



# MGN 472 (M)

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## Maritime Labour Convention, 2006; Guidance on the procedure for applying for a Substantial Equivalence

Notice to all shipbuilders, shipowners, ship operators, employers, masters, seafarers, manning agents and agencies

*This notice should be read in conjunction with The Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013 and the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014.*

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### Summary

- The purpose of this note is to outline the procedure for applying for a substantial equivalence on UK flagged vessels which are subject to the Maritime Labour Convention, 2006 (MLC).
- Substantial equivalences can only be approved where permitted in legislation.
- This Marine Guidance Note –
  - briefly describes the application procedure for UK flagged vessels and for vessels flagging into the UK.
  - provides details on the information which will be required when applying for a substantial equivalence
  - lists the substantial equivalences that have been approved with agreement of both shipowners' and seafarers' organisations.

## 1. Introduction

1.1 There are two kinds of substantial equivalence under UK regulations:

1.1.1 Those embedded in Regulations, as an alternative means for UK ships to comply with the provisions of the Maritime Labour Convention, 2006 (MLC), which are available to all ships subject to any limitations of restrictions specified in the regulations.

1.1.2 Ship-specific substantial equivalences – generally relating to crew accommodation.

1.2 The procedure for the approval of ship-specific substantial equivalences will follow the same arrangement that was used for exemptions under the Merchant Shipping (Crew Accommodation) Regulations 1997 (based on ILO 92 and ILO 133). These arrangements are:



- a. The shipowner discusses the proposals with the attending surveyor. The surveyor records this on a form which is placed on the ship's file.
- b. The shipowner writes to the Unions with the proposals
- c. The Unions respond.

1.3 The papers are sent to the Maritime and Coastguard Agency (MCA) for a decision and approval.

## 2. Procedure for agreement

2.1 The MCA intends to use a standard procedure with a set criteria for considering any proposal seeking ship-specific "substantial equivalences" similar to that described above. This will not create a derogation for the shipbuilder to build further ships to the same standard.

2.2 Any proposal for a substantial equivalence should be submitted with the agreement of both the shipowners and the seafarers' representatives. That means **in all cases** the UK Chamber of Shipping, Nautilus and the National Union of Rail, Maritime and Transport Workers (RMT), the official social partners for the MCA, should be consulted. There may however be situations where additional organisations such as the British Tugowners Association (BTA), Prospect and Unite representing specific sectors in the shipping industry are included in the consultation process. In these situations the appropriate organisations representing that sector will also be consulted.

2.3 Under normal circumstances, the applicant will write to the shipowners' and seafarers' representatives, and provide the responses with their applications to the MCA. The MCA will only undertake this task in exceptional circumstances.

2.4 In controversial or significant cases, the MCA reserves the right to put the proposal to the UK's MLC Tripartite Working Group for discussion before coming to a decision.

2.5 All approved substantial equivalences and their supporting documentation will be retained by the MCA and reported periodically to the International Labour Organization (ILO), as part of the Annual Reports on seafarers living and working conditions.

## 3. Information required

3.1 In any application for substantial equivalence, the shipowner is required to demonstrate the reason behind seeking the substantial equivalence with consideration to:

- a. the reason for seeking the substantial equivalence;
- b. how the proposal, in accordance with Article VI of the Maritime Labour Convention, meets the same objectives as, and gives effect to the provisions of Part A of the Maritime Labour Convention Code and giving due consideration to Part B of the Maritime Labour Convention Code;
- c. the effects on the provision of decent living and working conditions for seafarers;
- d. how full compliance would impact on the remainder of the ship;
- e. any special design challenges driving the substantial equivalence request;
- f. what objective can be accomplished through substantial equivalence which cannot be achieved by adhering to the regulations.



#### **4. Subsequent application for the same substantial equivalence**

4.1 It is intended that, after a particular measure or solution has been approved as a substantial equivalence by the MCA, any further use of the same substantial equivalence – unless specifically requested and approved for the initial application – undergoes the same process of approval in the light of the considerations identified in Section 3 above. Approval of a measure in one context should not necessarily be seen as setting a precedent. However, it is expected that once an approval has been given, this will make any subsequent application a simpler decision process.

#### **5. Flagging in**

5.1 When a ship flags onto the UK register an application should be made following the same procedure for any substantial equivalence and with the prior agreement of the shipowners' and seafarers' representatives. If the substantial equivalence has been agreed by another MLC Flag State then, this should make a smoother transition process.

5.2 As with the substantial equivalences agreed by the UK, all substantial equivalences agreed on this basis will need to be communicated to the ILO as part of the Annual Reports on seafarers living and working conditions.

#### **Substantial equivalences available to all ships**

#### **6. Procedure for approval**

6.1 Any substantial equivalence which is requested for general application will be considered by the MLC Tripartite Working Group, which has members from the UK Chamber of Shipping, Nautilus International, the National Union of Rail, Maritime and Transport Workers (RMT), the Department for Transport, the MCA and the Red Ensign Group Administrations.

6.2 The information required is the same as for paragraph 3.1 above. Any shipowner or group of shipowners may apply for such exemption. While consultation with the social partners will be carried out a national level, local view should be sought and reported to aid consideration.

6.3 Any substantial equivalences requiring amendments to the legislation will be incorporated at the next opportunity for revision. In the meantime, with the support of the TWG, the MCA will consider administrative arrangements for accepting the alternative arrangements on a case by case basis.

6.4 Substantial equivalences already agreed are listed in Annex A to this Note, subject in some cases to consideration as part of the MLC inspection process. For further details, contact the MCA surveyor responsible, or use the contact details below.

6.5 This procedure will also be used for approving substantial equivalences for the Red Ensign Group members that do not have their own tripartite arrangements for consultation.



## More Information

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telephone numbers are correct at time of publishing

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The following substantial equivalences have been agreed by the MLC Tripartite Working Group:

Ref	Description	For approval
SE001	Crew accommodation requirements for large commercial yachts between 200GT-500GT	See MSN 1851 (M)
SE002	Crew accommodation requirements for commercial vessels less than 200GT	See MGN 491 (M)
SE003	Crew accommodation below the reference load line for workboats under 500GT	See MGN 491 (M)
SE006	Dispensation allowing cadets to share a cabin	To agree with MCA as part of DMLC Part 1 approval
SE005	Acceptance of the use of digital records for the purpose of recording hours of work and rest	To agree with MCA as part of DMLC Part 1 approval
	Medical Certificates recognised as equivalent to ENG 1 in certain circumstances	To agree with MCA as part of DMLC Part 1 approval as below:
SE007	· UK Oil and Gas (UKOG)	On the UK, Norway or Netherlands Continental Shelf only, for oil and gas professionals not deemed seafarers pre-MLC <sup>1</sup> or for the purposes of STCW, or by the shipowner, not applicable for marine crew
SE007	· NOGEPa (Norway Offshore Certificate)	
SE007	· OLF (Netherlands Offshore Certificate)	
SE009	· Commercial Diver Medical Certificate (HSE approved)	As SE007 but worldwide – for the role of diver only
SE010	· Aviation/Pilot Medical Certificate (EASA approved)	As SE 007 but worldwide – for the role of pilot only
SE008	Recognition of Training Agreement with an approved training providers as equivalent to a Seafarer Employment Agreement (SEA)	See MGN 485 (M)
SE011	Recognition of experience or standing as a chef, equivalent to a Ships' Cook Certificate of Competency (for large yachts, in appropriate circumstances)	To agree with MCA ENSIGN as part of DMLC Part 1 approval
SE012	Crew Accommodation requirements for large commercial yachts of 3000GT up to 5000GT	See MGN 571 (M)

<sup>1</sup> See Annex B



**REQUIREMENT FOR ENG 1 MEDICAL CERTIFICATION PRE AND POST MLC**

The Merchant Shipping (Medical Examination) Regulations 2002 defined “seafarer” as follows:

*“seafarer” means any person, including a master, who is employed or engaged in any capacity on board a ship on the business of the ship.....”;*

The Merchant Shipping (Maritime Labour Convention) (Medical Certification) Regulations 2010, as amended by S.I. 2014/1614, define seafarer as follows:

*“seafarer” means any person, including a master, who is employed or engaged or works in any capacity on board a ship and whose normal place of work is on a ship;”*

The 2010 Regulations therefore have a potentially wider application.

The table below summarises the anticipated scenarios which are likely to be encountered, and whether SE007 (see Annex A) is applicable.

	<b>Pre-MLC Groups</b>	<b>Post-MLC Groups</b>	<b>Effect of SE007</b>
1	Post holders who previously were required to have ENG 1 Medical Certificates	Still required to have ENG 1 Medical Certificates.	None
2	Post holders who are required to have UKOG Medical Certificates (or their Norwegian and Dutch equivalents)	Some may be brought within the definition of “seafarer” for the purposes of the MLC.	For those post holders who are brought within the definition of “seafarer” for MLC purposes, but were not previously considered seafarers, the proposed equivalences would apply in circumstances described.
3	Post holders who previously were not required to have either an ENG 1 or UKOG Medical Certificate	Some may be brought within the definition of “seafarer” for the purposes of the MLC.	Post holders in this group who are brought within the definition of “seafarer” for MLC purposes will be required to have an ENG 1.
4	Post holders who have previously been required to have both an ENG 1 and a UKOG Medical Certificate	It is envisaged that if they are already required to have ENG 1s they will probably already be considered seafarers, regardless of the MLC legislation.	None. Regardless of their post-MLC status (column 2) this group will not be affected as the proposed substantial equivalences are aimed solely at relieving additional burdens brought about by the MLC.

