CHAMBER OF SHIPPING	
CHAMBER COMMENTS	**MCA RESPONSE**
Draft Regulations The UK Chamber understands that there is no reason why a seafarer's existing contract of employment should not serve as a SEA, provided it contains all the particulars required by the MLC and nothing that is contrary to provisions of the MLC or UK law.	Agreed, provided that the existing contract of employment meets the requirements of the Regulations.
Regulations 5 and 6 The UK Chamber strongly supports the proposal to take the opportunity presented by the introduction of SEAs to abolish the requirements as to crew agreements. However, Regulations 5 and 6 indicate that seafarers not subject to Regulation 2.1 and Standard A2.1 of the MLC will however remain subject to all provisions of the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991 which currently apply to them. We question whether this serves any purpose. We would expect many such seafarers to hold individual employment agreements, hence problems of unnecessary duplication and legal uncertainty would continue if the opportunity to abolish crew agreements for them were not taken. We believe that consideration should be given to abolishing crew agreements for all merchant shipping.	Regulation of crew agreements will remain in place for pleasure yachts with more than 4 paid crew, which are not subject to the MLC. However, where crew members on such yachts have individual employment agreements which meet MLC requirements, the owner may have an exemption from crew agreement regulations (MGN 474(M)).
Regulation 8 Draft Regulation states that the SEA must be an agreement between the seafarer and the shipowner. This does not take account of the reality that a large majority of seafarers working on UK-registered ships are employed not by shipowners, but by offshore employers. The MLC states that the SEA must be signed by either the shipowner or a representative of the shipowner. It does not specify that the shipowner must be a party to the SEA. Hence there is no reason why the implementation of the MLC need interfere with the existing practice. In addition, the UK Chamber is very concerned that, if a shipowner based in the	Paragraph 1 of Regulation 2.1 of the MLC clearly states that the terms and conditions of employment of a seafarer shall be set out or referred to in a clear written legally enforceable agreement which is consistent with the Code. Paragraph 1(a) of Standard A2.1 of the MLC states that seafarers shall have a Seafarer's Employment Agreement signed by both the seafarer and the shipowner. It is difficult to see therefore how this does not make the shipowner a party to such an agreement! Whether a seafarer is considered by HMRC to be "employed" by the shipowner

UK is a party to a SEA, HM Revenue & Customs (HMRC) will most likely consider the shipowner to be the employer and seek secondary National Insurance Contributions (NICs) from that shipowner. This would undo the delicate arrangement from which many employers of seafarers currently benefit – and which facilitates the employment of many thousands of UK seafarers. Paragraphs 3.4 and 3.5 of the MGN accurately describe the existing practice. However, the draft Regulations are out of step with the draft MGN. The UK Chamber considers that Regulation 8 should be amended to bring it into line with paragraphs 3.4 and 3.5 of the draft MGN.	or not is based on the circumstances of the case and not on the fact that there is an agreement between the shipowner and the seafarer, where the employment relationship is with another party. A model agreement has been provided which allows for cases where the shipowner, while a party to the agreement for the purposes of the MLC, is not the employer of the seafarer (MGN 477(M)).
Regulation 9 Paragraph 1b provides for a procedure to be followed where a seafarer is not an employee. The draft Regulations and MGN appear to focus on self-employed contractors whose normal place of work may be on a particular ship. Neither document makes any mention of trainees. It has been clear from discussions in the Tripartite Working Group that trainee seafarers will be considered to fall within the MLC seafarer definition. It has also been stated that an officer trainee's Training Agreement will be capable of serving as evidence of contractual or similar arrangements in lieu of a SEA. The UK Chamber requests that the MCA clarify this and propose appropriate wording for the Regulations and/or MGN. Paragraph 3 requires that each SEA include a statement by the seafarer and the shipowner confirming that the shipowner has provided a sufficient opportunity for the seafarer to review and take advice on the terms and conditions of the agreement; that the shipowner has explained the rights and responsibilities of the seafarer under the agreement and that the seafarer enters into the agreement freely. The MLC does not require the inclusion of such a statement and nor does it place any duty on the shipowner to explain the rights and responsibilities of the seafarer under the SEA. Paragraphs 7.5 and 7.6 of the draft MGN contain wording that reflects more accurately the MLC requirement. We believe that Regulation 9 paragraphs 3-7 need to be revised in line with what is contained in the MGN.	The Regulations have been amended to allow that a training agreement may be considered as a substantial equivalent to an SEA. MGN 485(M) gives more details. . Paragraph 2 of Regulation 2.1 of the MLC clearly states that "*Seafarers' employment agreements shall be agreed to by the seafarer under conditions which ensure that the seafarer has an opportunity to review and seek advice on the terms and conditions in the agreement and freely accepts them before signing."* Additionally paragraph 1(b) of Standard A2.1 provides that "*..seafarers signing a seafarers' employment agreement shall be given an opportunity to examine and seek advice on the agreement before signing, as well as such other facilities as are necessary to ensure that they have freely entered into an agreement with a sufficient understanding of their rights and responsibilities."* A provision is needed to enforce this requirement. The wording has been reviewed.

Offences under Regulations 8, 9, 11, 12, 13 The UK Chamber notes with considerable concern the proposal to include a power to impose fines on shipowners and masters for breaches of certain regulations. For shore-based workers and employees, matters relating to employment rights are subject to civil remedies – which will also be the case in respect of MLC rights. These will be enforceable via the detailed complaints procedures established in accordance with the MLC, the powers to be exercised by the flag state authority in approving (or not) the ship's Declaration of Maritime Labour Compliance (DMLC) Part II and the possibility of detention of the ship by flag state and Port State authorities. Breaches of statutory duties may also be remedied by actions in tort. As employers outside of the shipping industry are not subject to the threat of criminal penalties, it is inequitable for ship operators and Masters to face such a liability. It also sends an inappropriate signal to the industry as it is not a measure designed to promote compliance, but to seek to mete out punishment.	Criminal penalties are always the last resort where other actions (improvement notices, detention etc) fail to resolve the matter. Also this will apply to non-UK ships of non-ratifying states not subject to the MLC. A defence of taking "all reasonable steps to ensure compliance" has been included in the Regulations.
Draft Marine Guidance Note The draft contains two sections that are number "14". This needs to be addressed.	Corrected.
Paragraph 2.3 This paragraph – and paragraph 3.1 – repeat the error made in draft Regulation 8 that the SEA is an agreement between the seafarer and the shipowner. Paragraphs 2.2 and 3.4 of the MGN reflect the true position. Paragraphs 2.3 and 3.1 should therefore be amended to indicate that the SEA is an agreement between the seafarer and the employer – whether or not the shipowner is the employer.	Paragraph 1 of Regulation 2.1 of the MLC requires that the terms and conditions for employment of a seafarer shall be set out or referred to in a clear written legally enforceable agreement and shall be consistent with the standards set out in the Code. Paragraph 1(a) of Standard A2.1 of the MLC then requires that each Member shall adopt laws or regulations requiring that ships that fly its flag comply with the following requirements: (a) seafarers working on ships that fly its flag shall have a seafarers' employment agreement signed by both the seafarer and the shipowner or a representative of the shipowner (or, where they are not employees, evidence of contractual or similar arrangements) providing them with decent working and living conditions on board the ship as required by this Convention. It is clear therefore that an SEA must be between the shipowner, or his representative, and the seafarer.
Paragraph 16.2 We believe that it should not be necessary to submit lists of crew every six months. The current requirement to submit every twelve months has become normal custom and practice for running agreements. The UK Chamber can see	Normally the period of validity for a list of crew ties in with the period of validity of the crew agreement which, apart from the old NMB Agreements is 6 months unless an exemption has been granted by MCA.

no argument in favour of doubling the frequency of submissions, which will simply produce an additional burden for shipowners that the MLC does not require.	Following the replacement of crew agreements, MGN 477(M) provides for 12-monthly submission of crew lists.
Paragraph 17.1 This does not indicate whether electronic documents in portable document format (pdf) will be acceptable. It is considered essential that they are accepted, in order not to delay the processes of engaging a seafarer and ensuring that a seafarer has the opportunity to review the sea before signing. A seafarer should be able to print, sign, scan and send an SEA to the employer and the employer should equally be able to print, sign and scan it for it to be brought into effect.	The level of security provided by an electronic agreement varies widely, from a scan of an original document to authorised electronic signatures etc. Legally, an electronic document is equivalent to a hard copy, and MCA will accept them provided that both parties to the agreement are content that they suffice.
Annex 2 Note 13 requires the seafarer's hours of work to be recorded. We would expect a reference to the maximum hours that may be worked in accordance with the ship's schedule of service to be sufficient for this purpose (unless the seafarer earns different rates of pay for "normal" hours and overtime.) It would not be realistic to expect a shipowner to state the hours of work when this can be expected to vary greatly during the course of a voyage.	The consultation draft stated that:- "The hours of work for seafarers employed on UK registered vessels must comply with the requirements of the Merchant Shipping (Hours of Work) Regulations 2002 (as amended) or any subsequent Regulations which may further amend or replace those Regulations." It has been amended also to require a statement of normal weekly hours or pattern of work, and any differences in rate of pay for hours worked in excess of this, as applicable.
Annex 4 This indicates that it is an "Outer Cover for SEAs, List of Crew and Lists of Young Persons". The UK Chamber considers that the reference to SEAs is erroneous and requests that it be removed. It also questions the need to any more data than the names and dates of birth of crew members, the dates of signing on and off the ship and their rank.	The reference to SEAs has been deleted. The information required to be included in the list of crew is that currently required and enables the next of kin to be established if vessel lost as well as providing a record of sea service, to be held at RSS, should any queries arise in the future..
Levying of Fines on Seafarers for Disciplinary Offences MLC Guideline B2.2.2 paragraph 4(j) provides that monetary fines against seafarers, other than those authorised by national laws or regulations, collective agreements or other measures, should be prohibited. The provisions referred to above may not be sufficient to prevent all fines being levied, since they could be imposed on a contractual basis, or if provided for in a collective agreement forming part of an SEA or included in the SEA itself. Having taken the views of our members, the UK Chamber would like to advise that, although the levying of fines as a disciplinary measure is rare, the power to do so is still useful and should be retained. We would favour the MCA's suggested Option b – to ban all disciplinary fines other than those included in	See comment from Warsash re effect of Human Rights Act. The final MGN notes that no provision exists under UK Merchant Shipping law for fines to be levied on seafarers by shipowners in respect of disciplinary offences.

collective agreements, SEAs or other documents which have been agreed and signed by the seafarer . As an alternative approach, we would accept the inclusion of a statement in the MGN that fines should not be levied for disciplinary offences.	

MACKINNONS - SOLICITORS	
MACKINNONS COMMENTS	**MCA RESPONSE**
Dear Ms Nelson **Response to Consultation on Seafarer Employment Agreements** Mackinnons is a niche shipping law firm based in Aberdeen. Much of our work and expertise is focussed on shipping activities in the oil and gas industry. All of our clients who own or manage vessels operating in this sector, have contractual arrangements with offshore companies for the provision of crew for the vessels. These arrangements are in accordance with the UK social security regime whereby the offshore employer is not required to pay secondary National Insurance contributions, a regime with which the MCA will be familiar.	The UK Social Security regime is not relevant to consideration of the MLC proposals for SEAs.
We are aware of the on-going consideration of the definition of "shipowner" for the purposes of implementing the MLC into UK law, and we assume for now that the "shipowner" will be the ISM company. On this assumption, it is clear that in the context we have described the shipowner will not be the employer of the seafarers. It is in this context that we make all of the following comments in our response to the consultation on Seafarer Employment Agreements. We are aware that the Chamber of Shipping will be submitting a detailed response covering all the points raised by their members. We therefore limit our comments to the following key issues.	
Legal Effect of a Seafarer Employment Agreement We understand the ethos of the MLC that there should be one named body (the shipowner) with ultimate responsibility for the working and living conditions of all seafarers on the ship. We wholly	Paragraph 1 of Regulation 2.1 of the MLC requires that the terms and conditions for employment of a seafarer shall be set out or referred to in a clear written legally enforceable agreement and shall be consistent with the standards set out in the Code. Paragraph 1(a) of Standard A2.1 of the MLC then requires that each Member shall adopt laws or regulations requiring that ships that fly its flag comply with the following requirements: (a) seafarers working on ships that fly its flag shall have a seafarers' employment agreement signed by both the seafarer and the shipowner or a representative of the shipowner (or, where they are not employees, evidence of contractual or similar arrangements) providing them with decent working and living conditions on board the ship as required by this

	Convention. It is clear therefore that an SEA must be between the shipowner, or his representative, and the seafarer.

support the aim of the MLC to ensure that seafarers have a fair employment agreement, an air which the MLC seeks to achieve by requiring that the terms and conditions for employment of a seafarer are set out in a "clear written legally enforceable agreement" and consistent with certair standards set out in the Code (Regulation 2.1). Standard A2.1 therefore requires the UK to adop legislation that requires seafarers to have a seafarers' employment agreement "signed by both the seafarer and the shipowner or a representative of the shipowner". At present, the crews working on our clients' vessels have contracts of employment which are ir writing and which meet the current standards of employment protection required by UK law. These contracts are between the crew members and the offshore company which employs them. This situation meets the requirements of Regulation 2.1 of the MLC. Our concern is that, as currently framed, the draft Seafarer Employment Agreement Regulations and draft MGN would fundamentally alter this situation and create an express contract of employment between the seafarer and the shipowner, which would of course have extremely serious consequences for shipping companies which contract with offshore employers for the provision of crew. Standard A2.1 of the MLC at paragraph 1(a) requires that there be a seafarers' employment agreement "signed by" the seafarer and shipowner or shipowner's representative. Although there is no doubt that one of the underlying objectives of the MLC is to oblige shipowners to enter into binding employment contracts with the seafarers *they employ* on their ships, nonetheless the MLC does not impose an express obligation on the shipowner to do so. The focus is on ensuring that a legally enforceable agreement exists to guarantee the seafarers' living and working conditions on-board the vessel and ensure that these conditions meet certain minimum standards. We therefore believe that the MCA should make it clear that the seafarer employment agreement does not constitute a contract of employment between the shipowner and the seafarer. We disagree with the terminology used by the draft MGN in paragraph 1.2 where it states that the MLC requires a "legally enforceable Seafarers Employment Agreement between the seafarer and the shipowner, which sets out the terms and conditions of the seafarer's employment as well as the respective obligations of both parties". The MLC does not go this far: the duty is not to enter into such a contract or agreement, the duty is for the shipowner to *sign* a seafarer employment agreement. This duty could be met for example by a minor amendment to the current standard contract of employment between seafarers and the offshore company providing their services, so that this contract is signed by the shipowner but nonetheless the legal obligations created by that contract remain between the seafarer and the employer. By contrast, the draft Seafarer Employment Agreement Regulations impose a duty on the shipowner to *enter into* a seafarer employment agreement with the seafarer (Regulation 8), and thus "Seafarer Employment Agreement" is defined in the draft Regulations as an *agreement between a seafarer and a shipowner*. We believe that the focus should be changed so that there is an entitlement on the seafarer to have a seafarer employment agreement which meets all the conditions set out in the draft Regulations and which is signed by the shipowner. The focus of the obligation on the shipowner should therefore be changed to ensuring that such an agreement exists and meets the required standards, and signing it or having a representative sign on the shipowner's behalf. We believe this would better reflect the requirements of the MLC and would also better reflect the reality of the contractual arrangements for seafaring work in the oil and gas industry in the UK.	A model agreement has been provided which allows for cases where the shipowner, while a party to the agreement for the purposes of the MLC, is not the employer of the seafarer (MGN 477(M)).

Seafarers Who Are Not Employees The MLC Standard A2.1 paragraph 1(a) requires that, where the seafarer is not an employee, they have "evidence of contractual or similar arrangements" rather than a seafarers employment agreement. We do not think that there is sufficient clarity on this position in the draft MGN and draft Regulations. The Summary on page 1 of the MGN sets out the position under the MLC. However that position is then apparently contradicted by the draft Regulations which require a form of seafarer employment agreement for this category of seafarers (draft Regulation 9(1)(b)). This position is further confused by paragraph 3.6 of the draft MGN which seems to suggest that there is a third category of seafarer who would not be caught by draft Regulation 9(1)(b), and yet the draft Regulations make no provision for such a third category. The situation in practice can be rather complicated. Seafarers may be working on vessels operating in the oil and gas industry under a number of different contractual relationships. There may be crew employed by an offshore employer under a manning contract with the owner or operator of the vessel. There may be cadets. There may be employees of the charterer, or self-employed individuals working under a contract with the charterer. There may be other employees of third party contractors providing various services. This situation gives rise to two questions: first, are the seafarers "employees" at all, and second, if they are employees, by whom are they employed? The draft Regulations appear to have taken the simplest approach by imposing a blanket requirement on the shipowner for a) a seafarer employment agreement for all seafarers "who are employees", and b) a modified form of seafarer employment agreement for all seafarers "who are not employees". Unfortunately, this approach will prove extremely difficult to apply in practice to the situation described above where the shipowner may not have any direct contractual link with many of these individuals. We therefore suggest that the MCA needs to give further consideration to these difficulties. Further, in respect of seafarers who are not employees, we support the approach taken by the MLC itself, which does not require a seafarer employment agreement at all for these individuals but rather requires the necessary documents to evidence that they have decent working and living conditions on-board the ship. We believe this would be satisfied by evidence of the contractual relationships that have placed that individual on the ship, or in the case of cadets, their sponsorship/training agreement. If the MCA disagrees with us on this point and wishes to maintain the current requirement for a modified form of seafarer employment agreement for non-employees, then we urge the MCA to reconsider the draft Regulations which would impose a duty on the shipowner to enter into some kind of binding contract with these individuals. Again, we believe the focus should be on the entitlement of that individual to have certain written contractual arrangements in place (and the obligation on the shipowner to check that this is so), rather than an obligation on the shipowner to enter into such arrangements itself. **Additional Items to be Included in Seafarer Employment Agreements** We understand the intentions of the social partners in seeking to achieve parity with the minimum written particulars for contracts of employment for those who work in the UK. The only comment we wish to make is that the additional requirements currently set out in Schedule 1 Part 2 of the draft Regulations make it all the more likely that an express contract of employment will be created	A model agreement has been provided which allows for cases where the shipowner, while a party to the agreement for the purposes of the MLC, is not the employer of the seafarer (MGN 477(M)). Separate provision is made for seafarers who are employees and seafarers who are not employees.

between the shipowner and the seafarer, in circumstances where the seafarer already has a lawful and binding employment contract with another party. At the very least, the MGN should emphasise that these provisions could and should be included by reference to other documents, which would be the employment contract and policies applied by the actual employer of the seafarers, and not the shipowner. If our comments are to be followed, we would also point out that item 5 of Part 2 should not refer to pension benefits being "provided by the shipowner" as this is unlikely to be the case where the shipowner is not the employer. We hope that our comments are helpful. Should you wish to discuss any points in further detail please do not hesitate to contact Katie Williams of this firm. Yours faithfully 	

INTERNATIONAL MARINE CONTRACTORS ASSOCIATION (IMCA)	
IMCA COMMENTS	**MCA RESPONSE**
Information on the use of 'non-employed seafarers' The consultation documents seek information on the use of 'non-employed seafarers'. Freelance agency personnel represent a relatively high proportion of the project personnel working on offshore support vessels, in particular for personnel in offshore survey, ROV (remotely operated vehicles) and diving roles. It is difficult to quantify for a particular flag, because these personnel are often employed by the charterer or by a third party service provider and will be moved between ships depending on a particular project. In some cases, the employer may have no contractual relationship with the shipowner and may have no knowledge of the flag of the ship to which his personnel have been deployed. However, the IMCA annual statistics on diving personnel indicate that dayraters can sometimes account for over half the diving personnel employed by IMCA members in the North Sea. It is expected that most project personnel are employed in line with the MLC standards, but with some differences in the details of the health and social security benefits, and many may be employed by a party other than the shipowner.	MGN 471(M) gives guidance on determining whether or not an individual worker is a seafarer for the purposes of the MLC.
Draft Regulations: **Duty to enter employment agreement**	

8(1) – the draft regulation states that the Seafarer Employment Agreement must be an agreement between the seafarer and the shipowner. However, this does not reflect the reality that large numbers of personnel on offshore support vessels may be employed by someone other than the shipowner. This is particularly the case for the non-marine personnel on board for the purposes of the project work being undertaken by the vessel, who may well be employed by the charterer or other third party company and not by the shipowner. It is simply not practical to insist that the shipowner has an employment agreement with personnel with whom he has no contractual relationship. The key principle is to ensure that anyone working on board is provided with decent working and living conditions, but the agreement setting out those terms and conditions does not necessarily have to be with the shipowner. The MLC provides that the employment agreement will signed by either the shipowner or his representative or, where the seafarer is not an employee, for the seafarer to be provided with evidence of contractual or similar arrangements (MLC Standard A2.1). So the agreement does not have to be between the seafarer and the shipowner. While paragraphs 3.4 and 3.5 of the draft MGN acknowledge that seafarers may be employed by an employer other than the shipowner, and that 'an employer other than the shipowner may be directly responsible for meeting some of the obligations placed on the shipowner by a Seafarer Employment Agreement, e.g. repatriation, payment of wages etc' this is not reflected in the accompanying Regulations. In addition, IMCA shares the concerns expressed by the UK Chamber of Shipping that if a UK shipowner is party to an SEA, HM Revenue and Customs (HMRC) may well consider the shipowner to be the employer and will therefore expect him to provide secondary National Insurance Contributions (NICs). This would disrupt the delicate balance of existing arrangements and lead to all sorts of administrative confusion. The Regulations should therefore be amended to reflect the MGN.	Paragraph 1 of Regulation 2.1 of the MLC requires that the terms and conditions for employment of a seafarer shall be set out or referred to in a clear written legally enforceable agreement and shall be consistent with the standards set out in the Code. Paragraph 1(a) of Standard A2.1 of the MLC then requires that each Member shall adopt laws or regulations requiring that ships that fly its flag comply with the following requirements: (a) seafarers working on ships that fly its flag shall have a seafarers' employment agreement signed by both the seafarer and the shipowner or a representative of the shipowner (or, where they are not employees, evidence of contractual or similar arrangements) providing them with decent working and living conditions on board the ship as required by this Convention. It is clear therefore that an SEA must be between the shipowner, or his representative, and the seafarer. A model agreement has been provided which allows for cases where the shipowner, while a party to the agreement for the purposes of the MLC, is not the employer of the seafarer (MGN 477(M)). Whether a seafarer is considered by HMRC to be "employed" by the shipowner or not is based on the circumstances of the case and not on the fact that there is an agreement between the shipowner and the seafarer, where the employment relationship is with another party.
8(2) – the draft regulation states that the shipowner will be committing an offence if 'a seafarer does not have a seafarer employment agreement in breach of paragraph (1)'. If this regulation is maintained, we would recommend inserting a comma after the word 'agreement', otherwise the regulation implies that the shipowner will be committing an offence unless he provides an SEA	Noted.

which breaches the requirements, which is clearly not the intention.	
Content of seafarer employment agreement **9(1)** – paragraph b) sets out the procedure to be followed for a seafarer who is not an employee. However, the terminology needs to be clarified, and we are also unclear why the information to be provided differs according to whether the seafarer is an employee or is self-employed. Paragraph 3.6 of the draft MGN makes clear that by 'a seafarer who is not an employee', the MCA means self-employed personnel. However, there are potentially many personnel on board offshore support vessels who are neither self employed nor employees of the shipowner. These personnel will not have employment agreements with the shipowner, and in our view these personnel may also be covered by 'contractual or similar arrangements' rather than an SEA with the shipowner. So we are unclear why the information provided for these third party personnel, who are not employees of the shipowner, should differ from the information for 'self-employed' personnel. However, at the same time, we are unclear why information for 'self-employed' personnel does not include details of wages, hours of work etc. Presumably this is because this information will not be available to the shipowner, because he is not the employer, but if that is the reasoning, then the same would apply to third party personnel. We think the information requirements therefore need further consideration. In addition, it should be clarified whether 'self-employed' personnel are only those who are registered as self-employed or whether this category also covers freelance agency personnel.	Separate provision is made for seafarers who are employees and seafarers who are not employees, as worker entitlements such as annual leave do not apply to self-employed personnel.. This point has been considered and a model agreement has been provided which allows for cases where the shipowner, while a party to the agreement for the purposes of the MLC, is not the employer of the seafarer (MGN 477(M)).
The draft Regulation also makes no mention of trainees. We understand that the MCA's MLC Tripartite Working Group has determined that trainees will be considered as 'seafarers' for MLC purposes, and that an officer trainee's Training Agreement will be accepted in place of an SEA. However, the Regulations and MGN need amending to reflect this.	The Regulations have been amended to allow that a training agreement may be considered as a substantial equivalent to an SEA. MGN 485(M) gives more details.
9(3) – the draft regulation requires each seafarer employment agreement to include a statement by the seafarer and the shipowner confirming that the shipowner has provided the seafarer with a sufficient opportunity to review and	Paragraph 2 of Regulation 2.1 of the MLC clearly states that "*Seafarers' employment agreements shall be agreed to by the seafarer under conditions which ensure that the seafarer has an opportunity to review and seek advice on*

take advice on the terms and conditions of the agreement; that the shipowner has explained the rights and responsibilities of the seafarer under the agreement and that the seafarer enters into the agreement freely. The MLC does not require the inclusion of such a statement and it is not a duty of the shipowner to explain the seafarer's rights and responsibilities under the SEA. The Regulation should therefore be amended to align with the text in paragraphs 7.5 and 7.6 of the draft MGN, which more accurately reflects the MLC requirement.	*the terms and conditions in the agreement and freely accepts them before signing."* Additionally paragraph 1(b) of Standard A2.1 provides that "*..seafarers signing a seafarers' employment agreement shall be given an opportunity to examine and seek advice on the agreement before signing, as well as such other facilities as are necessary to ensure that they have freely entered into an agreement with a sufficient understanding of their rights and responsibilities."* A provision is needed to enforce this requirement. The wording has been reviewed.
Offences under Regulations 8, 9, 11, 12 and 13 IMCA is concerned by the proposals to impose criminal penalties on shipowners and Masters for breaches of certain regulations. MLC compliance will already be enforceable through the flag state's approval of the ship's Declaration of Maritime Labour Compliance (DMLC) Part II and the power of flag state and port state authorities to detain the ship, and we do not believe that these additional, criminal sanctions are appropriate.	Criminal penalties are always the last resort where other actions (improvement notices, detention etc) fail to resolve the matter. Also this will apply to non-UK ships of non-ratifying states not subject to the MLC. A defence of taking "all reasonable steps to ensure compliance" has been included in the Regulations.
Schedule 1 (Provision to be included in a seafarer employment agreement) See our comments above regarding the differentiation between 'self-employed' and third party seafarers. In addition, the references in Parts 1 and 2 to the shipowner (eg. 2. – the name and address of the shipowner, and 9. – the health and social security protection benefits to be provided by the shipowner) need to refer to the employer instead, as for third party employees these elements will be being provided by the individual employer rather than the shipowner.	Noted. The MGN has been reviewed. As the SEA is between the shipowner and the seafarer , responsibility rests with the shipowner irrespective of who actually employs the seafarer
Draft MGN **2. BACKGROUND** Paragraph 2.3 (and also paragraph 3.1) incorrectly states that the Seafarer Employment Agreement must be between the seafarer and the shipowner. In line with our comments above regarding draft Regulation 8, these paragraphs should be amended to reflect the fact that the SEA is an agreement between the seafarer and the employer, who may or may not be the shipowner.	Paragraph 1 of Regulation 2.1 of the MLC requires that the terms and conditions for employment of a seafarer shall be set out or referred to in a clear written legally enforceable agreement and shall be consistent with the standards set out in the Code. Paragraph 1(a) of Standard A2.1 of the MLC then requires that each Member shall adopt laws or regulations requiring that ships that fly its flag comply with the following requirements: (a) seafarers working on ships that fly its flag shall have a seafarers' employment agreement signed by both the seafarer and the shipowner or a representative of the shipowner (or, where they are not employees, evidence of contractual or similar

	arrangements) providing them with decent working and living conditions on board the ship as required by this Convention. It is clear therefore that an SEA must be between the shipowner, or his representative, and the seafarer. A model agreement has been provided which allows for cases where the shipowner, while a party to the agreement for the purposes of the MLC, is not the employer of the seafarer (MGN 477(M)).
3. GENERAL REQUIREMENTS OF SEAFARER EMPLOYMENT AGREEMENT REGULATIONS IMCA welcomes the guidance in paragraphs 3.4 and 3.5, which we believe provides an accurate description of the different types of employment arrangements that might be in place. However, the draft Regulations need to be amended to reflect these various circumstances. Also, the terms 'employed', 'non-employed' and 'self-employed' need to be clarified. Paragraph 3.5 refers to a category of 'employed seafarers' whose actual employer is someone other than the shipowner, but paragraph 3.6 defines a seafarer who is not an employee as someone who is self-employed. There may be potentially large numbers of personnel on board offshore support vessels who are neither self-employed nor employees of the shipowner, so the terminology needs to be clarified.	There are only two categories of seafarer. Those who are employed and those who are self-employed. Regardless of who is the employer of the seafarer, the SEA makes clear that the shipowner is ultimately responsible for ensuring that the seafarer receives their entitlements. The MGN has been reviewed in the light of comments received.
Regulation 9 – Content of Seafarer Employment Agreement It is also unclear to us why separate provision on the information to be contained in a Seafarer Employment Agreement has been made for seafarers who are 'self-employed' but not for other seafarers who are not employees of the shipowner (paragraphs 7.1 to 7.3). In paragraph 7.6, the draft MGN notes that, where practicable, shipowners should allow seafarers a reasonable time to review their SEA and seek advice on it before signing. However, for third party employees, this would obviously be the responsibility of the individual employer, rather than the shipowner.	The SEA may consist of more than one document, which between them must include the required content, but there must be an agreement between the shipowner and the seafarer which underpins the shipowner's ultimate responsibility for ensuring the seafarer receives their entitlements. Paragraph 2 of Regulation 2.1 of the MLC clearly states that "*Seafarers' employment agreements shall be agreed to by the seafarer under conditions which ensure that the seafarer has an opportunity to review and seek advice on the terms and conditions in the agreement and freely accepts them before signing."* Additionally paragraph 1(b) of Standard A2.1 provides that "*..seafarers signing a seafarers' employment agreement shall be given an opportunity to examine and seek advice on the agreement before signing, as well as such other facilities as are necessary to ensure that they have freely entered into an agreement with a sufficient understanding of their rights and responsibilities."*

	A provision is needed to enforce this requirement. The wording has been reviewed.
Regulation 11 - Documents Paragraph 9.1 of the draft MGN states that the shipowner is required to provide the seafarer with a signed original of the Seafarer Employment Agreement. However, while the shipowner is ultimately responsible for ensuring the seafarer has been provided with the agreement, in the case of third party employees, it will be the responsibility of the individual employer to provide the agreement. IMCA welcomes the confirmation in paragraph 9.2 that the MCA will accept the shipowners' copies being kept in electronic format.	The regulations reflect the ultimate responsibility of the shipowner.
16. SUBMISSION OF SEAFARER EMPLOYMENT AGREEMENTS, LISTS OF CREW AND OFFICIAL LOG BOOKS IMCA does not support the proposal in paragraph 16.2 to require ships to submit crew lists every six months. We do not believe the case has been made for changing the existing requirement to submit crew lists at 12 monthly intervals, and doubling the reporting requirement would create an additional administrative burden which is not required by the MLC.	Normally the period of validity for a list of crew ties in with the period of validity of the crew agreement which, apart from the old NMB Agreements is 6 months unless an exemption has been granted by MCA. Following the replacement of crew agreements, MGN 477(M) provides for 12-monthly submission of crew lists.
17. RESPONSIBILITY FOR PRODUCTION OF SEAFARER EMPLOYMENT AGREEMENTS, LISTS OF CREW AND LISTS OF YOUNG PERSONS Paragraph 17.1 does not indicate whether electronic documents in pdf format would be acceptable. To avoid delaying the procedures for engaging a seafarer and ensuring he has the opportunity to review the agreement before signing, seafarers should be able to send a scanned copy of the signed SEA to the employer, for the employer to print, sign and scan it.	The level of security provided by an electronic agreement varies widely, from a scan of an original document to authorised electronic signatures etc. Legally, an electronic document is equivalent to a hard copy, and MCA will accept them provided that both parties to the agreement are content that they suffice.
Annex 1 - Information to be included in a seafarer employment agreement See our comments above regarding the differentiation between seafarers who are third party employees and seafarers who are self-employed. For third party employees, it will need to be clear that the various provisions will be provided by the individual employer, rather than the shipowner.	See above.
Annex 2 - Model format for a seafarer employment agreement	

Name and Address of Employer - Note 2 states that where the shipowner is not the actual employer, the employment agreement should include details of both the shipowner and the actual employer, and should identify that the agreement is between the seafarer and both the shipowner and the employer. We are concerned about the legal implications of an employment agreement that is apparently between an employee and two different parties, one of whom is not actually the employer. As the MLC does not require the employment agreement to be with the shipowner, this does not make any sense. Also, in our view, a shipowner who has put in place the type of indemnification arrangement recommended in paragraph 3.5 of the draft MGN could leave himself open to having those arrangements challenged legally, if he is quoted as being a party to the SEA.	Whether a seafarer is considered by HMRC to be "employed" by the shipowner or not is based on the circumstances of the case and not on the fact that there is an agreement between the shipowner and the seafarer, where the employment relationship is with another party.
Place of Work - Note 4 provides that the employment agreement may state that the 'place of work may be on any vessel owned, managed or chartered by the shipowner'. This provides useful flexibility. However, it is not uncommon for the specialist project personnel on offshore support vessels to move between ships of different shipowners at relatively short intervals. These personnel may be on board to provide specialist services for a particular element of a longer term project and they therefore may well be moved between different vessels, on behalf of the charterer or sub-contractor by whom they are employed, as and when their particular task has been completed. In the case of vessels on a time charter, the charterer may not be the vessel operator, and will therefore not be the MLC 'shipowner', so the employment agreement may have to be amended to update the shipowner's details every time these personnel move between the different ships of a chartered fleet. This could be a significant administrative burden, and it would therefore help ease the practical burden if the MGN could make clear that the shipowner's details could be supplied (or updated) by way of a covering letter identifying the owner of the particular vessel, which could be provided to personnel as they move vessel.	This could be dealt with by a combination of an agreement with the employer/sub-contractor and an agreement with the shipowner which
Hours of Work – Note 13 requires the seafarer's hours of work to be recorded. However, this could vary during the course of a voyage or a project, so the reference should instead refer to the maximum number of hours that may be worked according to the ship's schedule of service. If the MCA does intend to apply the MLC requirements to offshore divers, it is important to note that divers are subject to different work hour requirements (EU Working Time Directive), and for saturation divers the MLC work hour limits should not be applied to the	The consultation draft stated that:- "The hours of work for seafarers employed on UK registered vessels must comply with the requirements of the Merchant Shipping (Hours of Work) Regulations 2002 (as amended) or any subsequent Regulations which may further amend or replace those Regulations." It has been amended also to require a statement of normal weekly hours or pattern of work, and any differences in rate of pay for hours worked in excess of this, as applicable.

time spent on board in the saturation chamber.	

NAUTILUS INTERNATIONAL	
NAUTILUS INTERNATIONAL COMMENTS	**MCA RESPONSE**
The Merchant Shipping (Maritime Labour Convention) (Seafarer Employment Agreement [Title 2.1]) Regulations 20xx ("MLC SEA Regulations") **General comment on criminal offences** Throughout this response Nautilus highlights concerns in connection with criminal offences or potential offences created against masters. Nautilus is strongly opposed to the creation of any new offences against masters, officers or ratings and the general trend of criminalisation of seafarers. Although the MLC requires Members to implement appropriate sanctions for non-compliance, at no point does it state that this should be done by creating offences against masters. There are some provisions in the MLC which impose specific obligations on masters but the vast majority of MLC obligations are imposed on shipowners. Masters are subject to ever increasing regulatory obligations and work under extreme commercial pressures. It is right that they should rely on shipowners to provide them with the financial and manpower resources to comply with their obligations. Therefore, if any offences are to be created at all then these should be directed solely against shipowners who should not be operating unless they have the means to fulfil their legal obligations. Masters, officers and ratings are answerable to shipowners who should be responsible with monitoring their performance – there is no need to criminalise them further.	Where the master fails to fufill statutory duties on board, where the shipowner has no control, it is appropriate to hold the master accountable. However, criminal penalties are always the last resort where other actions (improvement notices, detention etc) fail to resolve the matter. Also this will apply to non-UK ships of non-ratifying states not subject to the MLC. A defence of taking "all reasonable steps to ensure compliance" has been included in the Regulations.
The Merchant Shipping (Maritime Labour Convention) (Seafarer Employment Agreement [Title 2.1]) Regulations 20xx **Regulation 2 – Interpretation** Nautilus suggests that full reference should be made to the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991 and that any abbreviated title is used consistently. The first reference to those Regulations is in the heading of regulation 6 where they are referred to as the *"Merchant Shipping (Crew Agreements etc.) Regulations 1991"*. They are then	Drafting issue.

referred to in regulation 6(1) as *"The 1991 Regulations"* Normally a statute will refer to legislation in full in the interpretation provisions with an abbreviated title, which will then be used consistently. Nautilus suggests that the following should be inserted into regulation 2:- "*the 1991 Regulations" means the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991 SI 1991/2144."* All further references to the 1991 Regulations should use this abbreviation, including the heading to regulation 6.	
<u>Regulation 6 - Amendments to Merchant Shipping (Crew Agreements etc.) Regulations 1991</u> **Regarding regulation 6(2)(a) -** Nautilus recommends that after *"Maritime Labour Certificate"* the words *"and "interim Maritime Labour Certificate""* are inserted so as to be consistent with the definition used in regulation 2(1) of the MLC SEA Regulations.	Agreed.
<u>Regulation 8 - Duty to enter seafarer employment agreement</u> Nautilus recommends that the fine in regulation 8(3) be set at Level 5 on the Standard Scale. This would reflect the level of seriousness in failing in the fundamental obligation to issue the SEA.	Noted
<u>Regulation 9 - Content of seafarer employment agreement</u> Nautilus recommends that after the word *"agreement"*, there is inserted *"before signing it;"* This is required to comply with MLC, Standard A2.1, paragraph 1(b). Nautilus recommends that the fine in regulation 9(6) be set at Level 4 on the Standard Scale. Such a failure would not be as serious as failing to issue a SEA at all, therefore the reason for recommending Level 4, which is still significant but proportionate. Nautilus recommends that the fine in regulation 9(7) be set at Level 5 on the Standard Scale. This would allow the court the flexibility to impose a large fine when the reason that the relevant statement is *"inaccurate"* is due to the dishonesty or underhand dealings of the shipowner.	Reworded in final regulations. As offence is failure to provide an SEA in accordance with the Regulations, the penalty is level 5.
<u>Regulation 10 – Minimum notice periods</u> Nautilus recommends that the word *"serious"* is replaced with *"gross"* so as to be consistent with the language usually used in British employment law, in	Drafting point

which it is accepted that a contract of employment can be terminated by the employer for *"gross misconduct"*. Furthermore the MGN should be amended accordingly and use the phrase *"gross misconduct"*.	
<u>Regulation 11 – Documents</u> *"*For the avoidance of doubt, Nautilus recommends that, in regulation 11(1) that *"original"* should be inserted before the second reference to *"agreement"*. This is required to comply with MLC, Standard A2.1, paragraph 1(c). Nautilus recommends that the fines in regulation 11 be set at the following levels on the Standard Scale: regulation 11(1) - Level 5; regulation 11(2) - Level 4; regulation 11(3) - Level 5.	Agreed Noted.
<u>Regulation 12 - Foreign language seafarer employment agreement</u> Nautilus recommends that the fine in regulation 12(5) be set at Level 3 on the Standard Scale. A failure to have an English translation of a SEA is not as serious as the failure to have a SEA at all.	Noted
<u>Regulation 13 - Duty of master to produce seafarer employment agreement</u> Nautilus does not believe that there is any need to create a criminal offence against the master and instead would recommend that there are strong sanctions against shipowners to encourage compliance. Even if there will remain such an offence against master then there should be a due diligence defence. The master may have only recently joined the vessel and in such circumstances should not be held liable for such breaches. In any case, any fine against the master (if insisted upon), whose financial resources will be much more limited than those of the shipowner, should not exceed Level 1 on the Standard Scale.	Where the master fails to fufill statutory duties on board, where the shipowner has no control, it is appropriate to hold the master accountable. However, criminal penalties are always the last resort where other actions (improvement notices, detention etc) fail to resolve the matter. Also this will apply to non-UK ships of non-ratifying states not subject to the MLC. A defence of taking "all reasonable steps to ensure compliance" has been included in the Regulations.
<u>Regulation 14 - Inspection of United Kingdom ships and certain other ships</u> Nautilus finds the words in regulation 14(4) confusing and would ask the MCA to check if they are correct. In particular, *"as applied by paragraphs (2) and (3)"* may be incorrect as there is no reference in those paragraphs to *"subsection (8) of section 259 or subsection (3) of section 260 of the Act"*.	Inspection and detention provisions have been reworked in the consolidated Regulations.
<u>Regulation 15 - Detention of United Kingdom ships and other ships</u>	Inspection and detention provisions have been reworked in the consolidated

<u>without Maritime Labour Certificates</u> It seems, from the heading of this regulation and the reference in regulation 15(5) to *"a ship other than a United Kingdom ship"* that it applies to United Kingdom ships and other ships, but the drafting in regulation 15(2) is ambiguous and Nautilus requests that it be made clearer. There is a danger that it could be read as only referring to United Kingdom ships when they meet the circumstances in regulation 15(2)(b) or (c). Nautilus would suggest the words *"or any other ship which is"* are inserted in a new line between paragraphs (a) and (b).	Regulations.
<u>Regulation 15(6)</u> There should be no expectation that the security could or should be paid personally by the master. Nautilus requests that reference to the master be removed or alternatively there is inserted after *"master"* the following words *"on behalf of the shipowner"*.	The reworked provisions do not refer to payment of security by the master.
<u>Regulation 15(d)</u> Nautilus objects to any offences being created against masters and asks that such references be removed throughout.	Noted
<u>Regulation 15(7) and (8)</u> The references in regulation 15(7) and (8) to *"paragraph 7(c)"* appear to be typographical errors and should probably be references to *"paragraph 6(c)".* As regards regulation 15(8), Nautilus objects to any offences being created against masters and asks such references be removed throughout.	Noted.
<u>SCHEDULE 1 Regulation 9(1)</u> **<u>Provision to be included in a Seafarer Employment Agreement</u>** **<u>PART 1</u>** **<u>Provision to be included in all agreements</u>** ***10.*** To comply with MLC Standard A2.5, paragraph 2(b), and Guideline B2.4, paragraph 4(a), Nautilus requests that after *"annual leave"* the following words be inserted *"and public holidays"*. And Nautilus also requests that a further sentence be added as follows: *"In the UK the period must not exceed 327 days."*	The schedule now refers to "paid leave", which includes 8 additional days in respect of public holidays.

11. Nautilus requests that paragraph 11 be amplified so that seafarers are aware of the exact circumstances in which they are entitled to be repatriated. The wording to be added will depend on the final version of the Merchant Shipping (Maritime Labour Convention) (Repatriation) Regulations 20xx and, in that regard, Nautilus would remind the MCA of the Union's comments in its letter dated the 20th February 2013 in response to the consultation on those Regulations. Nautilus would highlight how detailed the MLC is on the issue of repatriation. Seafarers must know their rights so that they can be confident enough to assert them against the shipowner. Nautilus is of the view that this aspect of the SEA must be more informative and transparent.	Details on repatriation entitlements are in the Repatriation regulations and supporting MGN. The model SEA ensures that the circumstances when the entitlement to repatriation applies, the means of transport and destination for repatriation, and the maximum period served on board before repatriation are specified in the SEA.
PART 3 **Provision to be included where seafarer is not an employee** There is no reason why a collective bargaining agreement may not apply to a seafarer who is not an employee. Schedule 1 does not reflect this. A self employed worker/seafarer is entitled to join a trade union and enjoy the benefits of collective bargaining. The agreement could be expressed to apply to all members of the union working for or providing services personally to the relevant shipowner including those in a self employed capacity. These rights are further underpinned in the UK by Article 11 of the Human Rights Act 1998, Article 11 of the European Convention on Human Rights, as well as ILO Convention 87 on the Right to Freedom of Association (1948) and ILO Convention 98 on the Right to Organise and Collective Bargaining (1949) respectively. Furthermore, regardless of the description attached to a worker, the question of whether he or she is an employee or self employed is often subject to debate and challenge in an employment tribunal or under issues raised by HMRC. Nautilus asks that this be remedied by amending Schedule 1 by moving paragraph 7 of Part 2, e.g. *"Details of any collective bargaining agreement which is incorporated (in whole or in part) into the agreement or is otherwise relevant to it"* into Part 1 (which applies to all agreements whether the seafarer be employed or self-employed).	Final version of Part 1 (which applies to all agreements) includes details of CBAs.

<u>MGN XXX (M) Maritime Labour Convention, 2006 : Conditions of Employment - Seafarers Employment Agreements</u> ***"3. General requirements of seafarer employment agreement regulations*** ***Employed Seafarers*** Para 3.1 Nautilus would note that the original SEA is not "*evidence of the contract between an individual seafarer and the shipowner",* it <u>is</u> the contract or, in cases where there are other documents to be incorporated into the SEA (such as a collective bargaining agreement) part of the contract. Nautilus would request that this paragraph be amended accordingly.	Noted. MGN has been reworked.
Paragraph 3.2 Nautilus would suggest that it would be helpful for all sides of the industry for the following sentence to be added: *"Shipowners are advised to contact appropriate unions, such as Nautilus International or RMT, to consult on the terms of the SEA."*	Noted. MGN has been reworked.
5. Regulation 7 - Application **Regarding sub-paragraph 5.2** There should be added, as a further exception, "*ships of traditional build".* This would comply with MLC, Article 2, paragraph 4, and the MLC SEA Regulations, regulation 7(4)(c).	Agreed
7. Regulation 9 - Content of Seafarer Employment Agreement **Regarding sub-paragraph 7.1,** There is a typographical error, in *"a copy of which shall is to be kept"*, in that *"shall"* should be removed.	Noted
8. Regulation 10 - Minimum Notice Period Regarding sub-paragraph 8.1 Nautilus requests that the last sentence be amended to read:- *"Termination on disciplinary grounds for gross misconduct will also not be subject to the seven day minimum period."*	This point is now included.
12. SCHEDULE 1 - PROVISIONS TO BE INCLUDED IN A SEAFARER EMPLOYMENT AGREEMENT Regarding sub-paragraph 12.1 There is a typographical error, the words *"the information"* should be removed. Regarding sub-paragraph 12.2	Noted

Nautilus recommends that the words *“set out”* be replaced with *“referred to”*.	
13. SCHEDULE 2 - PROVISIONS TO BE INCLUDED IN A RECORD OF EMPLOYMENT ***“13.1 Regulation 11(3) (see paragraph 9(2) above) requires …”*** **The reference to paragraph 9(2) is incorrect and should instead be a reference to paragraph 9(3).** Regarding sub-paragaphs 13.1 and 13.2 respectively The sub-paragraphs seem to use the titles “Certificate of Discharge” and “Certificate of Service” for the same document. Nautilus requests consistency in the proper terms to be used.	Noted and agreed
Regarding sub-paragraph 13.2 The wording in points 4 and 5 is different from that used in Schedule 2 of the MLC SEA Regulations. Nautilus recommends consistency in the terms and words used. In particular, relating to point 4, Schedule 2 uses *“4. Date on which employment started”*. There could be a difference in substance here – the employment could commence before the date of joining the vessel (see point 4 in the list above).	Noted and agreed Schedule 2 of the MGN relates to the information required to be entered onto a Certificate of Discharge or into a Discharge Book, to record actual sea service. With hindsight this is exactly the same information that should be required by Schedule 2 of the SEA Regs and additionally the title of Schedule 2 should I suggest be amended to read *“Information to be included in a record of employment on a ship”*
17. RESPONSIBILITY FOR PRODUCTION OF SEAFARER EMPLOYMENT AGREEMENTS, LISTS OF CREW AND LISTS OF YOUNG PERSONS Regarding sub-paragraph 17.2 There may be confusion caused by the various references to hard copies of electronically produced SEA’s. Nautilus requests that it be made clear that the seafarer and the shipowner are each to retain “the original signed version of the SEA which is printed off”.	The level of security provided by an electronic agreement varies widely, from a scan of an original document to authorised electronic signatures etc. Legally, an electronic document is equivalent to a hard copy, and MCA will accept them provided that both parties to the agreement are content that they suffice.
INFORMATION TO BE INCLUDED IN A SEAFARER EMPLOYMENT AGREEMENT **PART 1** **Provision to be included in all agreements** ***“5. The capacity in which the seafarer is to be employed.”*** Point 5 also applies to self-employed seafarers so Nautilus requests that the	Final version of Schedule 1 Part 1 says “the capacity in which the seafarer is to work”.

words *"or engaged"* are inserted at the end of the sentence, which would be consistent with point 5, Part 1, Schedule 1 of the MLC SEA Regulations.	
"10. The maximum duration of service periods on board following which the seafarer is entitled to repatriation (which must not exceed a period of 12 months minus the number of days annual leave to which the seafarer is entitled)." Nautilus would refer the MCA to the comments made above under point 10, Part 1, Schedule 1 of the MLC SEA Regulations, which apply here also.	See above
"11. The seafarer's entitlement to repatriation (including the mode of transport and destination of repatriation) and the circumstances in which the seafarer is required to meet or reimburse the shipowner for the costs of repatriation." Nautilus would refer the MCA to the comments made above under point 11, Part 1, Schedule 1 of the MLC SEA Regulations, which apply here also.	See above.
PART 3 **Provision to be included where seafarer is not an employee** ***"21.*** Nautilus request that point 21 be phrased in exactly the same way as point 2, Part 2, Schedule 1 of the MLC SEA Regulations and read as set out below. This is required to comply with MLC, Standard A2.2, paragraph 1. *"21. The manner in which the remuneration must be paid, including payment dates (the first of which must be no more than one month after the date on which the agreement is entered into, with all subsequent dates being no more than one month apart) and the circumstances (if any) in which the remuneration may or must be paid in a different currency."*	Noted
ANNEX 2 **<u>MODEL FORMAT FOR A SEAFARER EMPLOYMENT AGREEMENT FOR AN EMPLOYED SEAFARER</u>** **Means of payment of Wages** ***"[Overtime hours i.e. hours worked outside of normal working hours will be paid at a rate of ………………………….(insert overtime rate] (Delete this sentence if not applicable)"*** So that seafarers are aware of their MLC rights in this regard, Nautilus would	This comes from the MLC Guidelines. UK government policy is to leave determination of wages for agreement between employers and workers.

request that a brief guidance note (concerning the provisions of MLC Guideline B2.2, paragraph 1(b), and Guideline, B2.2.2, paragraph 1(b)-(C)), is inserted in the SEA as set out below:- *Seafarers are entitled to be paid at the overtime rate for any work which exceeds 48 hours in any week. The overtime rate of pay should not be less than one and one-quarter times the basic pay (which does not include bonuses, allowances, paid leave or any additional remuneration).”*	
Note 2 - Name and Address of Employer There is a typographical error here. At the first sentence it should state “the seafarer” instead of the “the shipowner”.	Noted
Note 6 - Paid Annual Leave Nautilus would ask that this paragraph be amended to reflect the following points: (i) it is overly prescriptive by not allowing the shipowner and the seafarer to agree provisions to carry leave (in excess of EU/MLC minimum) over into the next year. Seafarers often earn leave well in excess of the EU and MLC minimum (20 and 30 days respectively) and there is no reason why agreement cannot be reached to carry any of the excess over the higher of the two (30 days) into the next leave year; (ii) the sentences do not reflect the EU case law on the carry over of annual leave which could not be taken due to sickness. The EU case law establishes that a worker, who cannot take his EU derived annual leave due to sickness, has the right to carry it over into the following leave year (and, of course, be paid in lieu if he leaves in the following annual leave year without taking the leave). Furthermore, EU derived leave accrues at its usual rate while a worker is on long term sick leave; if the worker is sick on a day which was otherwise to be a EU derived annual leave day he has the right to take that day again as annual leave at some point in the future. Nautilus requests that, to comply with MLC Guideline B2.4, paragraph 4, the following sentence be added to the above paragraph: *“In addition to the MLC annual leave entitlement, seafarers are entitled to a further 8 days paid leave on or in lieu of public holidays.”*	This provision refers to statutory paid leave. Detailed guidance is now included in the merchant shipping notice on Hours of Work and Annual leave (MSN 1842(M))

Notice of Termination of Employment Nautilus request that, to comply with MLC Standard A2.1, paragraph 4(g)(iii), provision is made in the above paragraph for there to be an option for the SEA to terminate *"xx days after arrival at the port of [………….. destination port]"*	An option is included for a voyage agreement.
Repatriation (see Note 10) Nautilus requests that, as a reason for repatriation which reasonably comes within MLC Standard A2.5, paragraph 1(b)(ii), that there is also inserted in the above paragraph the following reason *"on compassionate grounds"*.	Compassionate grounds would come under "justified reasons".
Nautilus request that the following *phrase "dismissed on disciplinary grounds or have breached your obligations under this Agreement"* be replaced with *"dismissed for gross misconduct or for serious default of the terms of this agreement"*. This change would more closely reflect British employment law and MLC Standard A2.5, paragraph 3. Nautilus would suggest that there is more scope for repatriation rights to be expressed and made apparent (on which see the comments made above). Nautilus would request that the SEA is a good place in which to let seafarers know of other repatriation rights set out in MLC Guideline B2.5, particularly those in paragraph 3(b)-(d): *"(b) accommodation and food from the moment the seafarers leave the ship until they reach the repatriation destination;* *(c) pay and allowances from the moment the seafarers leave the ship until they reach the repatriation destination, if provided for by national laws or regulations or collective agreements;* *(d) transportation of 30 kg of the seafarers' personal luggage to the repatriation destination;"*	Amended to "serious misconduct". Detail of repatriation entitlements are spelt out in the relevant Regulations and supporting MGN.
Note 11 - Maximum duration of service periods after which you are entitled to repatriation The reference to "note 5" above should probably be a reference to "note 6" on paid annual leave (and note Nautilus' recommendation there that public holidays should be included).	Noted

Applicable Collective Bargaining Agreement(s)(delete if not applicable)(see Note 12) ***"You employment …"*** **There is a typographical error, *"You"* should read *"Your".***	
ADDITIONAL PARTICULARS REQUIRED TO BE INCLUDED BY THE UNITED KINGDOM LAW **Hours of Work (see Note 13)** Nautilus requests that the main points relating to the hours of young seafarers are summarised in the SEA and/notes, relating to: the general restriction against night work and the exceptions (to ensure compliance with MLC Standard A1.1, paragraphs 2-3, and Guideline B2.3.1).	Hours of work of young seafarers are covered under the Merchant Shipping (Health and Safety at Work) (Employment of Young Persons) Regulations 1998 (S.I. 1998/2411)
Grievance and Disciplinary Procedures **(a)** Grievances - Nautilus requests that reference be made (in the SEA and/or a note) to the onshore seafarer complaint - handling procedures (under MLC Regulation 5.2.2, Standard A5.2.2, and Guideline B5.2.2) which should be available in the port of a ratifying country for the resolution of complaints which cannot be resolved on board.	Not included. This is a wider provision than the requirement for an onboard complaints procedure for MLC complaints
Pension benefits *(Delete whichever is not applicable) (see Note 14)* There is no text against "*Note 14 – Pension benefits -*", Nautilus requests to be informed of what is to be inserted, if anything, in this space.	Where applicable, details of any employment pension scheme (and any contributions which the seafarer is required to make) should be noted.
Compensation in respect of loss of personal property as a result of the loss or foundering of the vessel Nautilus requests that this part of the SEA is amplified to show seafarers their full entitlements. For instance, the paragraph above only refers to loss of personal property. To be fully compliant with MLC Standard A2.6, paragraph 2, and Guideline B2.6.1, paragraph 2, full reference should be made to their entitlement to their "indemnity against unemployment" at their full rate of pay for a minimum of two months.	The model SEA provides for details to be provided. Full entitlements are set out in the relevant MGNs.
Note 15 – "Inclusion of Additional Provisions by Shipowner" Nautilus requests that, bearing in mind the benefits for seafarers in collective bargaining (and that such agreements will promote MLC rights), the following	The current draft is preferred.

sentence is added to paragraph (a):- *"Any employed or self-employed seafarer is entitled, if they wish, to join a trade union and enjoy the benefits of collective bargaining. These rights are further underpinned in the UK by Article 11 of the Human Rights Act 1998, Article 11 of the European Convention on Human Rights, as well as ILO Convention 98 on the Right to Organise and Collective Bargaining (1949)."* Nautilus would note that paragraphs (c) and (d) could be dealt with as one paragraph as both relate to sensitive personal data. Nautilus would request that the paragraphs reflect the strict conditions (under principle 8, Schedule 1 of the Data Protection Act 1998) for transferring any personal data (whether sensitive or not) outside the EEA, with a sentence to be added to the effect of:- *"Shipowners or other organisations shall not transfer personal data to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data."* **Annex 3**	To be considered.
AMENDMENTS TO EXISTING LEGISLATION MADE BY THE MERCHANT SHIPPING (MARITIME LABOUR CONVENTION) (SEAFARER EMPLOYMENT AGREEMENT) REGULATIONS 20XX **Amendments to the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991 (SI 1991/2144)** there is a typographical error, *"evidencing and exemption"* should read *"evidencing an exemption"*.	Noted.
SUMMARY OF THE PROVISIONS OF SECTION 55 OF THE MERCHANT SHIPPING ACT 1995 AND THE MERCHANT SHIPPING AND FISHING VESSELS (HEALTH AND SAFETY AT WORK) EMPLOYMENT OF YOUNG PERSONS) REGULATIONS 1998 (AS AMENDED) On the basis that this document pre-dates the MLC, Nautilus asks whether the MCA intend to revise it (and, if necessary, the underlying legislation in the heading above) to make it more specific to the various detailed MLC provisions on health and safety/working hours for young persons (not forgetting MLC Guideline 4.3.10). For instance, the following section is out of step with MLC provisions on hours of work and rest (Guideline B2.3.1): *"Young persons shall be provided with*	

• *a rest period of 12 hours in every 24 hour period;* • *a rest period of 2 days in every week;* • *where daily working time is more than four and a half hours, a rest period of 30 minutes;"* Nautilus would appreciate some feedback from the MCA on the issues raised under this section.	
<u>SECTION 6 - TITLE 2.1 SEAFARER EMPLOYMENT AGREEMENTS</u> **Application** Nautilus would support the alternative in paragraph 7.12 to exempt pleasure vessels from the requirement to have a crew agreement if they have introduced SEAs on a voluntary basis. However, if that measure is not implemented, Nautilus would rather that the current law continues so that pleasure vessels that are not used commercially fall under the requirements of the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991 and are required to have a crew agreement if they undertake voyages, other than *"coastal voyages"* and more than 4 members of their crew receive wages for their employment. This is based on Nautilus' view that it is better for a seafarer to have the coverage of a crew agreement (which, under regulation 14 of the 1991 Regulations, there is a requirement to include particulars, some which are also in the new SEA's) than, potentially, no document relating to their employment at all.	Noted. Where crew on pleasure vessels have an SEA compliant with the MLC requirements, the shipowner may apply for an exemption from the requirement for a crew agreement.
Non-employed seafarers See the various points above that Nautilus has made in the response to the MLC SEA Regulations and the MGN. Information has been requested from Nautilus' industrial organisers and anything useful received will be passed on to the MCA. Nautilus would submit that the term *"self-employed seafarers"* is more appropriate than *"non-employed seafarers".*	Noted.
Additional items to be included in SEAs Nautilus welcomes the additional items for the purpose of enhancing transparency in the information provided to seafarers regarding their rights.	Noted
Production of SEAs and Lists of Crew etc. Nautilus is of the view that compliance would be more likely if the MCA, with its specialised knowledge, produced SEA's/crew lists and approved non-standard	

SEA's. The MCA are therefore urged to pay particular attention to this documentation during FSC inspections and intermediate inspections and ensure that Maritime Labour Certificates can only be held when shipowners are fully compliant.	
LEVYING OF FINES ON SEAFARERS FOR DISCIPLINARY OFFENCES Nautilus would highlight that the relevant MLC provision is Guideline B2.2.2, paragraph (4)(j), and not Guideline B2.2.4(j) as stated in the paper. Nautilus much prefers option (a):- *"(a) ban all disciplinary fines whether included in collective agreements, SEAs or other documents irrespective of whether or not they have been agreed and signed by the seafarer;"* The ultimate threat of dismissal should be sufficient as an incentive to maintain discipline. Disciplinary proceedings and warnings can be given for anything less than gross misconduct. Fines would adversely affect not only seafarers but also their dependants; fines are seldom used against onshore workers, so Nautilus requests that the MLC SEA Regulations are amended to ban all disciplinary fines.	The final MGN notes that no provision exists under UK Merchant Shipping law for fines to be levied on seafarers by shipowners in respect of disciplinary offences.

WARSASH MARITIME ACADEMY	
WARSASH MARITIME ACADEMY COMMENTS	**MCA RESPONSE**
7.1 The current provision of section 25 Merchant Shipping Act 1995 It is inevitable that section 25(1) Merchant Shipping Act 1995 will have to be amended, because the single document understood for generations to amount to the crew agreement is to be replaced by individual contracts, otherwise it would prima facie render the existing primary legislation inconsistent with the MLC and, while there may be some argument on construction of singular and plural meanings under section 25, no creative interpretation of the provisions of primary legislation should be entertained. That being said, the provisions of section 25 are compatible with Article IV and Regulation 2.1 of the MLC which defines the purpose of the SEA to ensure that seafarers have a fair employment agreement . Para 1 of Regulation 2.1 is	MSA 1995 section 25 is amended by the Merchant Shipping (Maritime Labour Convention) (Consequential and Minor Amendments) Regulations 2014

entirely satisfied; Para 2 falls within English Common Law contract principles and can be specifically addressed in the Secretary of state's SI; Para 3 clearly intends that the Flag State's national law shall prevail in relation to collective bargaining agreements, which can be succinctly addressed by the Secretary of State if need be, for the current law is well-established and serves the industry well –*videHenry v London General transport Services Ltd* [2002] EWCA Civ 488, *Kaur v MG Rover Group Ltd* [2004] EWCA Civ 1507. The difficulty appears in subsections 2,3,5 and 6 of section 25; while the Secretary of State can be given the powers to incorporate into the SEA those provisions required by the MLC in Article IV, Parliament would not have the right to give the Secretary of State such powers that are inconsistent with the provisions of the Convention.	
By reason of the doctrine of substantial equivalence, it is also argued that the 1995 Act complies with the Convention's rights to a safe and secure workplace, to decent working and living conditions on board ship and to health protection and medical care, by virtue of s30 Payment of seamen's wages. s38 Right, or loss of right, to wages in certain circumstances. s42 Obligation of shipowners as to seaworthiness. s43 Crew accommodation. s44 Complaints about provisions or water. s45 Expenses of medical and other treatment during voyage. s73 Relief and return of seamen etc. How these may be regulated by the Secretary of State's statutory instrument may resolve any conflict issues.	Noted
<u>The relationship with the Employment Rights Act 1996</u> It is currently difficult to divine how the SEA would sit with the seafarer's permanent contract which would, of course, be the subject of the Employment Rights Act 1996, section 199 of which excludes application to seamen and, in certain circumstances, the Master. If there is to be just one contract of employment, then presumably that which is required by the MLC legislation is intended to prevail. If that is the case, then the provisions of the Employment Rights Act 1996 must be applied to the SEA;	 The Employment Right Act 1996 is amended by the Merchant Shipping (Maritime Labour Convention) (Consequential and Minor Amendments) Regulations 2014 to exempt those with SEAs (as well as those employed under crew agreements)

if the Master, obviously a professional seafarer not a lawyer, then dismisses a seaman in accordance with their powers of discretion, which cannot be overruled by the owner, there must be some clear defence to the owner whose position may thus be compromised.	
Consultee's comments on the proposals in paragraphs 7.12 and 7.13 would be welcomed.*(assuming this to mean 7.11 and 7.12)* The draft Statutory Instrument fairly reflects the exemption currently enjoyed by 'pleasure vessels' (as defined) from the 1991 Regulations. As a general principle it would be sensible to perpetuate this extension if for no other reason than its practical enforcement would otherwise prove counter-productive on any cost-benefit analysis. That being said, it should be possible to ensure that a charterparty evidencing a commercial operation must be accompanied by evidence of an SEA, in the absence of which it would be unenforceable, as a cost-effective way of encouraging compliance.	Noted
The consultation document is to be applauded in its identification of clear issues raised by non-employed seafarers signing the SEA. In terms of general principle, the contractual obligations of employers to their employees, and their tortious obligations to third parties by way of vicarious liability,determine the key issues in this context. An individual who is employed by an independent contractor will enjoy all the rights and obligations in their particular contract of service, to which the owner is not privy. Moreover, the Employers' Liability (Compulsory Insurance) Act 1969 and the employer's non-compulsory public liability insurance, by their very nature, exclude any reference or extension to the owner of the vessel and, therefore, the risk transfer option could hardly be applied to a claim arising out of the Convention benefits. To give an example, if such non-employee is employed by a repair contractor and the repairs overrun, necessitating the employee completing the work while the vessel proceeds to her port of loading, then it would appear that the owner of the vessel must ask the employee's contractor to agree terms, providing them with *decent working and living conditions on board the ship* as required by this Convention, which are entirely unrelated to the nature of the owner's obligations under the agreement with the contractor.	The MLC lays down certain entitlements for seafarers and the shipowner is responsible under the Convention for ensuring these are provided, whether or not they actually provide those entitlements or someone else (the employer) does so. Any obligation of the shipowner under this Convention does not affect the contractual obligations of others. The Regulations require all seafarers (employed and self-employed and those employed by someone other than the shipowner) to have an SEA with the shipowner but (a) Make separate provision as to the contents for employed and self-employed seafarers; and (b) Allow for the situation where the seafarer is employed by someone other than the shipowner. The SEA may consist of more than one document, which between them must

As a compromise, the proposal in the draft for a separate SEA would be justified. However, the content which has been proposed, and contained in the draft statutory instrument, raises issues which may give rise to very significant difficulty and, conceivably, the implications arising out of the information given might justify a third party claim against the owner of the vessel, arising out of the individual's rights or obligations. Firstly, it is to be questioned, why a considerable amount of the information in Part 1 must be incorporated at all for non-employees. Secondly, a great deal of the information raises assumptions that the owner owes obligations to the individual as an employee.	include the required content, but there must be an agreement between the shipowner and the seafarer which underpins the shipowner's ultimate responsibility for ensuring the seafarer receives their entitlements.
Finally, and crucially, there is no provision – bizarrely, not even in Part 3 which is reserved for non-employees - for the name and address of the individual's employer. A very brief summary of the draft proposal may be summarised thus, following the wording in the proposed draft: **PART 1: Provision to be included in all agreements** **1. The full name, birthplace and date of birth (or age at the time of entering into the agreement) of the seafarer.** If the individual is not an employee of the owner, then the logic of the individual's personal details save their name cannot be relevant. **2. The name and address of the shipowner.** Agreed. **3. The place where the agreement is entered into.** Agreed. **4. The date on which the agreement is entered into.** Agreed. **5. The capacity in which the seafarer is to be employed or engaged**. Emphatically to be resisted. The individual is not an employee of the Owner, as a result of which, they cannot define the capacity of the individual – they cannot even tell them how to do their job, for that might prejudice any claim between	The final regulations, and the model SEA, include provision to include an employer other than the shipowner, in addition to the shipowner. See also MGN 471(M) which helps to establish who is a seafarer for the purposes of the SEA.

them and the contractor. **6. If the agreement has been made for a definite period, the termination date.** If this is to be included, it must clearly state that it reflects merely the agreement between the owner and the contractor and give clear clarification of just what is meant by 'the agreement'. **7. If the agreement has been made for an indefinite period, the period of notice of termination required and the circumstances in which such notice may be given.** The same applies as in (6). **8. If the agreement has been made for a voyage, the destination port and the period following arrival after which the agreement terminates.** The same applies as in (6). **9. The health and social security protection benefits to be provided to the seafarer by the shipowner.** Emphatically to be resisted. The owner is not the employer. **10. The maximum duration of service periods on board following which the seafarer is entitled to repatriation (which must not exceed a period of 12 months minus the number of days annual leave to which the seafarer is entitled).** Emphatically to be resisted. The same applies as in (9). **11. The seafarer's entitlement to repatriation (including the mode of transport and destination of repatriation) and the circumstances in which the seafarer is required to meet or reimburse the shipowner for the costs of repatriation.** Emphatically to be resisted. The same applies as in (9).	
12. The maximum sum which the shipowner will pay to the seafarer in respect of compensation for any loss of personal property arising from the loss or foundering of the ship. Emphatically to be resisted. The same applies as in (9).	In particular, if a ship is lost it would be the shipowner, or his insurers, who would be liable to pay compensation to those on board who had lost personal property irrespective of who their employer was.

PART 3: Provision to be included where seafarer is not an employee

1. The remuneration (either the amount or the formula to be used in determining it)

.Emphatically to be resisted. The same applies as in (9).

2. The manner in which the remuneration must be paid, including payment dates (the first of which must be no more than one month after the date on which the agreement is entered into, with all subsequent dates being no more than one month apart) and the circumstances (if any) in which the remuneration may or must be paid in a different currency. Emphatically to be resisted. The same applies as in (9).

In identifying a solution, we therefore need to isolate these sorts of non-employee from the sort whom the MLC should logically protect. This may conveniently be done by excluding the individual from the definition of a seafarer – currently conceived in the draft statutory instrument as a person *who is employed or engaged or works in any capacity on board a ship on the business of the ship*. A potential difficulty might be resolved by amending the definition of a seafarer to exclude an independent contractor or their employee, and to define *the business of the ship* in order to distinguish the owner's commercial obligations from those of others. Moreover, the inclusion of those individuals employed, for example, as entertainers but who have specific emergency tasks assigned to them, would still be assured.

That would also enable the incorporation of individuals within the definition of a seafarer, if that is what the spirit of the MLC demands. Overall, we would be left with an SEA which serves its purposes as follows:

1 The requirements of the Safe Manning Document in accordance with STCW are met.
2 Evidence of sufficient manning in accordance with Section 94 Merchant Shipping Act 1995.
3 Watchkeepers of any sort (from Deck to cooks) may be augmented above the minimum requirements in the Safe Manning Document and are duly recorded.
4 The Master's professional judgment has been met in accordance with their discretion under the Merchant Shipping (Safety of Navigation) (Amendment) Regulations 2011.
5 Individuals, such as those serving in hotel or entertainment capacities,

whether they are on temporary or permanent contracts, so long as they are on the business of the ship.	
Additional items to be included in the SEA The Master must still have absolute discretion because their overriding duty to maintain order and discipline is not only required under ISM (see 5.1 and 5.2) but also under Chapter V SOLAS as carried into UK domestic law by the Merchant Shipping (Safety of Navigation) (Amendment) Regulations 2011, which is vital to the safety of life at sea and the protection of the marine environment; eg, when considering their options in disciplining a seaman under the agreement, the Master will need to take into account compliance with the safe manning certificate or else may potentially be committing an offence when putting to sea under section 98 Merchant Shipping Act (see section 94). The Master is Flag State representative and their priority obligation should be here. This includes the maintenance of UK domestic law on the vessel wherever she may be in the world. It necessarily requires a shipboard management response to gathering evidence for a potential prosecution and disciplining individuals for a breach of their terms of employment, especially in respect of crimes of violence and dishonesty, as well as offences under the Merchant Shipping Act 1995, eg section 58 (Conduct endangering ships, structures or individuals) and s59 (Concerted disobedience and neglect of duty). (Note that it does not include levying a fine.) The Master owes a contractual obligation to the owner as their employee, representative and agent. It is in this capacity that they have traditionally signed the section 25 Crew Agreement. While it is to be applauded that the Master is included in the definition of a seafarer and will now become the beneficiary of rights under the SEA as a member of the crew, it is difficult to reconcile how this will be achieved without specifically defining their rights and obligations under the headline issues stated above which define the Master's rôle. In consequence, the concept of defining and regulating the SEA from the Master's point of view needs significant additional provision, which has not hitherto been an issue for the Section 25 crew agreement; matters to be addressed include *inter alia*: 1 Certainty of rights and obligations which are particular to the Master in	We do not see any conflict between the protection of the master as a seafarer under the MLC and their duties under other Conventions and regulations as listed.

the light of their rôle, clearly different to that of any other member of the ship's company and, especially, support by the Owner against the threat to a Master of criminal punishment under Port State (or even Flag State) domestic law which violate those rights and powers under UNCLOS. 2 In addition, it is the UK – ie the Flag State – which is making this a statutory document, and so the Master must be entitled to expect the protection of the Flag State under the SEA to secure the Master's rights – something which has hitherto been lacking. 3 In order to bring the entire relationship up to date and to offer more certainty for all parties, the owner's apprehension of corporate accountability for the Master's conduct, as defined in the Corporate Manslaughter and Corporate Homicide Act 2007, must be clarified in a number of areas, not least being in respect of prosecution for issues encountered as a result of piracy attacks. If there is to be no other contract, then it must be in the SEA.	
Transfer of responsibility for the production of SEA/Crew List documentation, and the transfer of responsibility for ensuring compliance of SEA with UK law, to shipowners There will be a cost increment on the owner but, if this transfer of responsibility presents a common feature in Flag State regulations globally, it should not have a detriment to the UK flag by risking flight from the UK register. Moreover, provided that the SEA complies with the minimum requirements contained in the draft statutory instrument, then the owner will be able to add whatever additional provisions they feel best, provided that they are not inconsistent with the Regulations. Essentially, any such agreement would have to meet compliance in surveys and inspections.	Noted.
LEVYING OF FINES ON SEAFARERS FOR DISCIPLINARY OFFENCES It is submitted that this is misconceived. Article 6 scheduled to the Human Rights Act 1998 emphatically states that: *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.* Moreover, the Prosecution of Offences Act 1985 strictly regulates the prosecution of offences, with guidelines to be followed and neither the Master nor the Owner constitute a competent authority under the Act.	The final MGN notes that no provision exists under UK Merchant Shipping law for fines to be levied on seafarers by shipowners in respect of disciplinary offences.

The whole purpose of the SEA is to regulate the rights and obligations of the owner and the seafarer, according to a civil contract of employment. No argument in modern jurisprudence would countenance the determination of a disciplinary matter as an offence punishable by a fine. Any suggestion of the levying of a fine for disciplinary offences is entirely inappropriate and should be banned in any form, in accordance with the proposal contained in 7.22(a).	

DARIUSZ GOZDZIK	
DARIUSZ GOZDZIK COMMENTS	**MCA RESPONSE**
1. The draft MGN of 21 November 2012 makes clear that SEAs will replace crew agreements. Regulation 10 (4) of the draft statutory instrument (Seafarer Employment Agreement [Title 2.1] states: "Nothing in this regulation prevents a party from terminating a seafarer employment agreement without penalty notwithstanding that the minimum period of notice has not been given where it is reasonable to do so on compassionate grounds or for reasons of serious misconduct". This implies that a seafarer terminating without the minimum period of notice will incur a (possibly criminal?) penalty. Shipowners are now introducing agreements containing 6-month notice periods. It is understood that a seafarer giving a shorter notice may (but not necessarily will) be in breach of the agreement, but why should he/she also thereby be in breach of regulations ? Previously, such a seafarer would have been able to give the master, say, 48 hours' notice and disembark the ship - this would have been perfectly legal regardless of any potential private contractual consequences. Now, however, it appears that the seafarer may be caught by regulation 10 (4). This cannot be right or correct.	The comments regarding regulation 10 (4) of the draft Merchant Shipping (Maritime Labour Convention) (Seafarer Employment Agreement) Regulations 20xx (the "SEA Regulations") are noted. Regulation 10(1) actually states that the **minimum period of notice to be given** is seven days. Regulation 10(2) does however provide for a minimum period of notice of less than seven days to be set out in a Seafarer Employment Agreement where this has been agreed by the parties to the Seafarer Employment Agreement (i.e. the shipowner and the seafarer). In addition regulation 10(4) provides for shorter periods of notice to be given in compassionate cases or cases of serious misconduct.
2. Quite apart from 1. above, 6 month notice periods on the part of seafarers appear to be unnecessarily long and potentially preventive of the free movement of labour within the industry - something which, in my view, should	The comment re 6 month notice periods is noted. However as explained in respect of point 1 above the current draft SEA Regulations actually provide for the minimum period of notice to be seven days. This accords with paragraph 5

be of concern to the MCA.	of Standard A2.1 of the Maritime Labour Convention.
3. The Impact Assessment dated 10 August 2012 on the Merchant Shipping (Maritime Labour Convention) (Seafarer Employment Agreements) Regulations explains, in paragraph 10.1 Equalities Assessment, that (among other things) "The MLC is based on the fundamental rights and principles of workers (Article III): freedom of association **and the effective recognition of the right to collective bargaining"** (my emphasis). Paragraph 10.4 Human Rights similarly states that "the proposed Regulations would implement provisions of the MLC which requires respect for the fundamental rights and principles of workers (Article III): freedom of association **and the effective recognition of the right to collective bargaining"** (again, my emphasis).	The comments re the wording of paragraphs 10.1 - Equalities Assessment - and 10.4 - Human Rights - of the draft Impact Assessment in respect of the draft Merchant Shipping (Maritime Labour Convention) (Seafarer Employment Agreements) Regulations are noted. These are however general paragraphs which were included in the four MLC consultations that took place in 2012 as well as in the current consultations regarding Wages and Repatriation. Whilst they do refer to the MLC their primary purpose is simply to explain that implementation of the various requirements of the MLC do not impact on Equality or Human Rights.
At least some United Kingdom shipowners deliberately **do not** recognise seafarers' rights to collective bargaining and expressly say so in contracts of employment and the new SEAs. How will the draft Regulations change that and on what basis? In my view the above statements in the impact assessment are misleading. I hope that I am wrong - but if so, please explain how and why.	Final guidance on SEAs highlights that this type of clause in an SEA would be in breach of the fundamental right of freedom of association.
4. Paragraph 10.5 of the Impact assessment - Justice System - refers to offences and penalties laid down in the draft Regulations and which are said to be in line with the penalties in place for corresponding or similar offences in existing regulations on crew agreements. As I stated above, at present a seafarer is able to give the master the requisite (short) notice to be perfectly legally discharged from the ship. It seems this right may be lost and in fact replaced with one very onerous for the seafarer.	A shorter period of notice may be agreed between the shipowner and the seafarer for justified reasons.
5. The draft MGN, in paragraph 3.5 recommends shipowners to ensure that there is in place some form of contractual or indemnity arrangement between them and the actual employer (in those situations where that is the case) to ensure that all obligations to seafarers arising from the MLC will be will be met. Is there not an onus on the MCA to enquire into and interrogate any such agreement or arrangement to ensure that seafarers are protected before granting the Declaration of Maritime Labour Compliance ?	While primary responsibility rests with the shipowner to comply with the statutory requirements, the MLC introduces a survey regime so that Flag States will inspect ships for compliance on a regular basis. The purpose of paragraph 3.5 of the draft SEA Marine Guidance Note is basically to inform shipowners that they will under the merchant shipping legislation be liable overall for the protection of all seafarers employed on their vessels; it is up to the shipowner to ensure that any appropriate contractual arrangement or other indemnity is put in place between them and the employer

	of the seafarer(s) to permit the shipowner to recover any costs incurred if the employer fails to meet their contractual obligations.

RMT	
RMT COMMENTS	**MCA RESPONSE**
Introduction The Rail, Maritime and Transport Workers' Union represents 80,000 transport workers nationally including over 7,000 in the maritime industry, predominantly employed as deck, engine or catering ratings on vessels working in the short sea shipping sector. RMT continue to support early ratification of the MLC and we are encouraged by the further progress that the second phase of consultation represents. However, our concern is growing over the impact on the UK shipping industry, particularly in terms of jobs, of the threat that still exists over the UK achieving ratification of the MLC by August 2013. We believe that it is legally possible for the UK government to announce ratification of the MLC *and then* consult over the changes necessary to implement the MLC in UK law.	UK Government policy is to ratify Conventions only when the government is in a position to ensure compliance. This can only be done once legislation is in place.
General comments We repeat our concerns over the definition of 'seafarer' and 'shipowner' used in the consultation but do not have anything further to add to the concerns set out under General comments in the First Phase of consultation on the MLC.	Noted.
Criminalisation of seafarers RMT share and support our sister union Nautilus International's concerns over the creation of criminal offences or potential offences against masters, as part of the MLC enforcement regime in the UK. We acknowledge that the MLC requires countries to implement an appropriate sanctions regime to penalise non-compliance but it makes no reference to making masters responsible for a range of non-compliance offences.	Where the master fails to fufill statutory duties on board, where the shipowner has no control, it is appropriate to hold the master accountable. However, criminal penalties are always the last resort where other actions (improvement notices, detention etc) fail to resolve the matter. Also this will apply to non-UK ships of non-ratifying states not subject to the MLC. A defence of taking "all reasonable steps to ensure compliance" has been

Whilst the MLC does impose some new obligations on masters, the vast majority of obligations under the Convention are imposed on shipowners. RMT believe that the shipowner should provide masters and all seafarers with the appropriate financial and employment resources required to comply with the MLC. As a result, any and all new offences created under the Convention should be directed exclusively at the shipowner, as they have ultimate liability for compliance.	included in the Regulations.
<u>Red Ensign Group</u> It is of great concern to the RMT that it is common knowledge that members of the Red Ensign group are permitted cherry pick parts of the MLC legislation that apply to them. This militates against the level playing field for both seafarers and employers that the MLC ultimately seeks to establish in the industry. As such we call on the government to fully ratify the MLC in Red Ensign countries alongside full ratification in the UK.	 The Category 1 registers all intend to implement the MLC and when they have done so in full the UK will extend UK ratification to them. Category 2 registers do not have ships which require Maritime Labour Certificates nor do they have a significant port State control function for ships with such certificates. It may not therefore be feasible for them to implement the Convention and if so, the UK will not extend ratification to them.
<u>Draft statutory instrument: The Merchant Shipping (MLC) (Seafarers' Employment Agreements) Regulations 20xx</u> Firstly, RMT point out that the title of the draft SI should reflect the *exact* wording of MLC regulation 2.1. At present, the draft SI is titled: The Merchant Shipping (Maritime Labour Convention) (Seafarer Employment Agreement [Title 2.1]) Regulations 20xx For the avoidance of any doubt over the scope of these regulations, RMT believe that this should be amended to read: The Merchant Shipping (Maritime Labour Convention) (Seafarers' Employment Agreements) Regulations 20xx	
<u>Regulation 6 - Amendments to Merchant Shipping (Crew Agreements etc.) Regulations 1991</u> **Regulation 6(2)(a)** – In order to provide certainty during the period of implementation and ratification of MLC regulation 2.1.1., RMT support the	 Noted

addition, after “Maritime Labour Certificate”, of the words “and valid interim Maritime Labour Certificate”.	
<u>Regulation 8 - Duty to enter seafarer employment agreement</u> In response to the invitation to set the sanction to accompany regulation 8(3), RMT believe that this be set at the maximum, Level 5 on the Standard Scale. Whilst this would reflect in statute the level of seriousness, it only equates to a fine of £5,000. We do not believe this amount of money reflects the seriousness of not issuing an SEA and contravening the Regulations and the MLC. We believe that this penalty should be accompanied by the removal or temporary withdrawal of the shipowner’s Maritime Labour Certificate or interim MLC.	 Noted.
Regulation 9 - Content of seafarer employment agreement RMT has some concern over the extent of draft regulation 9 (3)(a). We suggest that this be re-drafted with “before signing it” inserted after “agreement” at the end of Regulation 9 (3)(a) as currently drafted. This amendment would ensure that the regulation accurately reflects and implements MLC Standard A2.1, paragraph 1(b).	 The draft of the final version of the Regulation is clear on this point.
In response to the invitation to comment on the penalty to accompany the offence at draft regulation 9(6), RMT support a Level 4 penalty on the Standard Scale - £2,500. RMT accept that the offence of failing to comply with the legally required content of an SEA is not as serious as failure to produce an SEA but do not regard £2,500 as sufficient financial deterrent to incompetent or fraudulent drafting of an SEA by the employer.	Noted.
For draft regulation 9(7) RMT suggest that a shipowner guilty of an offence under paragraph (5) should be liable to a Level 5 fine on the Standard Scale. Once again, we do not regard £5,000 as a sufficient penalty for failing to secure the seafarer’s agreement to the terms of the SEA which they are asked to sign. It seems that this penalty would potentially be applied to cases where, amongst others, a seafarer’s agreement had been falsified and those guilty of such offence should lose more than £5,000. In our view, the financial penalty should be accompanied by the loss or temporary withdrawal of the shipowner’s Maritime Labour Certificate or interim MLC	Noted

Regulation 10 – Minimum notice periods In both cases, RMT support replacing the word “serious” with “gross”; this amendment would achieve greater consistency with the language typically used in this area of domestic employment law, where it is generally accepted that an employer can legitimately terminate a contract of employment for “gross misconduct”. If this change to the draft regulations is made, then the Marine Guidance Note should also be amended and “gross misconduct” inserted accordingly.	 The final version refers to “serious misconduct”.
Regulation 11 – Documents In order to comply with MLC, Standard A2.1, paragraph 1(c), RMT support insertion of the word “original” after the second use of “agreement” in regulation 11(1) as drafted: RMT believe that the penalties for offences listed under regulation 11(7) should attract the following penalties on the Standard Scale: regulation 11(1) - Level 5; regulation 11(2) - Level 4; and regulation 11(3) - Level 5.	 Noted Noted
Regulation 12 - Foreign language seafarer employment agreement RMT recommend that the fine set out in regulation 12(5) should be Level 4 on the Standard Scale, as failure to provide an English translation of an SEA, although not as serious as the failure to provide an SEA, could result in a seafarer being unable to read and understand their SEA in its entirety.	 Noted
Regulation 13 - Duty of master to produce seafarer employment agreement RMT does not support the current wording of regulation 13 as it places an unacceptable duty on the master. We see no need to place the burden for producing these documents on the master of the ship or any other seafarer. We see no element of either MLC Regulation 2.21 or Standard A2.1 that requires the MCA to specifically cite the master or any other seafarer in this context. We believe that the regulatory requirement and the accompanying penalty for not	 Where the master fails to fufill statutory duties on board, where the shipowner has no control, it is appropriate to hold the master accountable. However, criminal penalties are always the last resort where other actions (improvement notices, detention etc) fail to resolve the matter. Also this will apply to non-UK ships of non-ratifying states not subject to the MLC.

producing these documents on demand for the salient authorities to scrutinize should sit with and be directed at the shipowner. RMT would also point to the far greater financial resources of the shipowner when compared to a master or other individual seafarer. However, if any fine were to be levelled against the master under regulation 13, RMT ask that it should not be above Level 1 on the Standard Scale.	A defence of taking "all reasonable steps to ensure compliance" has been included in the Regulations.
Regulation 14 - Inspection of United Kingdom ships and certain other ships There appears to be some confusion at regulation 14(4) RMT believe that this regulation should be re-drafted to make it clearer whether the current reference to "as applied by paragraphs (2) and (3)" refers to paragraphs (2) and (3) of sections 259 and 260 of the 1995 Act or to paragraphs (2) and (3) of one of those sections of the Act. At present we are unsure and this needs to be clearer in the regulation.	Inspection and detention provisions have been reworked in the consolidated Regulations.
Regulation 15 - Detention of United Kingdom ships and other ships without Maritime Labour Certificates RMT is also concerned over the clarity of regulation 15(2) Judging from the regulation's title and the reference at regulation 15(5) to *"a ship other than a United Kingdom ship"*, 15(2) also applies to UK and other ships yet this is not clear from its current form, As such, 15(2) currently risks being understood as only applying to UK ships in the circumstances outlined at regulation 15(2)(b) or (c). To resolve this ambiguity, RMT propose that *"any other ship"* is inserted as a new clause between the existing paragraphs (a) and (b). RMT is also concerned at where members of the Red Ensign Group would sit within this regulation. We would be grateful if the MCA could confirm which category in regulation 15(2) would apply to the detention of ships in Red Ensign Group states. **Regulation 15(6)(c)** The current wording of regulation 15(6)(c) is of concern to RMT, as it potentially	Inspection and detention provisions have been reworked in the consolidated Regulations. There is no expectation that a master would personally pay the security.

confers on the master responsibility for payment of monies required to release a ship: Consistent with RMT's position that neither the master nor any other seafarer should be held financially responsible for the payment of debts or penalties for non-compliance with the MLC, we ask that regulation 15(6)(c) be amended to remove the reference to "master" at 15(6)(c)(ii). Alternatively, inserting after *"master"* the words *"on behalf of the shipowner"* could also make it clear that the master is not responsible for the payment of this penalty required to release a ship. **Regulation 15(6)(d)** As previously stated, RMT oppose regulations that cite the master or any other seafarer as being directly responsible for payments incurred through non-compliance with the MLC. As such, we oppose the creation of the offence under regulation 15(6)(d) and request that this regulation be deleted. **Regulation 15(7) and (8)** There appear to be typographical errors in regulations 15(7) and 15(8) where they refer to "paragraph 7(c)" which doesn't exist. We suspect that both refer to paragraph 6(c) and ask that they be amended accordingly. In addition, RMT also ask that the offences created under 15(8) be amended to remove the references to "master", in both 15(8) and 15(8)(a). We are opposed to offences which make masters or any other seafarer responsible for bearing costs or other penalties imposed for non-compliance with the MLC.	
Schedule 1 Regulation 9(1) We do not intend to provide a commentary on each part of the draft schedules. As such, the following are RMT's comments on the provisions in each of the 3 schedules to the draft regulations where we are seeking amendments. **Schedule 1, Part 1** **Provision to be included in all agreements** 10. RMT is very concerned that the proposal at Part 1 (10) fails to fully comply	The final version refers to paid leave.

with the provisions on repatriation set out in MLC Standard A2.5, paragraph 2(b) and Guideline B2.4, paragraph 4(a). Specifically, we demand that Part 1(10) be amended to ensure that public holidays are deducted from the maximum duration of service on board a ship. As such, we ask that *"and public holidays"* be added after *"annual leave*"**.** In order to make arithmetically clear that the regulations exclude public holidays from the calculation of maximum duration of service, we also ask that the following sentence be added to the end of Schedule 1, Part 1 (10): *"In the UK the period must not exceed 327 days."*	This level of detail is not appropriate to the Regulations but can be included in guidance on the SEA.
11. RMT believe that the current wording of Schedule 1, Part 1(11) is insufficient. In our view, this needs to be expanded to alert seafarers to the exact circumstances in which they will be entitled to be repatriated under the MLC. In light of the ongoing consultation on the final content of the Merchant Shipping (Maritime Labour Convention) (Repatriation) Regulations 20xx, it is not possible to propose amendments at this time that will suitably amplify the repatriation provisions in Schedule 1, Part 1(11) of the draft SEA regulations. However, we would point to the RMT's response to the consultation on the repatriation regulations and to the MLC Regulation 2.5, Standard A2.5 and Guideline B2.5 themselves to highlight how detailed we believe the SEA regulation needs to be on contractual repatriation entitlements for seafarers	Details on repatriation entitlements are in the Repatriation regulations and supporting MGN. The model SEA ensures that the circumstances when the entitlement to repatriation applies, the means of transport and destination for repatriation, and the maximum period served on board before repatriation are specified in the SEA.
Schedule 1, Part 3 **Provision to be included where seafarer is not an employee** RMT believe that a collective bargaining agreement should apply to a seafarer who is not an employee and that this should be provided for in Schedule 1 of the regulations. As a self-employed worker/seafarer is entitled to join a trade union and access collective bargaining rights, a collective agreement would cover all members of the union working for the shipowner, including self-employed workers. Article 11 of the Human Rights Act 1998, the European Convention on Human Rights, as well as ILO Convention 87 on the Right to Freedom of Association (1948) and ILO Convention 98 on the Right to Organise and Collective Bargaining (1949) all serve to underpin and reinforce those rights. RMT propose, therefore, that Schedule 1 is amended by moving paragraph 7 of Part 2 *"Details of any collective bargaining agreement which is incorporated (in*	This is now included in Part 1 (for all SEAs).

whole or in part) into the agreement or is otherwise relevant to it" into Part 1 (which covers all agreements). At present members of the Red Ensign Group do not have to comply with the MLC. We seek guidance and clarity on whether EAs or EBs registered in Red Ensign Group states are required to comply with this section of the Convention.	 This will depend on the standards set by the host country. See above on REG intentions in regard to implementation of the MLC.
Marine Guidance Note – Maritime Labour Convention, 2006: Conditions of Employment - Seafarers Employment Agreements Here follows RMT's comments on the content of the draft MGN and those points where we feel amendments or other alterations to the draft text are required. ***3. GENERAL REQUIREMENTS OF SEAFARER EMPLOYMENT AGREEMENT REGULATIONS*** 3.1 We are concerned at the wording used in the MGN here. The original SEA is not "*evidence of the contract between an individual seafarer and the shipowner",* as 3.1 currently describes it, the original SEA *is* the contract or, in cases where there are other documents to be incorporated into the SEA (such as a collective bargaining agreement) part of the contract. RMT request that this paragraph be amended accordingly.	The MGN wording has been revised.
Paragraph 3.2 RMT believe that there is scope for the MGN to be more detailed on this point which would be in the interests of trade unions and employers. Therefore, RMT request that the following sentence be added to the end of paragraph 3.2: *"Shipowners are advised to contact the appropriate unions, the National Union for Rail, Maritime and Transport Workers in the case of ratings grades and Nautilus International in the case of officer grades, to consult on the terms of the SEA.*	The current wording is preferred.
Regulation 10 - Minimum Notice Period **Paragraph 8.1** RMT ask that the final sentence is amended to read:- *"Termination on disciplinary grounds for gross misconduct will also not be subject to the seven day minimum period."*	This is clear in the final version of the MGN.

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<tr><td></td><td></td></tr>
<tr><td>SCHEDULE 1 – Provisions to be Included in a Seafarers' Employment Agreement

Paragraph 12.1 currently contains a typographical error and we ask that the words "the information" be removed.

Paragraph 12.2 RMT request that this paragraph be amended with the words "set out" replacing "referred to".</td><td>

Noted</td></tr>
<tr><td>SCHEDULE 2 – Provisions to be Included in a Record of Employment

Paragraph 13.1 currently makes reference to "(see paragraph 9(2) above)" which should be changed to "paragraph 9(3)."

Paragraphs 13.1 and 13.2 use different titles, "Certificate of Discharge" and "Certificate of Service" respectively, for the same document. RMT would like to see one term used in both instances, so that there is consistency and clarity over which document is being referred to.

Paragraph 13.2 currently lists

"The information to be entered in the Discharge Book or Certificate of Service comprises the following:-

1. Name, port of registry, gross or register tonnage and official IMO number of ship.
2. Description of voyage.
3. Capacity in which the seafarer was employed.
4. Date and place of joining the ship.
5. Date and place of leaving the ship."

1.The wording used for points 4 and 5 differs from that used in Schedule 2 of the draft SEA regulations which are phrased:

4. Date on which employment started.

5. Date of discharge.</td><td>

Noted

Noted

We will consider further.</td></tr>
</table>

We cannot see any reason for this difference and in fact regard this different language to describe the same circumstances as unhelpful. RMT would like to consistency in the terms and words used and for the MGN to reflect, verbatim the regulations. The importance of this is illustrated by the substantive difference between the current wording used at point 4 of the MGN and point 4 in Schedule 2: it is quite likely that some seafarers' contracts of employment could commence before the date of joining the vessel and the difference between the regulation and the MGN would cause problems in these circumstances.	
17. Responsibility for Production of Seafarer Employment Agreements, Lists of Crew and Lists of Young Persons **Paragraph 17.2** as drafted currently risks causing confusion due to references to hard copies of electronically produced SEA's. RMT would like the guidance to be clearer in stating that the seafarer and the shipowner should each retain a copy of "the original signed version of the SEA which is printed off".	We will review the wording.
18. Elimination of Workplace Harassment and Bullying **Paragraph 18.2** although we welcome it extending beyond the MLC's requirements, RMT would like to see a deadline for shipowners to obtain copies of the ECSA-ETF guidance on eradicating workplace harassment and bullying in the maritime sector and a deadline for employers to put in place their procedure for tackling this problem. RMT suggest that this deadline should be when the MLC comes into force in the UK and should be inserted in paragraph 18.2.	We do not think this is practical.
Draft MGN) INFORMATION TO BE INCLUDED IN A SEAFARER EMPLOYMENT AGREEMENT **PART 1** **Provision to be included in all agreements** Point 5 applies to self-employed seafarers but they are not mentioned in the current wording. RMT requests that *"or engaged"* is inserted at the end of the sentence, which would be consistent with point 5, Part 1, Schedule 1 of the draft regulations.	The final wording is "work"

10. The maximum duration of service periods on board We refer back to our comments in response to point 10, Part 1, Schedule 1 of the MLC SEA Regulations (page 7 of this submission), which are also applicable here.	See previous response.
11. The seafarer's entitlement to repatriation RMT refer back to our comments made above under point 11, Part 1, Schedule 1 of the MLC SEA Regulations (page 7 of this submission), which are applicable here too.	See previous response
PART 3 **Provision to be included where seafarer is not an employee** RMT regard the current wording of draft MGN Part 3, point 21 as insufficient and not in compliance with MLC, Standard A2.2, paragraph 1. We request that point 21 use exactly the same language used at point 2, Part 2, Schedule 1 of the MLC SEA Regulations to read as follows: *"21. The manner in which the remuneration must be paid, including payment dates (the first of which must be no more than one month after the date on which the agreement is entered into, with all subsequent dates being no more than one month apart) and the circumstances (if any) in which the remuneration may or must be paid in a different currency."*	Noted
ANNEX 2 **<u>MODEL FORMAT FOR A SEAFARER EMPLOYMENT AGREEMENT FOR AN EMPLOYED SEAFARER</u>** RMT have some concern over the following section of the Means of payment of Wages part of the model format: *"[Overtime hours i.e. hours worked outside of normal working hours will be paid at a rate of ………………………….(insert overtime rate] (Delete this sentence if not applicable)"*	The proposed text comes from the MLC Guidelines B2.2.2 which ratifying states must take into account but which are not mandatory. UK government policy is that wages should be determined between employers and workers.

In order to ensure that seafarers are fully aware of their rights under the MLC in this regard, RMT suggest that a brief guidance note (outlining the provisions of MLC Guideline B2.2, paragraph 1(b) and Guideline, B2.2.2, paragraph 1(b)-(C)) is produced and inserted in the SEA. We propose that this brief guidance note take the following form: *“Seafarers are entitled to be paid at the overtime rate for any work which exceeds 48 hours in any week. The overtime rate of pay should not be less than one and one-quarter times the basic pay (which does not include bonuses, allowances, paid leave or any additional remuneration).”*	
We are also extremely concerned at the proposed content of the model format on Paid Annual Leave, particularly the following section: *“There is no provision for the carry over of paid annual leave from one year to the next. All paid annual leave must be taken in the year in which it accrues. There is also no provision for payment to be made in lieu of untaken leave except where paid annual leave has accrued but has not been taken at the date of termination of employment”.* The guidance here, we believe, is not broad enough and overlooks industry realities for seafarers. We recommend that this section of the model format is amended to take into account the following points: • By denying the shipowner and the seafarer the option to agree provisions to carry leave (in excess of EU/MLC minimum) over into the next year, the guidance is too restrictive and needlessly inflexible. Seafarers often earn leave well in excess of the EU and MLC minimum (20 and 30 days respectively) and there should be no barrier to the two parties reaching agreement on carrying over excess leave, above the MLC minimum of 30 days, into the next leave year; EU case law has established that a worker who cannot take EU derived annual leave due to sickness, has the right to carry it over into the following leave year (and to be paid in lieu if he leaves in the following annual leave year without taking the leave). Furthermore, EU derived sick leave accrues at its usual rate while a worker is on long term sick leave; if the worker is sick on a day which	Detailed provisions on paid leave are included in the Merchant Shipping (Maritime Labour Convention) (Hours of Work) (Amendment) Regulations 2014 and supporting MSN 1842(M).

<table>
<tr><td>was otherwise to be a EU derived annual leave day he has the right to take that day again as annual leave at some point in the future.</td><td></td></tr>
<tr><td>Notice of Termination of Employment (Delete whichever is not applicable) (See Note 7)

The Voyage Agreement template should better reflect MLC Standard A2.1, paragraph 4(g)(iii) and RMT propose that this achieved by amending the Voyage Agreement to include an option for the SEA to terminate “xx days after arrival at the port of [destination port]”.</td><td>

A voyage agreement option is included. This is not mandatory and could be amended to reflect alternative arrangements such as these.</td></tr>
<tr><td>RMT would like to see the template for Repatriation to include “on compassionate grounds” as it omits this reason at present. Its inclusion would better reflect Standard A2.5, paragraph 1(b)(ii).

Also, we would like to see an amendment made to the <u>NOTE</u> which currently reads:

“You may not be entitled to repatriation at the expense of the shipowner in circumstances where you have been dismissed on disciplinary grounds or have breached your obligations under this Agreement. In such circumstances the shipowner will still be liable to repatriate you but is entitled to recover from any wages due to you the cost of doing so.”

RMT request that the following excerpt “dismissed on disciplinary grounds or have breached your obligations under this Agreement” is replaced by “dismissed for gross misconduct or for serious default of the terms of this agreement”. This amendment would be more consistent with UK employment law and MLC Standard A2.5, paragraph 3.</td><td>Compassionate grounds are given as an example of justified reasons for early termination.</td></tr>
<tr><td>Also, the model SEA should include more information on repatriation rights, including other repatriation rights set out in MLC Guideline B2.5, especially those listed at paragraph 3(b)-(d):

“(b) accommodation and food from the moment the seafarers leave the ship until they reach the repatriation destination;</td><td>Detail of repatriation entitlements are set out in the Repatriation Regulations and supporting MGN. We do not think they need to be repeated here.</td></tr>
</table>

(c) *pay and allowances from the moment the seafarers leave the ship until they reach the repatriation destination, if provided for by national laws or regulations or collective agreements;* (d) *transportation of 30 kg of the seafarers' personal luggage to the repatriation destination;"* RMT request that these points are added in the Model SEA or accompanying Note 10.	
ADDITIONAL PARTICULARS REQUIRED TO BE INCLUDED BY THE UNITED KINGDOM LAW At the Hours of Work section, RMT supports inclusion here (or in Note 13) of a summary of the main points relating to the hours of young seafarers and/notes, relating to: the general restriction against night work and the exceptions (to ensure compliance with MLC Standard A1.1, paragraphs 2-3 and Guideline B2.3.1).	 Provisions for young persons are separately implemented. Working time provisions are in the Merchant Shipping and Fishing Vessels (Health and safety) (Employment of Young Persons) Regulations 1998.
On Grievance and Disciplinary Procedures, at (a) Grievances, RMT ask that the model SEA and accompanying note make reference to the onshore seafarer complaint-handling procedures outline under MLC Regulation 5.2.2, Standard A5.2.2 and Guideline B5.2.2, which should be available in the port of a ratifying country in order to resolve complaints which could not be resolved on board.	The grievance procedures referred to here are broader in scope than the MLC onboard complaint procedures.
Under Compensation in respect of loss of personal property as a result of the loss or foundering of the vessel RMT request amplification of the SEA at this point in order to alert seafarers to their full entitlements under the MLC. For example, as currently drafted, the SEA would only refer to loss of personal property. In order to fully comply with MLC Standard A2.6, paragraph 2, and Guideline B2.6.1, paragraph 2, reference should also be included to their entitlement to "indemnity against unemployment" on full pay for a minimum two month period.	Entitlements for loss as a result of the loss or foundering of a vessel are set out in the relevant regulations and supporting MGN.
NOTES **Note 2 - "Name and Address of Employer** contains a typographical mistake	 Noted

at the end of the first sentence which should end "the seafarer" rather than "the shipowner".	
Note 6 –"Paid Annual Leave" does not sufficiently comply with MLC Guideline B2.4, paragraph 4. In order to achieve full compliance, RMT seek the addition of the following sentence at the end of Note 6: *"In addition to the MLC leave annual entitlement seafarers are entitled to a further 8 days paid leave on or in lieu of public holidays."*	This now covers "paid leave" including the additional 8 days in respect of public holidays.
The blank space after Note 14 accompanying Pension benefits is concerning, as we cannot respond when there is no proposal. We ask that the MCA alert RMT and other stakeholders to the government's specific proposal for the model SEA on this point. We believe that the terms of the National Employment Savings Trust (NEST) could be reproduced here and would welcome the MCA's further thoughts on this.	Where applicable, details of any employment pension scheme (and any contributions which the seafarer is required to make) should be noted.
Note 15 – "Inclusion of Additional Provisions by Shipowner", paragraph (a) requires amendment, as it is confusing, contains no reference to the benefits of collective bargaining and the title implies that "forbidding membership of a trade union" is legitimate. RMT would like to see the following paragraph added at the end of 15(a): *"Any employed or self-employed seafarer is entitled, if they wish, to join a trade union and enjoy the benefits of collective bargaining. These rights are further underpinned in the UK by Article 11 of the Human Rights Act 1998, the European Convention on Human Rights, as well as ILO Convention 98 on the Right to Organise and Collective Bargaining (1949)."*	The current wording is preferred.
RMT would like to see the current guidance at paragraphs 15(c) and 15 (d) condensed into one paragraph, 15(c), as both relate to sensitive personal data. These paragraphs should reflect the strict conditions (under principle 8, Schedule 1 of the Data Protection Act 1998) for transferring any personal data (whether sensitive or not) outside the EEA. As such, RMT ask that a further sentence is added to the effect of:- *"Shipowners or other organisations shall not transfer personal data to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the*	Wording is being reviewed.

rights and freedoms of data subjects in relation to the processing of personal data.”	
Annex 3 **AMENDMENTS TO EXISTING LEGISLATION MADE BY THE MERCHANT SHIPPING (MARITIME LABOUR CONVENTION) (SEAFARER EMPLOYMENT AGREEMENT) REGULATIONS 20XX** **Amendments to the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991 (SI 1991/2144)** There is a typographical error at 1(c); *“evidencing and exemption”* in the second line should read *“evidencing an exemption”*.	Noted
SUMMARY OF THE PROVISIONS OF SECTION 55 OF THE MERCHANT SHIPPING ACT 1995 AND THE MERCHANT SHIPPING AND FISHING VESSELS (HEALTH AND SAFETY AT WORK) EMPLOYMENT OF YOUNG PERSONS) REGULATIONS 1998 (AS AMENDED) As this document pre-dates the MLC, RMT question whether the MCA does intend to revise the Act and the Regulations to make it more specific to the MLC provisions on health and safety/working hours for young persons (including MLC Guideline 4.3.10). For instance, the following section conflicts with MLC provisions on hours of work and rest:- *“Young persons shall be provided with* • *a rest period of 12 hours in every 24 hour period;* • *a rest period of 2 days in every week;* • *where daily working time is more than four and a half hours, a rest period of 30 minutes;”* Whereas MLC Guideline B2.3.1 states:- *“1. At sea and in port the following provisions should apply to all young seafarers under the age of 18:* *(a) working hours should not exceed eight hours per day and 40 hours per week and overtime should be worked only where unavoidable for safety reasons;* *(b) sufficient time should be allowed for all meals, and a break of at least one hour for the main meal of the day should be*	Working time for young persons is dealt with in other legislation.

assured; and (c) *a 15-minute rest period as soon as possible following each two hours of continuous work should be allowed".* RMT request that the MCA re-draft this section, incorporating MLC Guideline B2.3.1 in full.	
<u>Paper headed: SECTION 7 - TITLE 2.1 SEAFARER EMPLOYMENT AGREEMENTS</u> There appears to be a recurrent typographical error in this paper. Starting in paragraph 7.1 and repeated throughout, there is reference to "Regulation 2.1 and Standard A4.1." Whilst the reference to Regulation 2.1 is accurate, Standard A4.1 of the MLC relates to "Medical care on board ship and ashore." We presume that the paper should instead refer to Standard A2.1 on Seafarers' employment agreements and trust that the MCA will make the appropriate corrections that are necessary throughout the paper.	Noted
<u>Application</u> In response to the invitation to comment on the proposals in paragraphs 7.12 and 7.13, RMT accept the alternative in paragraph 7.12 to exempt pleasure vessels from the crew agreement requirement if they have voluntarily introduced SEAs, although we would rather that the current law continues so that pleasure vessels that are not used commercially are covered under the provisions of the Merchant Shipping (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991 which requires a crew agreement if they undertake voyages, other than "coastal voyages" and more than 4 crew members receive wages for their employment. This would ensure that seafarers in this position have some minimum coverage of their terms and conditions of employment.	Noted. Where crew on pleasure vessels have an SEA compliant with the MLC requirements, the shipowner may apply for an exemption from the requirement for a crew agreement.
<u>Non-employed seafarers</u> In response to the invitation to comment on the proposals in the SEA to cover non-employed seafarers, RMT refer to our various points in response to the MLC SEA Regulations and the MGN. We re-state our view that the term *"self-employed seafarers"* would be a more accurate term to use than *"non-employed seafarers"*, and will alert the MLC to any further evidence we receive	Noted

in support of this point.	
<u>Additional items to be included in SEAs</u> In terms of whether RMT foresee any problems with the inclusion of the additional items requested by the social partners, the union welcomes the additional items to increase transparency of seafarers' rights.	Noted.
<u>Production of SEAs and Lists of Crew etc.</u> RMT do foresee problems with shipowners having responsibility for production of SEAs etc. We believe that compliance rates would be faster and higher if the specialist knowledge of the MCA were to be applied in this area, namely the production of SEAs/crew lists and approved non-standard SEAs. We therefore urge the MCA to focus particular regulatory attention on documentation during FSC inspections and intermediate inspections and ensure that Maritime Labour Certificates are only issued when shipowners have achieved full compliance with the Convention.	The majority of those responding do not expect problems. Compliance will be assured by survey and inspection of ships under the MLC.
LEVYING OF FINES ON SEAFARERS FOR DISCIPLINARY OFFENCES RMT refer to MLC Guideline B2.2.2, paragraph (4)(j), and not Guideline B2.2.4(j) as stated in the paper. RMT support option (a):- "(a) ban all disciplinary fines whether included in collective agreements, SEAs or other documents irrespective of whether or not they have been agreed and signed by the seafarer;" The ultimate threat of dismissal is sufficient incentive to maintain discipline. Disciplinary proceedings and warnings can be given for anything less than gross misconduct. Fines would adversely affect seafarers' dependants and they are seldom used onshore. As such, RMT request that the SEA Regulations are amended to include a definitive ban on all disciplinary fines.	The final MGN notes that no provision exists under UK Merchant Shipping law for fines to be levied on seafarers by shipowners in respect of disciplinary offences.

ROYAL YACHTING ASSOCIATION	
RYA COMMENTS	**MCA RESPONSE**
In our view, the MLC was clearly drafted with commercial shipping and superyachts in mind and there was little, if any, thought for small yachts – particularly those under 24m in length. Moreover, there is a potential conflict between the provisions of the MLC and the EU Recreational Craft Directive, for yachts of less than 24m in length. We are therefore strongly of the opinion that the provisions of the MLC should be disapplied to recreational craft (as defined in the EU Recreational Craft Directive) even if they are operated for charter or recreational boat training. Notwithstanding the above, we set out below our comments in relation to the draft Merchant Shipping (Maritime Labour Convention) (Seafarer Employment Agreement) Regulations 201x. However, these comments apply equally to many of the other draft Regulations that identified below (notwithstanding that the consultation period for some of these draft regulations has closed).	An exemption for yachts which ordinarily operate commercially is not permitted by the MLC. The majority of the provisions of the MLC deal with conditions of employment. There is therefore no reason why small vessels should not be able to comply.
Article 3. In the definition of "seafarer", "sail training vessel" is defined as being a sailing vessels used, amongst other things, to provide instruction in the principles of responsibility, resourcefulness etc and on navigation and seamanship for yachtsmen. However, such instruction is also frequently provided on motor vessels on which the trainees are no more "seafarers" than the trainees on a sailing vessel. The definition of "seafarer" is therefore too widely drawn and should be narrowed to exclude individuals receiving such instruction on motor vessels as well as sailing vessels.	The reference to "sail training vessels" no longer appears in the definition of seafarer.
Article 4. This definition of "pleasure vessel" is markedly different from the long established definition used in virtually all current Merchant Shipping Regulations. In particular, this definition substitutes the expression "unincorporated association" for "member's club" in the second limb of the definition. Bona fide not-for-profit members' clubs take many legal forms, some of which are incorporated and some of which are unincorporated. There is **absolutely no justification whatsoever** for excluding boats owned by incorporated members' clubs from the novel definition of pleasure vessel used in these	The definition of pleasure vessel has been amended.

regulations. Moreover, to introduce a second, conflicting, definition of “pleasure vessel” into Merchant Shipping Regulations would result in considerable uncertainty and inconsistency of application. We therefore strongly believe that the definition of “pleasure vessel” used in the Merchant Shipping (Maritime Labour Convention) (Seafarer Employment Agreement) Regulations 201x should mirror that used in virtually all current Merchant Shipping Regulations, which can be found in the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998 (SI1998/2771).	
Article 7. Our understanding is that the UK’s interpretation of the MLC is that it does not apply to UK ships operating on domestic voyages within 60nm of a UK safe haven. This interpretation stems from the definition of a “ship” within the MLC and accordingly applies to **all** aspects of the application of the MLC. While this interpretation is incorporated into Article 5(3)(e) of the Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 201x, however, it does not appear in Article 7 of the Merchant Shipping (Maritime Labour Convention) (Seafarer Employment Agreement) Regulations 201x. In our view, it is vital that each of the various implementing regulations is consistent in this regard and we therefore consider that Article 5(3)(e) of the Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 201x should be replicated in Article 7 of the Merchant Shipping (Maritime Labour Convention) (Seafarer Employment Agreement) Regulations 201x.	This is not quite a correct reading of the MCA’s position. The survey and inspection elements of the MLC are not being applied to vessels operating on domestic voyages within 60nm of a UK safe haven. However, regulations implementing individual provisions of the MLC (such as employment agreements, wages, health and safety, medical care) will supersede existing UK legislation which covers all seagoing ships. The new MLC-based regulations are therefore also being applied to all seagoing vessels other than the groups of vessels (fishing vessel, warships, ships of traditional build) which are excluded from the MLC.

INCE LAW	
INCE LAW COMMENTS	**MCA RESPONSE**
7.12 Application of crew agreements to pleasure vessels An employee should have in any event a written statement of the main terms of his employment. The SEA agreement is its equivalent. There are many purely pleasure vessels with more than 4 seafarers. The adoption of SEAs will eliminate reference to “old law” and would probably assist managers of yachts	Noted. Where crew on pleasure vessels have an SEA compliant with the MLC requirements, the shipowner may apply for an exemption from the requirement for a crew agreement.

as they would not have to have a multiplicity of agreements. It would also allow the seafarer to transfer from one vessel to another without having to renegotiate terms (especially if they are actually employed not by the vessel but by a manager). Managers and their advisers are likely in any event to use the national model SEA as a template. It would I hope also reduce disputes and settle clearly responsibilities. So, in truth no exemption but a requirement to have a SEA.	

PASSENGER BOAT ASSOCIATION	
PASSENGER BOAT ASSOCIATION COMMENTS	**MCA RESPONSE**
Will not be responding as the applicability is beyond the bounds of our member vessels and operations.	Noted