU obligations, to all EEA flagged vessels. However, the protected characteristic of marriage and civil partnership does not stem from European obligations and so must be excluded in the application of Part 5 to vessels registered in the EEA while in the UK territorial sea adjacent to Great Britain (GB).

This means that the broadest range of seafarers that it is possible to apply Part 5 of the Act to is:

- All seafarers, irrespective of nationality, who work onboard a UK registered ship or hovercraft which operates wholly or partly in GB or adjacent waters;
- EEA and designated state seafarers, where the legal relationship of their employment is located in (or closely linked to) GB, working onboard an EEA registered ship/hovercraft operating wholly or partly in GB or adjacent waters (except in relation to the protected characteristic of marriage and civil partnership); and
- EEA and designated state seafarers, where the legal relationship of their employment is located in (or closely linked to) GB, working onboard a UK registered ship/hovercraft operating wholly outside of GB and/or adjacent waters.

It should be noted that, where a vessel is owned by a business, the nationality of the business does not necessarily correlate to the flag that the vessel is registered on. Therefore, it should be noted that a) UK

businesses own and operate both UK registered ships and EEA registered ships; and b) non-UK businesses also own and operate both UK registered ships and EEA registered ships.

3.3. The issue of differential pay on ships and hovercraft

As explained in section 1 of this impact assessment, on 27 January 2011 the European Commission issued a Reasoned Opinion, to the UK in relation to section 9 of the RRA which does not prohibit the practice of paying differential rates of pay on the basis of nationality to seafarers from the EEA and designated states. This Reasoned Opinion gives the UK two months to act.

The Regulation making power in section 81 of the Act is wide enough to change the law on differential pay and bring it in line with EU law. The Reasoned Opinion and high risk of being fined (which could also open up the Government to individual compensation claims) is, therefore, the driving force behind making these Regulations with such urgency.

The previous Government placed draft regulations in the Libraries of both Houses of Parliament in November 2009, while the Equality Bill (now the Act) was being debated. At that time, interested parties were invited to comment on the draft Regulations and submit any financial based evidence on the impact that such a change in the law would have. Evidence was received from the Chamber of Shipping, the Rail and Maritime Trade Union (RMT), Nautilus, the Trades Union Congress (TUC), and the Scottish Trades Union Congress (STUC). The Department commissioned an independent consultant to review the evidence, which has been published on the Department's website¹. This evidence has also been used when preparing this impact assessment.

Furthermore, the Minister for Shipping, Mike Penning MP, has met with all interested parties on various occasions to discuss the potential impact of prohibiting differential pay. In addition, the Department has put out numerous calls to other EU member states asking for evidence of practices in their respective countries. This has had mixed results, but in general, limited information was received and it remains that limited detail is known about the practice of differential pay throughout the EU.

3.4. Summary of provisions included in Part 5 of the Equality Act

Part 5 of the Act specifically deals with work, including applications for work and recruitment. The provisions offer protection in respect of protected characteristics from direct discrimination; discrimination by association; perception discrimination; indirect discrimination; harassment; and victimisation.

This sub-section summarises the provisions in Part 5 of the Act, and sets out what has changed and what is new.

3.4.1. Discrimination

"Direct discrimination" occurs where someone is treated less favourably than another person because of a protected characteristic. It was the case under the previous legislation, and continues to be the case under the Act, that, with the exception of the protected characteristic of age in certain circumstances, employers must not directly discriminate against employees or job applicants.

Direct discrimination includes "discrimination by association" and "perception discrimination". Discrimination by association is direct discrimination against someone because they associate with another person who possesses a protected characteristic. Perception discrimination is direct discrimination against an individual because others wrongly think they possess a particular protected characteristic.

Protection against discrimination by association previously applied to just race, religion or belief, and sexual orientation. However, the Act, in the light of recent case law, extends protection against discrimination by association to cover age, disability, gender reassignment and sex. Similarly, protection against perception discrimination previously applied to just age, race, religion or belief, and sexual orientation. However, the Act, in the light of recent case law, extends protection against perception discrimination to cover disability, gender reassignment, and sex.

¹ Susan Carter (May 2010) [Review of Stakeholder Evidence on Differential Pay in the Shipping Industry](http://www.dft.gov.uk/pgr/shippingports/shipping/diffpay/pdf/report.pdf). Available from <http://www.dft.gov.uk/pgr/shippingports/shipping/diffpay/pdf/report.pdf>.

The Act also provides protection from “indirect discrimination”, which occurs where a particular policy, rule, or practice that applies to everyone, puts people who share a protected characteristic at a particular disadvantage. Protection against indirect discrimination previously applied to just age, race, religion or belief, sex, sexual orientation, and marriage and civil partnership. However, the Act extends protection against indirect discrimination to cover disability and gender reassignment.

3.4.2. Harassment

“Harassment” is “unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual”. Protection against harassment previously applied to all protected characteristics apart from pregnancy and maternity, and marriage and civil partnership. This continues to be the case under the Act. However, under previous discrimination law, different definitions of harassment meant that different levels of protection applied to different protected characteristics. The greatest level of protection applied to sex harassment under which employees could bring a claim even if the harassment was not directed at them and the complainant did not possess the relevant characteristic. The Act has extended this wide definition of harassment to the other relevant characteristics, i.e. age, disability, gender reassignment, race, religion or belief and sexual orientation.

“Third party harassment” provisions in Part 5 of the Act mean that employers are liable for harassment if their employees are harassed by people who are not employees of the company, such as customers or clients. An employer is only liable for third party harassment, where the employee has been harassed by a third party on at least two previous occasions, the employer is aware that harassment has taken place, and has not taken reasonable steps to prevent it from happening to that person again. Protection against third party harassment previously applied to sex and gender reassignment, but the Act extends this protection to cover all other protected characteristics (except pregnancy and maternity, and marriage and civil partnership).

3.4.3. Victimisation

“Victimisation” occurs where someone is treated badly because they have made or supported a complaint, or raised a grievance under the Act; or because they are suspected of doing so or may do so. The Act strengthens protection by removing the requirement for complainants to identify a comparator who is treated more fairly than them. The Act merely requires that a claimant proves that they have been treated unfairly without the need for a comparator.

3.4.4. Pre-employment health-related checks

Part 5 of the Act changes the law on asking pre-employment questions relating to a job applicants health. The Disability Discrimination Act 1995 did not prevent an employer from making health or disability related enquiries of job applicants, although it did make it unlawful to use the result of such enquiries to discriminate against a candidate because of his or her disability. Part 5 of the Act now limits employers’ ability to make such enquiries and therefore helps to tackle the disincentive effect that such enquiries can have on some disabled people when applying for work.

3.4.5. Pay secrecy

The Act introduces completely new provisions which make terms of a contract of employment that require pay secrecy unenforceable in respect of discussions intended to establish if differences in pay exist that are related to protected characteristics. It also provides that action taken by the employer against an employee because of such a discussion is an act of victimisation.

4. Options

4.1. Do Nothing

Doing nothing is not considered to be a viable option for two reasons.

Firstly, doing nothing would mean that Part 5 of the Act would not apply to work on ships and hovercraft, and seafarers. Instead, seafarers would continue to be protected from discrimination, harassment and

victimisation by the plethora of previous equalities legislation in as far as it still applies to work on ships and hovercraft, and seafarers; and not benefit from the strengthened, simplified, harmonised and consolidated protection that Part 5 of the Act offers. Doing nothing would also mean that seafarers and their employers would not benefit from clarification regarding which seafarers, working on which vessels, in which waters, Part 5 applies.

Secondly, it would mean that section 9 of the RRA would remain in force and that the UK law on differential pay for seafarers would consequently remain the same. It is likely that the UK would be taken to court by the European Commission and likely that it will be found to be in breach of European law. The UK would expect to be fined 0.5% of GDP per day until the law was changed (i.e. until either Option 1 or 2 were adopted). It could also be liable to individual compensation claims.

4.2. Introduce ‘The Equality Act 2010 (Work on Ships and Hovercraft) Regulations 2011’, to apply Part 5 as broadly as possible, and make it unlawful to differentially pay seafarers from EEA and designated states (Option 1).

Option 1 would apply Part 5 of the Equality Act 2010 to:

- All seafarers, irrespective of nationality, who work onboard a UK registered ship or hovercraft which operates wholly or partly in GB or adjacent waters;
- EEA and designated state seafarers, where the legal relationship of their employment is located in (or closely linked to) GB, working onboard an EEA registered ship or hovercraft operating wholly or partly in GB or adjacent waters (except in relation to the protected characteristic of marriage and civil partnership); and
- EEA and designated state seafarers, where the legal relationship of their employment is located in (or closely linked to) GB, working onboard a UK registered ship or hovercraft operating wholly outside of GB and adjacent waters.

Furthermore, Option 1 would:

- Make it unlawful to pay seafarers from EEA and designated states, differentially on the basis of their nationality

Option 1 would achieve the intended effect of applying Part 5 of the Act to as broad a range of ships and hovercraft, and seafarers, as possible, without going so far as to be in breach of UNCLOS.

It would also achieve the intention of doing the minimum necessary to bring the UK law on differential pay in line with EU law, and minimising as much as possible, the costs to the UK shipping industry.

Option 1 is therefore the preferred option. The costs and benefits of Option 1 are discussed in section 5 of this impact assessment.

4.3. Introduce Regulations to apply Part 5 as broadly as possible, with no exception regarding differential pay (Option 2).

Option 2 (like Option 1) would apply Part 5 of the Equality Act 2010 to:

- All seafarers, irrespective of nationality, who work onboard a UK registered ship or hovercraft which operates wholly or partly in GB or adjacent waters;
- EEA and designated state seafarers, where the legal relationship of their employment is located in (or closely linked to) GB, working onboard an EEA registered ship or hovercraft operating wholly or partly in GB or adjacent waters (except in relation to the protected characteristic of marriage and civil partnership); and
- EEA and designated state seafarers, where the legal relationship of their employment is located in (or closely linked to) GB, working onboard a UK registered ship or hovercraft operating wholly outside of GB or adjacent waters.

However, Option 2 would go further than Option 1 by:

- Not including any exception to permit the practice differential pay.

Option 2 would achieve the intended effect of applying Part 5 of the Act to as broad a range of ships and hovercraft, and seafarers, as possible, without going so far as to be in breach of UNCLOS.

Option 2 would achieve the intention of bringing the UK law on differential pay into line with EU law. However, by not including any exception to permit the practice of differential pay, this option would prevent employers from paying all seafarers who are covered by Part 5 – including those from non-EEA/designated states – differential rates of pay on the basis of nationality. This would therefore go beyond EU requirements and the costs to the UK shipping industry would not be the minimum possible. The costs and benefits of Option 2 are discussed in section 6 of this impact assessment.

5. Costs and Benefits of the ‘The Equality Act 2010 (Work on Ships and Hovercraft) Regulations 2011’ (Option 1)

5.1. Overall approach

For the purposes of this impact assessment, the costs and benefits of the Regulations (Option 1) have been monetised to the extent that is possible. Given the limitations of the available evidence base, it has not been possible to monetise some of the costs and benefits of the Regulations (Option 1). 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.

Due to the limitations of the available evidence base, and the significant uncertainties, a number of assumptions have had to be made in this impact assessment. These assumptions are clearly explained below. However, it should be noted that the estimates of the monetised costs and benefits to the UK that are presented in this impact assessment are sensitive to the assumptions that have been made, and should therefore be interpreted as indicative estimates of the order of magnitude of these costs and benefits.

5.2. Key evidence

The key evidence that has been used in preparing this impact assessment is as follows:

- In response to a request for evidence from the previous administration, submissions were received from the Chamber of Shipping, the RMT, Nautilus, the TUC, and the STUC relating to the issue of differential pay for seafarers (see section 3.3 of this impact assessment for background);
- Department for Transport (DfT) UK Seafarer Statistics: 2010²;
- Marine Management Organisation (MMO) UK Sea Fisheries Statistics 2009³;
- Chamber of Shipping (2010) Manpower Survey June 2010⁴;
- Department for Business, Innovation and Skills (BIS) Small and Medium-sized Enterprise (SME) Statistics for the UK and Regions 2009⁵;
- Survey of Employment Tribunal Applications (SETA) 2008⁶;

² Department for Transport (DfT) (2011) UK Seafarer Statistics: 2010. Available from <http://www.dft.gov.uk/pgr/statistics/datatablespublications/maritime/sfarer/>.

³ Marine Management Organisation (MMO) (2010) UK Sea Fisheries Statistics 2009. Available from <http://marinemanagement.org.uk/fisheries/statistics/documents/ukseafish/2009/final.pdf>.

⁴ Chamber of Shipping (2010) Manpower Survey June 2010.

⁵ Department for Business, Innovation and Skills (BIS) (2011) SME Statistics for the UK and Regions 2009. Available from <http://stats.bis.gov.uk/ed/sme/>.

⁶ Survey of Employment Tribunal Applications 2008. Details are available at <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/10-756-findings-from-seta-2008..>

- Annual Survey of Hours and Earnings (ASHE) 2010⁷; and
- The Equality Act Impact Assessment⁸.

5.3. Sectors and groups affected

5.3.1. Businesses

Given the scope of the Regulations, it is expected that Option 1 would impact upon both UK businesses and non-UK businesses. It is expected that the UK businesses impacted would include:

- UK businesses that own and / or operate UK registered ships; and
- UK businesses that own and / or operate EEA registered ships.

In the absence of better evidence, it is assumed that the total number of UK enterprises with employees⁹ in the 'Sea and costal water transport' sector (Standard Industrial Classification (SIC) code 611), b) the 'Inland water transport' sector (SIC code 612) and c) the 'Fishing, fish farming and related service activities' sector (SIC code 050) is a suitable proxy for the number of UK enterprises that would be affected by the Regulations. Therefore, the number of UK businesses that would be impacted by Option 1 is assumed to be around 2,040 SMEs and 10 large enterprises on the basis of Department for Business Innovation & Skills statistics¹⁰. A full breakdown by size of enterprise is provided in Table 1 below.

Table 1: Number of UK enterprises (2009)

	Sea and costal water transport	Inland water transport	Fishing, fish farming and related service activities	Total
Micro (1 – 9 employees)	480	125	1,170	1,775
Small (10 – 49 employees)	130	15	75	220
Medium (50 – 249 employees)	35	5	5	45
Large (250 or more employees)	10	0	0	10
All employers	655	145	1,250	2,050

However, it should be noted that the number of UK businesses that would be impacted by Option 1 is very uncertain due to the broad definition of a "ship", the geographical applicability of the Regulations, and the broad definition of seafarers affected. It is therefore possible that the above assumption could overestimate or underestimate the number of UK businesses that would be impacted by Option 1. Some of the uncertainties are discussed below.

1.) Some of the UK enterprises with employees in the 'Sea and costal water transport', 'Inland water transport' and 'Fishing, fish farming and related service activities' sectors may operate vessels that would be not covered by the Regulations. For example, it is possible that some of these enterprises could be involved in the management and operation of non-UK registered vessels that would be not affected by the Regulations.

2.) Some of the UK enterprises with employees in the 'Sea and costal water transport', 'Inland water transport' and 'Fishing, fish farming and related service activities' sectors may already be familiar and / or complying with Part 5 of the Act. For example, businesses which employ land-based workers in the UK would need to be compliant with the Act with regards to their land-based workers in the UK.

⁷ Office of National Statistics (ONS) (2010) Annual Survey of Hours and Earnings (ASHE) - 2010 Results. Available from <http://www.statistics.gov.uk/statbase/Product.asp?vlnk=1951>.

⁸ Government Equalities Office (GEO) Equality Act Impact Assessment, Final Version (Royal Assent), April 2010. Available from <http://www.equalities.gov.uk/pdf/Equality%20Act%20Impact.pdf>

⁹ This excludes sole proprietorships and partnerships comprising only the self-employed owner-manager(s), and companies comprising of only one employee director.

¹⁰ BIS (2011) SME Statistics for the UK and Regions 2009.

3.) Some UK enterprises with employees in other sectors of the economy may be affected by the Regulations. For example, the broad definition of a “ship” includes smaller vessels such as private yachts and sports craft that may be operated by enterprises in other sectors.

It is likely that non-UK businesses would also be affected by the Regulations. However, no estimates of the number of non-UK businesses that would be affected are available.

5.3.2. Seafarers

It is expected that the Regulations would affect UK and non-UK seafarers working for UK enterprises and non-UK enterprises, including fishermen. Given the limitations of the available evidence base, and the significant uncertainties, it has not been possible to robustly estimate either a) the number of UK seafarers that would be affected by the Regulations; or b) the number of seafarers working for UK enterprises that would be affected by the Regulations under Option 1. However, available statistics relating to the number of UK seafarers and the number of seafarers working for UK enterprises are presented below.

Statistics on the total number of UK nationals working on UK registered ships are not available. However, DfT statistics¹¹ indicate that around 27,800 UK nationals were seafarers (excluding fishermen) working regularly at sea in 2010, comprising around 14,700 UK officers, around 11,300 UK ratings and around 1,800 UK trainees. In addition, MMO statistics¹² indicate that the number of UK fishermen was around 12,200 in 2009. Chamber of Shipping statistics¹³ indicate that around 43% of UK officers and 59% of UK ratings employed by their members were serving on UK registered ships. If it is assumed that these percentages apply to all UK officers and UK ratings, that all UK trainees are working on UK registered ships, and that all UK fishermen are working on UK registered ships, the above statistics suggest that the total number of UK seafarers (including fishermen) working on UK registered ships would be of the order of magnitude of around 27,000. However, it should be noted that the appropriateness of these assumptions is uncertain. For example, it is possible that some UK trainees and UK fishermen are working on non-UK registered ships.

Statistics on the total number of seafarers working for UK enterprises are also not available. However, statistics on the number of seafarers employed by members of the Chamber of Shipping are available. These statistics indicate that members of the Chamber of Shipping employed around 71,300 seafarers in 2010¹⁴. If it is assumed that the Chamber of Shipping statistics are a suitable proxy for the order of magnitude of the total number of seafarers (excluding fishermen) working for UK enterprises and that the number of UK fishermen is a suitable proxy for the order of magnitude of the total number of fishermen working for UK enterprises, the above statistics suggest that the total number of seafarers (including fishermen) working for UK enterprises would be of the order of magnitude of around 83,500. However, it should be noted that the appropriateness of these assumptions is uncertain. For example, not all UK enterprises employing seafarers will be members of the Chamber of Shipping.

5.4. Costs of the General application of Part 5 of the Act to seafarers under Option 1

5.4.1. Familiarisation Costs

Familiarisation means reaching the point where a manager or relevant employee is aware of the (new) changes in the law and how they impact on their business or organisation. Familiarisation costs are an economic opportunity cost that arises due to workers responding to guidance and new information as opposed to engaging in productive work. For the purposes of this impact assessment, it is assumed that 100% of employers would actively seek to familiarise themselves with their obligations under Regulations when they are bought in. This is consistent with the ‘Equality Act Impact Assessment’. However, whilst it is assumed that 100% of employers would incur familiarisation costs for the purpose of this impact assessment, advice from the Government Equalities Office (GEO) is that most employers would be likely to only ever refer to guidance when a case arises. Therefore, the resulting estimate is likely to be an overestimate of the familiarisation costs that would be incurred in practice. The following assumptions have also been made for the purposes of estimating the familiarisation costs in this impact assessment.

¹¹ DfT(2011) [UK Seafarer Statistics: 2010](#).

¹² MMO (2010) [UK Sea Fisheries Statistics 2009](#).

¹³ Chamber of Shipping (2010) [Manpower Survey June 2010](#).

¹⁴ Chamber of Shipping (2010) [Manpower Survey June 2010](#).

- The total number of UK enterprises with employees in the ‘Sea and costal water transport’, ‘Inland water transport’ and ‘Fishing, fish farming and related service activities’ sectors is assumed to be a suitable proxy for the number of UK enterprises that would need to familiarise themselves with their obligations under the Regulations. Therefore, it is assumed that 2,040 SMEs and 10 large enterprises would need to familiarise themselves with their obligations under the Regulations.
- For SMEs, it is assumed that a general manager would be responsible for familiarising themselves with the enterprise’s obligations under the Regulations. Data from the Annual Survey on Hours and Earnings (ASHE) 2010¹⁵ suggests that median gross hourly pay for this occupation (excluding overtime) is around £19.35. This is uplifted by 21% to account for non-wage labour costs. Therefore, the familiarisation costs for SMEs are assumed to be around £23.41 per hour.
- For large enterprises, it is assumed that a dedicated personnel manager would be responsible for familiarising themselves with the enterprise’s obligations under the Regulations. ASHE 2010 data suggests that median hourly pay for this occupation (excluding overtime) is around £21.66. This is uplifted by 21% to account for non-wage labour costs. Therefore, the familiarisation costs for large enterprises are assumed to be around £26.21 per hour.
- The assumptions for the amount of time that it would take the relevant member of staff to familiarise themselves with each of the relevant aspects of the Act that employers would need to comply with under the Regulations are based on the assumptions made in the ‘Equality Act Impact Assessment’. These are presented in Table 2 below. In the absence of any evidence on the proportion that should be attributed to Part 5 of the Act, it is assumed that the relevant member of staff would take the full amount of time that is assumed in the ‘Equality Act Impact Assessment’. Consequently, this is another reason why the resulting estimate of the familiarisation costs is likely to be an overestimate.

Table 2: Time assumed for familiarisation

	SMEs	Large Enterprises
Simplifying definitions	0.5 Hour	2 Hours
Discrimination arising from disability: indirect	1 Hour	2 Hours
Gender reassignment	0.5 Hour	2 Hours
Simplifying disability legislation	0.5 Hour	2 Hours
Harassment extension third party and the provision of goods, facilities and services	0.5 Hour	2 Hours
Equal pay	0.5 Hour	2 Hours
Pay secrecy clauses	0.5 Hour	2 Hours
Rationalising exceptions	0.5 Hour	2 Hours
Total	4.5 Hours	16 Hours

On the basis of the above assumptions, the total one-off familiarisation costs that would be incurred under Option 1 are estimated at around £219,000. This is shown in Table 3 below. However, for the reasons discussed above, it should be noted that this is likely to represent an overestimate of the familiarisation costs that would be incurred under Option 1.

Table 3: Estimated Familiarisation Costs (Best estimate)

	SMEs	Large Enterprises
Time per Enterprise	4.5 Hours	16 Hours
Costs per Hour	£23.41 per Hour	£26.21 per hour
Costs per Enterprise	£105 per Enterprise	£419 per Enterprise
Number of Enterprises	2040	10
Total Costs	£214,936	£4,193
	£219,129	

5.4.2. Potential increase in the number of employment tribunal cases

¹⁵ ONS (2010) Annual Survey of Hours and Earnings (ASHE) – 2010 Results.

Cases relating to the Regulations would be heard by employment tribunals. The Regulations could influence the number of employment tribunal cases per year in the following ways:

- By simplifying, clarifying and increasing transparency in the rights of seafarers working on board “ships”, the Regulations could a) increase the number of employment tribunal cases because such employees may not have previously been aware of their rights or b) decrease the number of employment tribunal cases because the law will be clearer and less open to interpretation, reducing inadvertent non-compliance that leads to claims or reducing the requirement to resort to a tribunal.
- By increasing the protection afforded to certain protected characteristics, the Regulations could increase the number of employment tribunal cases. Based on the ‘Equality Act Impact Assessment’, it is considered that there is the potential that the number of employment tribunal cases could increase as a result of the Regulations for a variety of reasons, including the introduction of a uniform definition of indirect discrimination; the extension of protection against direct disability, age, sex and gender reassignment discrimination and harassment based on association and perception; the prohibition of indirect discrimination against those going through gender reassignment; the simplification of the law relating to disability discrimination; the extension of protection against third party harassment; and the introduction of protection against pay secrecy.

In relation to the shipping industry, the application of equalities legislation to seafarers is currently very unclear. The Regulations would introduce a specific interpretation of the provisions of the Act to employment aboard ships and hovercraft, and to that extent, represent a significant improvement in the clarity of how equalities legislation applies to seafarers. Therefore, it is considered that workers in the shipping industry would benefit to a proportionately greater extent than land-based workers benefit from the provisions of Part 5 of the Act. It is considered that the net effect of these combined factors is likely to be an increase in the number of employment tribunal cases.

No evidence is currently available on the number of employment tribunal cases relating to seafarers. Therefore, it is not possible to robustly estimate how many additional claims would occur per annum as a result of the factors mentioned above under the Regulations. However, it is estimated that there are approximately 24,500 employment tribunal cases relating to discrimination and equal pay per year in the private and voluntary sector¹⁶. This implies that there is approximately 1 employment tribunal case relating to discrimination and equal pay per year for every 1,000 employees in the private sector¹⁷. If it is assumed that this ratio applies for seafarers, the discussion on the order of magnitude of the total number of seafarers working for UK enterprises in section 5.3.2 of this impact assessment suggests that the number of such employment tribunal cases each year involving seafarers would be of the order of magnitude of 100 cases per year.

Given the likely order of magnitude of the number of employment tribunal cases each year involving seafarers at present, it is anticipated that the number of additional employment tribunal cases involving seafarers each year as a result of the Regulations under Option 1 would be insignificant based on the assumptions that were made in the ‘Equality Act Impact Assessment’. For each additional employment tribunal case that arises as a result of the Regulations, it is expected that there would be additional costs to employers, the taxpayer and claimants bring the case. However, where the claimant is successful, this would be indicative of non-compliance and consequently the costs to the employer should be interpreted as costs of non-compliance.

Details of the average costs of an additional employment tribunal case relating to discrimination are presented below for reference.

a) Tribunal costs for employers

¹⁶ Estimate supplied by the Government Equalities Office. The total number of equal pay and discrimination cases in recent years has been estimated using [Employment Tribunals Service Annual accounts and statistics](#), and the number of cases against private and voluntary sector employers has been consequently estimated using [SETA 2008](#), and [Employment Tribunals Service statistics](#).

¹⁷ The number of people in employment in the private sector in the UK was around 23 million during September to November 2010. Source: Office for National Statistics (ONS) [Labour market statistics, January 2011](#). Available from <http://www.statistics.gov.uk/pdfdir/lmsuk0111.pdf>.

The estimated average cost of a discrimination claim in the employment tribunal system currently to the employer is calculated using SETA 2008 and stated in 2010 prices¹⁸. This is based on all employers involved in employment tribunal cases where the primary jurisdiction was a discrimination claim. This is calculated as the average cost of legal advice and representation, in addition to the median wage or productivity cost of the total days staff at the affected firm work on the claim. This is split between the time spent on the case by managers/directors and any other staff more generally. The average cost of an employment tribunal claim to an employer is estimated at around £4,346.

Table 4: Average tribunal costs for employers

	Average time spent on claim (days)	Wage cost (hourly ¹⁹)	Cost (2010 prices)
Advice and Legal Representation			£2,861
Management/Directors	6.6	£22.40 ²⁰	£1,035
Other Staff	4.8	£13.42 ²¹	£451
Total average cost per claim			£4,346

b) Tribunal costs for claimants

The estimated average cost of a discrimination claim in the employment tribunal system to the individual is calculated using SETA 2008 and stated in 2010 prices²². This is based on all claimants who bring a claim to employment tribunal where the primary jurisdiction is discrimination related. This is calculated as the average total cost from advice and legal representation, communication, travel expenses and forgone earnings that arise during the claim process. The average cost of an employment tribunal to the individual is estimated at around £1,772.

Table 5: Average tribunal costs for the individual

	Cost (2010 prices)
Advice and Legal Representation	£920
Communication	£46
Travel Expenses	£26
Loss of Earnings	£780
Total average cost per claim	£1,772

c) Tribunal costs for the Exchequer

The average cost to the Exchequer of an employment tribunal claim is calculated using the Employment Tribunals Service Annual Report and Accounts 2005/2006²³, and is taken as the net operating cost per claim receipt in period, inflated to 2009/2010 prices. The cost per employment tribunal case to the Exchequer is estimated at around £673.

5.4.3. Other costs relating to employment tribunal cases

It is possible that the Regulations could increase the number of successful employment tribunal cases in some instances. For example, based on the 'Equality Act Impact Assessment', it is considered that there is the potential that there could be an increase in the number of claimants that are successful in employment tribunal cases relating to indirect race and sex discrimination; direct disability, sex and gender reassignment discrimination and harassment based on association and perception, and indirect discrimination against those undergoing gender reassignment. Any increase in the number of successful employment tribunal cases would be likely to result in additional compensation for claimants. The mean compensation awarded in discrimination cases at employment tribunals is approximately £92,500 in 2008 prices²⁴. However, it should be noted that compensation represents a transfer payment between

¹⁸ The cost of advice and representation is the true arithmetic mean value for employers in cases where primary jurisdiction is discrimination related.

¹⁹ This assumes that a working day is seven hours.

²⁰ ASHE 2010 Code 1 – includes 21% uplift for non-labour costs.

²¹ ASHE 2010 Code All – includes 21% uplift for non-labour costs.

²² It should be noted that all costs have been adjusted to account for those individuals or employers who do not encounter costs from an employment tribunal. For example, the majority of employees do not incur significant costs for legal advice and representation. Figures presented are the true arithmetic mean values for claimants in cases where primary jurisdiction is discrimination related.

²³ The Tribunals Service now publishes an aggregate report and accounts which does not after 2005/2006 reflect the true cost of an employment tribunal; <http://www.employmenttribunals.gov.uk/Documents/Publications/ARA0506.pdf>.

²⁴ SETA 2008. See <http://www.bis.gov.uk/assets/biscore/employment-matters/docs/10-756-findings-from-seta-2008>.

employers and claimants, and would be indicative of legal non-compliance by the employer. Consequently, the costs of compensation payments to employers should therefore be interpreted as costs of non-compliance.

However, it is possible that the Regulations could decrease the number of successful employment tribunal cases in other instances. For example, based on the 'Equality Act Impact Assessment', it is considered that rationalising exceptions allowing discrimination could increase the number of employment tribunal cases that employers are able to defend. Any reduction in the number of successful employment tribunal cases would mean that some claimants would not receive compensation that they would otherwise have received.

In addition, it is possible that the Regulations could increase the complexity of some employment tribunal cases. For example, based on the 'Equality Act Impact Assessment', it is considered that the introduction of protection against discrimination that occurs because of something arising in consequence of the disabled person's disability could lead to increased complexity for such employment tribunal cases. This could therefore lead to additional litigation costs, which would represent a cost to employers.

Due to the limitations of the available evidence base, it has not been possible to monetise these potential costs of the Regulations (Option 1) in this impact assessment. However, given the likely order of magnitude of the total number of employment tribunal cases each year involving seafarers, it is expected that these impacts would be insignificant based on the assumptions that were made in the 'Equality Act Impact Assessment'.

5.4.4. Other Compliance Costs

Some enterprises could incur other compliance costs, such as making changes to recruitment and working practices as a result of the Regulations under Option 1. For example, based on the 'Equality Act Impact Assessment', it is considered that the Regulations could result in the following costs.

- a.) The Regulations would impose liability where an employer knowingly fails to protect an employee from repeated harassment by a third party over whom the employer has no direct control, e.g. a customer or client, where this is related to race, disability, religion or belief, sexual orientation or age. Costs may result from employers having to take steps appropriate to the size and type of business they run, such as putting up warning notices saying that abuse of staff members is not acceptable.
- b.) The Regulations would widen the powers of tribunals so that they can make recommendations that benefit the wider work force. Costs may include reviewing policies and implementing changes, and re-training employees. Costs may also arise if the recommendation is appealed.
- c.) The Regulations would limit the use of disability-related pre employment enquiries. Costs may arise if currently, an employer routinely asks for disability-related information, but does not restrict enquiries to the permitted categories. This is because they may require some minor adaptation of application forms or processes to comply with the more restricted use of pre-employment enquiries.

Due to the limitations of the available evidence base, it has not been possible to monetise these potential costs of the Regulations (Option 1) in this impact assessment.

5.4.5. Summary of the costs of the General application of Part 5 of the Act to seafarers under Option 1

The present value of the monetised costs of the general application of Part 5 of the Act under Option 1 is estimated at around £219,000. This is shown in Table 6 below. However, a number of non-monetised costs have also been identified in this impact assessment.

Table 6: Summary of monetised costs (Best estimates)

	Estimated Cost	Estimated Present Value over 10 years
Familiarisation Costs	£219,000 (one-off)	£219,000

5.5. Benefits of the General application of Part 5 of the Act to seafarers under Option 1

5.5.1. Protection for seafarers

Seafarers would benefit from the greater protection Part 5 offers against discrimination, harassment and victimisation under the Regulations. They would receive the same protection as people working in other sectors on land. A larger number of seafarers would benefit from equalities protection due to the addition of protected characteristics not previously covered by equalities legislation. Seafarers making complaints about their employers could benefit from the increased clarity and transparency that the Regulations would bring to equalities legislation and how it applies to people working aboard “ships”. This could mean that employers would be more certain of their obligations, and employees would better understand their rights. This in turn could mean that when an employee has a complaint about their employer, if the statutory obligations of the employer are clear, the claim is less likely to be refuted and therefore less likely to proceed to an employment tribunal, which in turn could reduce potential future cases.

5.5.2. Simplification Benefits relating to familiarisation

Simplification benefits to employers from re-familiarisation

It is assumed that employers would “re-familiarise” themselves with the available guidance and legislation when necessary for a particular reason. It is assumed that the likelihood of an enterprise making such a reference would not be altered under Option 1. However, it is expected that the time taken by employees to access the information they need to understand how the law affects their enterprise would be reduced under Option 1 because of the greater clarity, lower volume of material and greater consistency. Based on the assumptions made in the ‘Equality Act Impact Assessment’, it is assumed that 20% of enterprises would benefit from simplification when “re-familiarising” themselves with equalities legislation each year as a result of the Regulations, and that for each enterprise, there would be a time saving of one hour in the time taken to find, read and comprehend how the law affects them. However, it is possible that this is an overestimate of the impact of Part 5 of the Act as the assumptions made in the ‘Equality Act Impact assessment’ related to the whole Act. The value of time-saving at work is the opportunity cost of the time to the employer. Therefore, these savings, equal to the gross hourly wage rate plus non-wage labour costs, should be interpreted as opportunity cost savings for employers. The following assumptions have been made to estimate these simplification benefits.

- The total number of UK enterprises with employees in the ‘Sea and costal water transport’, ‘Inland water transport’ and ‘Fishing, fish farming and related service activities’ sectors is assumed to be a suitable proxy for the number of UK enterprises that would be affected. Therefore, it is assumed that, each year, around 408 SMEs and 2 large enterprises would benefit from simplification when “re-familiarising” themselves with equalities legislation.
- For SMEs, it is assumed that a general manager would be responsible for familiarising themselves with the enterprise’s obligations under the Regulations. Data from ASHE 2010²⁵ suggests that the median hourly pay for this occupation (excluding overtime) is around £19.35. When uplifted by 21% to account for non-wage labour costs, the familiarisation costs for SMEs are estimated at around £23.41 per hour.
- For large enterprises, it is assumed that a dedicated personnel manager would be responsible for familiarising themselves with the enterprise’s obligations under the Regulations. ASHE 2010 data suggests that the median gross hourly pay for this occupation (excluding overtime) is around £21.66. When uplifted by 21% to account for non-wage labour costs, the familiarisation costs for large enterprises are estimated at around £26.21 per hour.

Therefore, the total simplification benefits to employers from “re-familiarisation” are estimated at around £9,600 per year. On this basis, the present value of the total simplification benefits to employers from “re-familiarisation” over the 10 year appraisal period is estimated at around £82,700.

Simplification benefits to employees

²⁵ ONS (2010) Annual Survey of Hours and Earnings (ASHE) - 2010 Results.

It is considered that employees could also save time when accessing the relevant information as a result of the Regulations. The value of the time saved by individuals is assumed to be their market wage rate (i.e. what they could have earned by offering that time to the labour market). Unlike for employers, this saving does not include non-wage costs since these are not borne by the individual or 'earned' through labour market exchange. Based on the assumptions made in the 'Equality Act Impact Assessment', it is assumed that 1% of the seafarers that would be covered by Part 5 of the Act under Option 1 would seek information about the law in any one year, and it is assumed that the Regulations would result in a saving of one hour in the time it takes them to seek information about the law. The ASHE (2010) indicates that median hourly pay in the private sector (excluding overtime) is around £10.00²⁶. Given the limitations of the available evidence base, this is assumed to apply to seafarers that would be covered by Part 5 of the Act under Option 1 for the purposes of this impact assessment.

Due to the uncertainty around the number of UK seafarers working on non-UK registered ships that would be affected by the Regulations, the following estimates assume that only UK seafarers working on UK registered ships would be affected by the Regulations. In line with section 5.3.2 of this impact assessment, the following estimates assume that the total number of UK seafarers (including fishermen) working on UK registered ships is of the order of magnitude of around 27,000. Based on the assumption that 1% of seafarers would seek information about the law in any one year, it is assumed that around 270 UK seafarers would seek information about the law in any one year. Therefore, assuming that each seafarer would benefit from a saving of one hour in the time it takes them to seek information about the law and assuming the value of their time is around £10.00 per hour, the total simplification benefits to employees per year are estimated at around £2,700. On this basis, the present value of the total simplification benefits to employees over the 10 year appraisal period is estimated at around £23,200.

5.5.3. *Other Benefits*

It is possible that applying Part 5 of the Equality Act to seafarers could result in other benefits to employers, claimants and the taxpayer. However, given the limitations of the available evidence base, it has not been possible to monetise these benefits in this impact assessment. A qualitative description of these benefits is therefore provided below.

Advice from the GEO indicates that there would be savings for employers, claimants and the taxpayer on individual employment tribunal cases as a result of the law being simpler, and a real reduction in the time opportunity cost of legal proceedings to those parties affected. In addition, advice from the GEO indicates that the Regulations could result in time savings for large employers when recruiting as a result of the law being simpler.

Furthermore, based on the 'Equality Act Impact Assessment', it is considered that the following potential benefits may arise as a result of the Regulations.

- The Regulations would rationalise exemptions allowing discrimination. There could be a small reduction in the number of employment tribunal cases and a small increase in the number of employment tribunal cases that are defended by employers.
- The Regulations would widen the powers of tribunals so that they can make recommendations that benefit the wider workforce. This could help some enterprises to ensure that they take the necessary steps to avoid future claims being brought against them.
- Currently claimants who believe they have been discriminated against because of gender can make both sex discrimination and equal pay claims in parallel, partly as a result of lack of clarity in the existing legislation, and partly to reflect the different facets of discrimination. The greater clarity could reduce the need for this.

5.5.4. *Summary of the benefits of the General application of Part 5 of the Act to seafarers under Option 1*

The present value of the monetised benefits of the general application of Part 5 of the Act under Option 1 is estimated at around £106,000. This is shown in Table 7 below. However, a number of non-monetised costs have also been identified in this impact assessment.

²⁶ As noted above, this has not been uplifted to account for non-wage labour costs.

Table 7: Summary of monetised benefits (Best estimates)

	Estimated Benefit	Estimated Present Value over 10 years
Simplification benefits to employers from re-familiarisation	£9,600 per year	£82,700
Simplification benefits to employees	£2,700 per year	£23,200
Total	£12,300 per year	£105,900

5.6. Costs of making it unlawful to differentially pay seafarers from EEA and designated states under Option 1

Regarding the costs of making it unlawful to differentially pay seafarers from EEA and designated states working on vessels currently registered on the UK flag, there is significant uncertainty over how the owners of vessels currently registered on the UK flag would respond to the provisions in the Regulations relating to differential pay under Option 1.

Firstly, the owners of vessels currently registered on the UK flag that would be affected by these provisions could choose to keep affected vessels registered on the UK flag under Option 1. In which case, some employers of seafarers working on these vessels would incur additional employment costs under Option 1. Due to the limitations of the available evidence base, it has only been possible to monetise the potential additional employment costs to the employers of seafarers working on GB registered vessels²⁷ that are engaged in international commercial trades that would arise if they remain on the UK flag under Option 1. These costs are discussed in section 5.6.1 of this impact assessment. However, it should be noted that the employers of seafarers working on other UK registered vessels and potentially other EEA registered vessels could also incur additional employment costs as a result of the Regulations under Option 1. These costs are discussed in section 5.6.2 of this impact assessment.

Secondly, the owners of vessels currently registered on the UK flag that would be affected by these provisions could choose to change the registration of affected vessels from the UK to another country. In which case, the owners and / or operators of these vessels would incur other costs (e.g. registration fees) and there could be other costs to the UK, but it is assumed there would be no additional employment costs to employers. Due to the limitations of the available evidence base and the significant uncertainties, it has not been possible to monetise a number of these costs in this impact assessment. These costs are discussed in section 5.6.3 of this impact assessment.

5.6.1. Additional employment costs that would be incurred by the employers of seafarers working on GB registered vessels that are engaged in international commercial trades assuming that these vessels would remain on the UK flag under Option 1

If it is assumed that all GB registered vessels that are engaged in international commercial trades would continue to be registered in the UK in the future under Option 1, it is expected that a significant proportion of the employers of seafarers working on such vessels would incur additional employment costs due to the provisions in the Regulations relating to differential pay.

In the absence of better evidence, the estimates of the additional employment costs are based on estimates of the additional wage costs of prohibiting differential pay for EEA and designated state nationals from the Chamber of Shipping's submission. These estimates are based on a survey that the Chamber of Shipping undertook of its members, which included asking them to estimate the additional wage costs that would arise if they were required to pay their existing crew members who were nationals of EEA and designated states as if they had been recruited in the UK.

The Chamber of Shipping has provided estimates of the average additional wage costs²⁸ – disaggregated by type of vessel – based on a sample of 229 GB registered vessels which are operated by their members and engaged in international commercial trades. These estimates are shown in Table 8 below. However, estimates have not been provided for vessels engaged in purely domestic trades as

²⁷ The estimates submitted to the Department by the Chamber of Shipping relate to 'GB registered' vessels rather than 'UK registered' vessels. For the purposes of this impact assessment, it is assumed that 'GB registered' means registered to the UK with a port of choice in GB.

²⁸ The price base year for these estimates was not stated. Given that the Chamber of Shipping's submission was received in 2010, it is assumed that the Chamber of Shipping's estimates are in 2010 prices for the purposes of this impact assessment. However, it should be noted that this is uncertain.

such vessels are “often subject to specific rules concerning employment and wages” or non-trading vessels. The Chamber of Shipping has advised that the number of enterprises providing information for each type of vessel was as follows:

- Container: 5 enterprises
- Deep sea bulker/tanker: 4 enterprises
- Cruise ship: 2 enterprises
- Ro-ro ferry: 4 enterprises
- Short sea bulk/tanker: 4 enterprises

Table 8: Estimates of the average increase in annual wage costs per vessel based on Chamber of Shipping’s Survey

Type of Vessel	Number of Vessels in Sample	Average Increase in Annual Wage Costs per Vessel	Total Annual Increase for Sample ²⁹
Worldwide container	139	£112,719	£15,667,941
Deep-sea bulker / tanker	47	£163,984	£7,707,248
Cruise	7	£790,000	£5,530,000
International ro-ro ferry	12	£543,157	£6,517,884
Short sea bulker/tanker	24	£39,375	£945,000
Total	229	£158,813	£36,368,073

For the 229 vessels in the sample covered by the Chamber of Shipping’s survey, the average increase in annual wage costs per vessel is estimated at around £159,000 and the total annual increase in wage costs for the entire sample is estimated at around £36 million. The Chamber of Shipping’s best estimate is that the total number of GB registered vessels which are engaged in international commercial trades is around 360. If it is assumed that the average increase in wage costs per vessel estimated on the basis of the Chamber of Shipping’s survey would apply to the remaining vessels, the total annual increase in wage costs for all 360 GB registered vessels which are engaged in international commercial trades is estimated at around £57 million³⁰. For the purposes of this impact assessment, it is assumed that these additional wage costs would be incurred in each year of the 10 year appraisal period. Over the 10-year appraisal period, the present value of these costs is therefore estimated at around £492 million.

Whilst the estimates derived from the estimates submitted to the Department by the Chamber of Shipping have been used in the absence of better evidence, it should be noted that this approach has a number of limitations.

1.) As noted above, these estimates only relate to GB registered vessels which are engaged in international commercial trades.

2.) It should be noted that the costs to the employers of seafarers working on UK registered vessels would only represent a cost to the UK if they fall on UK entities (e.g. UK businesses or consumers). However, it should be noted that UK registered vessels are not necessarily UK owned (e.g. companies incorporated in one of the EEA countries are eligible to register ships on the UK flag)³¹, and UK registered vessels do not necessarily operate to and from UK ports. Nonetheless, given the limitations of the available evidence base, it has been necessary to use the costs to UK registered vessels as a proxy for the costs to the UK for the purpose of this impact assessment.

3.) It should be noted that the submissions from the TUC and RMT indicate that the difference in pay rates between UK and non-UK nationals has been narrowing over time. The TUC submission suggested that pay differential have narrowed due to the demand for skilled seafarers exceeding supply. The RMT submission noted that the worldwide recession has since prevented substantial pay rises in international bargaining forums but the overall trend towards narrowing of pay differentials has not changed. The RMT submission also provided examples of recent agreements with shipping companies that have removed

²⁹ The total annual increase for the sample has been calculated by multiplying the average annual increase in wages costs per vessel by the number of vessels in the sample.

³⁰ Around 360 multiplied by around £159,000.

³¹ Full details of the eligibility criteria are available at <http://www.mcga.gov.uk/c4mca/ukr-home/merchant/eligibility-merchant.htm>.

or narrowed the gap between UK seafarers and those from other EU Member States. This indicates it is possible that the costs under this scenario could decrease over time.

4.) Given the data underpinning these estimates has not been submitted to the Department, it should be noted that it has not been possible to quality assure the estimates submitted by the Chamber of Shipping.

The Chamber of Shipping’s submission also included estimates of the average percentage increase in wage costs and total ship operating costs per vessel under this scenario. Total ship operating costs are intended to encompass the total variable running costs for a vessel. This includes fuel, provisions and water, repair and maintenance, spares, spendable material, management and insurance. In some cases, it might also include drydocking. Based on estimates made by their members, the Chamber of Shipping has provided estimates of the average percentage increase in wage costs and operating costs per vessel – disaggregated by type of vessel – based on the sample of 229 GB registered vessels described above. The averages for each type of vessel are presented in Table 9 below, but it should be noted that there is a wide range for each type of vessel. In particular, it should be noted that the range of estimates provided by the Chamber of Shipping suggest that there would be no increase in wage costs and operating costs for some vessels under Option 1.

Table 9: Chamber of Shipping estimates of the average increase in wages costs per vessel (%) and operating costs per vessel (%).

Type of Vessel	Average Increase in Wage Costs per Vessel (%)	Average Increase in Operating Costs per Vessel (%)
Worldwide container	22%	4.6%
Deep-sea bulker / tanker	28%	5.0%
Cruise	12%	4.0%
International ro-ro ferry	31%	7.2%
Short sea bulker/tanker	6.3%	1.6%

5.6.2. Additional employment costs that could be incurred by the employers of seafarers working on other ships assuming that these vessels would remain on the same flag under Option 1

The employers of seafarers working on other UK registered ships and potentially other EEA registered vessels could potentially incur additional employment costs as a result of the provisions in the Regulations on differential pay. However, no evidence on the potential additional employment costs to such employers is currently available. Therefore, it has not been possible to monetise these costs in this impact assessment.

5.6.3. Costs to the UK that could arise if the owners of UK registered vessels that would be affected by the provisions of the Regulations on differential pay would change the registration of their vessels from the UK flag to another flag under Option 1

Given the limitations of the available evidence base, the impact of the Regulations (Option 1) on the number of vessels registered in the UK and the consequences of any reduction in the number of vessels registered in the UK are very uncertain. In particular, it should be noted that stakeholders have expressed different views on the likely impacts.

Regarding the impact of the Regulations on the number of vessels registered in the UK under Option 1, the Chamber of Shipping’s submission discussed the potential for vessels to leave the UK flag. Based on the survey of their members which asked whether they would remain registered in the UK if differential rates were prohibited for EEA and designated state nationals, the Chamber of Shipping reported that “this is likely to lead to most companies affected flagging out ships from GB”. Under this option, it reported that 15 companies indicated that they would reduce the number of vessels in registered in the UK by 141. However, it should be noted that the submissions from the TUC and RMT indicate that flagging out might be less extensive because of other UK advantages and because of doubts about its effectiveness.

It should be noted that, if the owner of a UK registered vessel that would be affected by the provisions of the Regulations on differential pay would change the registration of the vessel from the UK flag to another flag under Option 1, changing flag would not necessarily involve a business leaving the UK. Any vessels that registered on another flag under Option 1 could still be owned and / or operated by a UK

business in the future. Indeed, there are numerous UK based shipping companies with no ships registered on the UK flag.

Two potential costs associated with the potential impacts of Option 1 on the number of vessels registered in the UK have been identified in this impact assessment. These costs are discussed below.

a.) Costs to the owners and / or operators of UK registered vessels that change flag as a result of Option 1

If the owners of UK registered vessels that would be affected by the provisions of the Regulations on differential pay would change the registration of these vessels to another country, it is assumed that there would be no additional employment costs to the employers of seafarers working on these vessels under Option 1. However, it is expected that there would be some other costs to the owners and / or operators of these vessels as a result of changing flag under Option 1.

The costs to the owners and / or operators of these vessels would include the financial and administrative costs associated with registering on another flag³². Based on information from their members, the Chamber of Shipping has indicated that the costs of re-registering would be between £1,000 and £7,000 per vessel, with the cost being largely dependent on the registration fees charged by the flag state administration to which a ship is being re-flagged. Whilst some flag state administrations might seek to undertake a survey of a ship when registration under their flag is being considered, the Chamber of Shipping has advised that it is most unlikely that a ship being re-registered from the UK would be subjected to this kind of survey. The Chamber of Shipping has also advised that the costs of ongoing surveys do not vary significantly between flag state administrations.

The Chamber of Shipping's best estimate is that the total number of GB registered vessels which are engaged in international commercial trades is around 360. If it is assumed that the costs of re-registering are between £1,000 and £7,000 per vessel, this implies that the total costs of re-registering all of these vessels would be of the order of magnitude of around £360,000 to £2.5 million.

The Chamber has advised that probably the only other cost of reflagging would be the cost of obliterating the UK port of choice from the ship's stern and replacing it with the name of its new port of choice. No evidence is currently available on the magnitude of this cost. Therefore, it has not been possible to monetise this cost in this impact assessment. However, it is assumed that this cost would be insignificant.

However, there could also potentially be other costs associated with moving from the UK flag. For example, UK registered ships are not targeted by port state control³³ regimes in the world's major trading areas. Consequently, vessels that change flag could potentially be subject to increases in the frequency of inspections, which could potentially result in additional costs to the owners and operators of such vessels. This would depend on the new flag that a vessel is registered on and how it compares to the UK flag. Given the significant uncertainties and limitations of the available evidence base, it has not been possible to monetise these potential costs in this impact assessment.

b) Wider costs to the UK of flagging out as a result of Option 1

Regarding the wider impacts that flagging out as a result of Option 1 could have on the UK, the Chamber of Shipping's submission indicated that flagging out could lead companies to move part or all of their operations abroad; potential adverse impacts on the employment of British seafarers; potential adverse indirect impacts on the UK maritime cluster; and potential impacts on the strategic capability of the UK fleet.

However, it should be noted that there is very limited evidence available on the wider impacts of flagging out on the UK. Furthermore, the submissions from the RMT and TUC indicate that prohibiting differential pay could have positive impacts on the employment of British seafarers; this is discussed in section 5.7.2

³² The various fees and costs generally incurred when registering a vessel on the UK Ship Register are reported at <http://www.mcga.gov.uk/c4mca/ukr-home/merchant/fees-merchant.htm>.

³³ Port State Control is a system of harmonised inspection procedures coordinated by cooperating maritime administrations designed to target sub-standards ships with the main objective being the eventual elimination of such ships. Sub-standard ships can be detained by port state inspectors until appropriate action is taken to rectify faults.

of this impact assessment. In addition, the submission from the RMT indicated that the strategic needs of the UK would not be impacted.

Therefore, the wider costs to the UK of flagging out as a result of Option 1 are very uncertain and cannot be monetised in this impact assessment.

5.6.4. Summary of the costs of making it unlawful to differentially pay seafarers from EEA and designated states

Given the uncertainty surrounding the costs to the UK if the owners of UK registered vessels that would be affected by the provisions of the Regulations on differential pay would change the registration of their vessels from the UK flag to another flag under Option 1 (see section 5.6.3 of this impact assessment), the estimate of the additional employment costs that would be incurred by the employers of seafarers working on GB registered vessels that are engaged in international commercial trades assuming these vessels remain on the UK flag under Option 1 (see section 5.6.1 of this impact assessment) has been selected as the Best Estimate of the costs of making it unlawful to differentially pay seafarers from EEA and designated states.

The Best Estimate of the present value of the monetised costs of making it unlawful to differentially pay seafarers from EEA and designated states under Option 1 is therefore around £492 million. This is shown in Table 10 below.

However, it should be noted that a) the costs to the UK would differ if the owners of UK registered vessels that would be affected by the provisions of the Regulations on differential pay would change the registration of their vessels from the UK flag to another flag under Option 1 (see section 5.6.3 of this impact assessment); and b) there could be other costs if the owners of vessels that would be affected by the provisions of the Regulations on differential pay would keep their vessels on the same flag under Option 1 (see section 5.6.2 of this impact assessment).

Table 10: Summary of monetised costs (Best estimates)

	Estimated Cost	Estimated Present Value over 10 years
Additional wage costs due to prohibiting differential pay with regards seafarers from EEA and designated states	£57.2 million per year	£492.1 million

5.7. Benefits of making it unlawful to differentially pay seafarers from EEA and designated states

5.7.1. Benefits to Non-UK Seafarers

The Chamber of Shipping's submission included estimates of the number of seafarers employed on GB registered vessels engaged in international commercial trades, which are disaggregated into a) UK and other high-cost EEA countries, b) Low-Cost EEA and designated states and c) Low cost other countries. These estimates are presented in Table 11 below.

Table 11: Chamber of Shipping estimates of number of seafarers employed on GB registered vessels which are engaged in international commercial trades.

	Officers	Ratings	Total
UK and other high-cost EEA countries	2,634	4,181	6,815
Low-Cost EEA and designated states	963	1,454	2,417
Low cost other countries	1,528	8,779	10,307

Table 11 suggests that making it unlawful to differentially pay seafarers from EEA and designated states under Option 1 has the potential to benefit around non-UK 2,400 seafarers that are working on these vessels. Should these vessels continue to be registered in the UK, it is expected that some of these seafarers would receive higher wages under Option 1, given the estimates in section 5.6.1 of this impact assessment. It is also possible that some non-UK seafarers working on other UK registered vessels or EEA registered vessels could benefit.

5.7.2. *Benefits to UK Seafarers*

Given the limitations of the available evidence base, the consequences for UK seafarers are unclear. It should be noted that stakeholders have expressed different views on the likely impacts.

The TUC and RMT submissions indicate that prohibiting pay differentials would bring benefits for UK seafarers. For example, the TUC submission indicated that it could make UK seafarers less likely to be replaced by non-UK seafarers. The TUC and RMT submissions also indicate that it could have wider impacts on the UK economy. For example, the RMT submission indicated that an increase in the employment of UK seafarers would have knock on effects on employment and spending in the UK economy. However, the Chamber of Shipping's submission indicated that there could be an adverse impact on the employment of some UK seafarers due to flagging out. Whilst the Chamber of Shipping did not predict an immediate reduction in the number of UK seafarers on ships that are flagged out, it indicated that UK seafarers could be gradually replaced by seafarers from other countries as UK seafarers retire, especially if operators move their bases away from the UK.

5.7.3. *Summary of benefits of prohibiting differential pay*

None of the benefits of making it unlawful to differentially pay seafarers from EEA and designated states under Option 1 have been monetised. However, a number of non-monetised benefits have been identified in this impact assessment.

6. Costs and Benefits of Option 2

The 'Overall approach', 'Key evidence' and 'Sectors and groups affected' for Option 2 are the same as for Option 1, and are discussed in section 5.1, section 5.2 and section 5.3 of this impact assessment respectively.

6.1. Costs and Benefits of General application of Part 5 under Option 2

For the purposes of this impact assessment, it is assumed that the costs and benefits of the general application of Part 5 would be the same under Option 2 as under Option 1. These costs and benefits are described in section 5.4 and section 5.5 of this impact assessment respectively. However, it should be noted that how the costs and benefits of the General application of Part 5 would vary under Option 1 and Option 2 is uncertain.

6.2. Costs of making no exception to permit the practice of differential pay

By not including any exception to permit the practice of differential pay, Option 2 would prevent employers from paying all seafarers who are covered by Part 5 – including those from non-EEA/designated states – differential rates of pay on the basis of nationality. There is significant uncertainty over how the owners of vessels registered on the UK flag would respond. As for Option 1, the owners of vessels registered on the UK flag that are affected by these provisions could choose to keep affected vessels registered on the UK flag or change the registration of affected vessels from the UK to another country.

6.2.1. Additional employment costs that would be incurred by the employers of seafarers working on GB registered vessels that are engaged in international commercial trades assuming that these vessels would remain on the UK flag under Option 2

If it is assumed that all GB registered vessels that are engaged in international commercial trades would continue to be registered in the UK in the future under Option 2, it is expected that employers of seafarers working on such vessels would incur additional employment costs.

In the absence of better evidence, the estimates of the additional employment costs are based on estimates of the additional wage costs if differential pay were made completely unlawful in the Chamber of Shipping's submission, and are shown in Table 12 below. These estimates have been made on the same basis as the estimates in section 5.6.1 of this impact assessment and consequently have the same limitations. Furthermore, it should be noted that these estimates are likely to overestimate the average additional wage costs of Option 2 to the employers of seafarers working on GB registered vessels. This

is because these estimates assume that differential pay would be made completely unlawful. However, Option 2 in fact only prevents the differential pay of seafarers who are protected by Part 5 as set out in section 4.3 of this impact assessment.

Table 12: Estimates of the average increase in annual wage costs per vessel based on Chamber of Shipping's Survey

Type of Vessel	Number of Vessels in Sample	Average Increase in Annual Wage Costs per Vessel	Total Annual Increase for Sample
Worldwide container	139	£415,994	£57,823,166
Deep-sea bulker / tanker	47	£761,951	£35,811,697
Cruise	7	£2,904,286	£20,330,002
International ro-ro ferry	12	£634,824	£7,617,888
Short sea bulker/tanker	24	£59,104	£1,418,496
Total	229	£537,123	£123,001,249

For the 229 vessels in the sample covered by the Chamber of Shipping's survey, the average increase in annual wage costs per vessel is estimated at around £537,000 and the total annual increase in wage costs for the entire sample is estimated at around £123 million. The Chamber of Shipping's best estimate is that the total number of GB registered vessels which are engaged in international commercial trades is around 360. If it is assumed that the average increase in wage costs per vessel estimated on the basis of the Chamber of Shipping's survey would apply to the remaining vessels, the total annual increase for all GB registered vessels which are engaged in international commercial trades is estimated at around £193 million³⁴ per year. For the purposes of this impact assessment, it is assumed that these costs would be incurred in each year of the appraisal period. Over the 10-year appraisal period, the present value of these costs is therefore estimated at around £1.7 billion. However, as noted above, this is likely to be an overestimate.

The Chamber of Shipping's submission also included estimates of the average percentage increase in wage costs and total ship operating costs per vessel if differential pay were prohibited altogether. Based on estimates made by their members, the Chamber of Shipping has provided estimates of the average percentage increase in wage costs and operating costs per vessel – disaggregated by type of vessel – based on the sample of 229 GB registered vessels described above. The averages for each type of vessel are presented in Table 13 below, but it should be noted that there is a wide range for each type of vessel.

Table 13: Chamber of Shipping estimates of the average increase in wage costs per vessel (%) and operating costs per vessel (%).

Type of Vessel	Average Increase in Wage Costs per Vessel (%)	Average Increase in Operating Costs per Vessel (%)
Worldwide container	81%	22.3%
Deep-sea bulker / tanker	130%	56%
Cruise	43%	11%
International ro-ro ferry	36%	8.6%
Short sea bulker/tanker	10%	3.2%

6.2.2. Additional employment costs that could be incurred by the employers of seafarers working on other ships assuming these vessels remain on the same flag under Option 2

The employers of seafarers working on other UK registered ships and potentially other EEA registered vessels could potentially incur additional employment costs. However, no evidence on the potential additional employment costs to such employers is currently available. Therefore, it has not been possible to monetise these costs in this impact assessment.

6.2.3. Costs to the UK that could arise if the owners of UK registered vessels that would be affected by the provisions of the regulations on differential pay would change the registration of their vessels from the UK flag to another flag under Option 2

³⁴ Around 360 multiplied by around £537,000.

The impact of Option 2 on the number of vessels registered in the UK is very uncertain. In particular, it should be noted that stakeholders have expressed different views on the likely impact.

The Chamber of Shipping’s submission discussed the potential for vessels to leave the UK flag. Based on the survey of their members which asked whether they would remain registered in the UK if differential rates were prohibited altogether, the Chamber of Shipping reported that “the companies affected are almost unanimous in stating that they will re-register their ships away from GB rather than absorb the additional costs”. Under this option, it reported that 20 companies indicated that they would reduce the number of vessels in registered in the UK by a total of 172. However, as noted in section 5.6.3 of this impact assessment, the TUC and RMT submissions indicate that flagging out might be less extensive because of other UK advantages and because of doubts about its effectiveness.

The costs to the owners and / or operators of UK registered vessels that flag out and the potential wider costs to the UK of any flagging out are discussed in section 5.6.3 of this impact assessment. However, given the limitations of the available evidence base and the significant uncertainties, it should be noted that it has not been possible to monetise some of the potential costs to the owners and / or operators that flag out, and any of the wider costs to the UK of flagging out.

6.2.4. Summary of costs of prohibiting differential pay

Given the uncertainty surrounding the costs to the UK if the owners of UK registered vessels that would be affected by the provisions of the regulations on differential pay would change the registration of their vessels from the UK flag to another flag under Option 2 (see section 6.2.3 of this impact assessment), the estimate of the additional employment costs that would be incurred by the employers of seafarers working on GB registered vessels that are engaged in international commercial trades assuming these vessels remain on the UK flag under Option 2 (see section 6.2.1 of this impact assessment) has been selected as the Best estimate of the costs of making it unlawful to differentially pay seafarers.

The Best estimate of the present value of the monetised costs of prohibiting differential pay under Option 2 is therefore estimated at around £1.7 Billion. This is shown in Table 14 below.

However, it should be noted that a) the costs to the UK would differ if the owners of UK registered vessels that would be affected by the provisions of the regulations on differential pay would change the registration of their vessels from the UK flag to another flag under Option 2 (see section 6.2.3 of this impact assessment); and b) there could be other costs if the owners of vessels that would be affected by the provisions of the regulations on differential pay would keep their vessels on the same flag under Option 2 (see section 6.2.2 of this impact assessment).

Table 14: Summary of monetised costs (Best estimates)

	Estimated Cost	Estimated Present Value over 10 years
Additional wage costs due to prohibiting differential pay	£193.4 million per year	£1.7 billion

6.3. Benefits of completely prohibiting the practice of differential pay

6.3.1. Benefits to Non-UK Seafarers

As noted in section 5.7.1 of this impact assessment, there are currently significant pay differences between seafarers of different nationalities that are employed on UK registered ships. The estimates provided by the Chamber of Shipping that are presented in Table 11 suggest that Option 2 has the potential to benefit up to around 12,700 non-UK seafarers working on GB registered vessels engaged in international commercial trades that are operated by members of the Chamber of Shipping. Should these vessels continue to be registered in the UK under Option 2, it is expected that some of these seafarers would receive higher wages. It is also possible that some non-UK seafarers working on other UK registered vessels or EEA registered vessels could benefit.

6.3.2. Benefits to UK Seafarers

Given the limitations of the available evidence base, it is unclear how the consequences for UK seafarers would differ from Option 1. The potential impacts of Option 1 are discussed in section 5.7.2 of this impact assessment.

6.3.3. Summary of benefits of prohibiting differential pay

None of the benefits of making no exception to permit the practice of differential pay under Option 2 have been monetised. However, a number of non-monetised benefits have been identified in this impact assessment.

7. Direct costs and benefits to business calculations (following OIOO methodology)

7.1. Option 1

On the basis of the Best estimates of the monetised costs and benefits, the equivalent annual costs, benefits and net costs to business of the Regulations (Option 1) have been estimated as follows. In line with the OIOO methodology, these estimates are for a Price Base Year of 2009 and a Present Value (PV) Base Year of 2010. HMT's GDP deflator series has been used to deflate the Best estimates of the monetised costs and benefits from a Price Base Year of 2010 to a Price Base Year of 2009.

Total – Option 1		
	Present Value (£m) (Price Base Year: 2010) (Present Value (PV) Base Year: 2011)	Equivalent Annual (£m) (Price Base Year: 2009) (Present Value (PV) Base Year: 2010)
Costs to Business	492.34	53.70
Benefits to Business ³⁵	0.08	0.01
Net Costs to Business	492.26	53.69

However, it should be noted that the majority of the estimated costs to business would arise due to the need to bring the UK law on differential pay in line with EU law. According to OIOO methodology, these costs are out of scope of OIOO. Therefore, only the net costs to business from the general application of Part 5 of the Act to seafarers would fall under the scope of OIOO. On this basis, the net costs to business are estimated at approximately £15,000 (Equivalent Annual) (Price Base Year: 2009) (Present Value (PV) Base Year: 2010), which would need to be offset by an 'Out'. The equivalent annual costs, benefits and net costs to business have been estimated as follows. These estimates are shown on the 'Summary: Analysis and Evidence' sheet for Option 1.

Within the scope of OIOO – Option 1		
	Present Value (£m) (Price Base Year: 2010) (Present Value (PV) Base Year: 2011)	Equivalent Annual (£m) (Price Base Year: 2009) (Present Value (PV) Base Year: 2010)
Costs to Business	0.22	0.02
Benefits to Business	0.08	0.01
Net Costs to Business	0.14	0.01

7.2. Option 2

On the basis of the Best estimates of the monetised costs and benefits, the Direct costs and benefits to business of Option 2 have been estimated in line with the OIOO methodology as follows.

Total – Option 2		
	Present Value (£m) (Price Base Year: 2010) (Present Value (PV) Base Year: 2011)	Equivalent Annual (£m) (Price Base Year: 2009) (Present Value (PV) Base Year: 2010)
Costs to Business	1664.64	181.56
Benefits to Business	0.08	0.01
Net Costs to Business	1664.56	181.55

However, it should be noted that the some of the estimated costs to business would arise due to the need to bring the UK law on differential pay in line with EU law. Therefore, it is assumed that only a) the

³⁵ This only counts the simplification benefits to employers from re-familiarisation discussed in section 5.5.2 of this impact assessment.

additional net costs to business under Option 2 compared to Option 1 and b) the net costs to business from the general application of Part 5 of the Act to seafarers would be within the scope of OIOO. On this basis, the net costs to business are estimated at approximately £128 million (Equivalent Annual) (Price Base Year: 2009) (Present Value (PV) Base Year: 2010), which would need to be offset by an 'Out'. The equivalent annual costs, benefits and net costs to business have been estimated as follows. These estimates are shown on the 'Summary: Analysis and Evidence' sheet for Option 2.

Within the scope of OIOO – Option 2		
	Present Value (£m) (Price Base Year: 2010) (Present Value (PV) Base Year: 2011)	Equivalent Annual (£m) (Price Base Year: 2009) (Present Value (PV) Base Year: 2010)
Costs to Business	1172.52	127.88
Benefits to Business	0.08	0.01
Net Costs to Business	1172.43	127.87

8. Specific Impact Tests

8.1. Competition Assessment

Based on the evidence presented in this impact assessment on the likely magnitude of the impacts on enterprises, it is not considered that the general applications of Part 5 of the Act would have a significant impact on competition. However, it is considered that both Option 1 and Option 2 would have the potential to impact on the competitiveness of some UK registered ships due to the impacts they would have on the legality of the practice of differential pay. For example, some UK registered ships operating outside of UK waters are likely to compete with ships that are registered in countries outside the EU, and some ships registered in countries outside the EU would likely still be able to engage in the practice of differential pay. There is therefore the potential for Option 1 and Option 2 to negatively impact on the competitiveness of such UK registered ships. Given the wider scope of Option 2, any negative impact on the competitiveness of such UK registered ships could be higher under Option 2 than Option 1.

8.2. Small Firms Impact Test

The Regulations (Option 1) would not include any exemptions for small firms. Table 1 indicates that small firms would be affected by the Regulations. Consequently, small firms could incur costs and benefits as a result of the Regulations. This would also apply under Option 2.

8.3. Equalities Assessment

The Equalities Assessment is attached.

Annexes

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

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p>Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review , or there could be a political commitment to review (PIR)];</p> <p>The Regulations include a duty on the Secretary of State to review the Regulations every 5 years. This shall be carried out as part of the larger review of the Equality Act as a whole, which the Government Equalities Office are committed to carrying out after 3 to 5 years.</p>
<p>Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p> <p>The objective of the review will be to understand to what extent Part 5 of the Equality Act has achieved its intention; and to identify whether the Regulations applying Part 5 to work on ships and hovercraft, and seafarers are operating as expected.</p>
<p>Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p> <p>The precise approach to reviewing Part 5 of the Act and the Regulations will be determined in the context of the wider Equality Act review, which will involve gathering stakeholder views, use of monitoring data and potentially specifically commissioned primary research if required and considered appropriate.</p>
<p>Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]</p> <p>The precise elements of the baseline will be determined in the context of the Equality Act review, but will include building on the evidence from existing research, evidence referenced in the Equality Act Impact Assessment and this impact assessment.</p>
<p>Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p> <p>The precise success criteria will be determined in the overall review of the Equality Act.</p>
<p>Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]</p> <p>Where possible, we will continue to use the data sources set out in the Evidence Base, and revise and update assumptions based on the most up-to-date statistical findings.</p>
<p>Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here]</p> <p>Not applicable</p>