

## SECTION 9

### TITLE 5.1 AND TITLE 5.2 FLAG STATE INSPECTION AND CERTIFICATION AND PORT STATE INSPECTION

#### *Introduction*

**10.1 This section seeks your views on the Maritime and Coastguard Agency's proposals for giving full effect to Regulation 5.1 and 5.2 and Standard A5.1 of the ILO Maritime Labour Convention 2006 (MLC) which require the certification of certain UK ships under the MLC, provide standards for the survey and inspection of ships and the issue of documentation, provide for on board and on-shore complaints procedures and provide for port state control of non-UK ships in UK waters against the MLC.**

***N.B. MCA is considering the responses from earlier consultations with regard to the definitions of shipowner and seafarer. Those definitions are repeated in these draft regulations, YOU DO NOT NEED TO REPEAT YOUR COMMENTS - all regulations will be updated in line with the agreed definitions in due course.***

10.2 The UK has ratified ILO 178 on inspection of seafarer living and working conditions (applicable to UK registered ships) and ILO 147 on minimum standards (applicable to UK ships and which also includes provision for port state inspection of ILO matters.) The MLC replaces ILO 178 and ILO 147; in particular it introduces a certification regime, so some significant changes to UK provisions are needed. But we propose to build on UK implementation of these existing Conventions; in particular the inspection regime introduced for ILO 178 by Merchant Shipping Notice MSN 1769(M) is relevant. (ILO 178 was implemented for the UK on the basis of the ship inspection powers of the MSA 1995 and MSN 1769(M); there is no implementing SI.)

10.3 This consultation also covers implementation of the Appendices to Title 5 which set out the details to be included in the Maritime Labour Certificate, the Declaration of Maritime Labour Compliance etc..

#### **Application**

10.4 The application of the proposed regulations is set out in regulation 5.

10.5 The bulk of the regulations, which deal with the UK's Flag State responsibilities under Title 5.1, apply only to UK ships. Regulation 11 allows the UK Government to carry out an MLC survey for a non-UK ship at the request of its flag state if that is a ratifying state. Regulations 20 to 22 allow the UK to exercise port state control of non-UK ships in UK waters once the MLC is in force.

10.5.1 The Regulations do not apply to

- (a) pleasure vessels
- (b) fishing vessels,
- (c) ships of traditional build,
- (d) warships or naval auxiliaries,

All of the above are outside the scope of the Maritime Labour Convention, and most of the MLC-related regulations are disapplied to them.

(e) vessels which—

(i) are not engaged in international voyages or operating from a port in a country other than the United Kingdom, and

(ii) operate only within 60 miles of a safe haven in the United Kingdom,

10.5.2 The definition of “safe haven” is the same as that used for the limits of a Category 2 vessel under the Code of Safety for Small Commercial vessels.

10.5.3. The UK, in consultation with the Tripartite Working Group on the MLC has agreed that vessels on domestic voyages only, and operating within 60 miles of the UK should be excluded from the inspection regime. This is provided for under Article II of the MLC, which excludes from the definition of “ship” vessels operating exclusively within or adjacent to sheltered waters, or waters where port regulations apply.

10.5.4. However, that decision was based on the understanding that most of those working on such vessels are living at home, and so are not as vulnerable as seafarers on international operations. It is also important to note that some of the other merchant shipping regulations implementing MLC standards (e.g. medical certification, seafarer employment agreements, hours of work, food and catering, health and safety, medical care) will apply to vessels covered by (e), since the existing UK standards already apply within those limits.

## **10.6 Small Commercial Vessels operating under the MCA Codes (under 24 metres in length carrying no more than 12 passengers)**

10.6.1 Vessels operating within 60 miles of the UK on domestic voyages are excluded under (e) above.

10.6.2 Administrations cannot use the MLC concept of “substantial equivalence” in implementing Title 5. However, there is limited scope for treating small vessels on domestic voyages differently from larger ships.

10.6.3 Article II paragraph 5 of the Convention, which states that “In the event of doubt as to whether this Convention applies to a ship or particular category of ships, the question shall be determined by the competent authority in each Member after consultation with the shipowners’ and seafarers’ organizations concerned.

10.6.4 Article II paragraph 6 provides for the MLC standards not to apply to vessels under 200GT not engaged in international voyages, “to the extent that the matter is dealt with differently by national laws and regulations”.

10.6.5 We have consulted with our social partners and they have agreed that, for vessels operating under the small commercial vessel Codes, the Codes should be modified to take into account the crew accommodation requirements of the MLC, and to draw attention to other MLC requirements. In principle it is also agreed that the certification arrangements for them should be expanded to include MLC inspections. This is subject to further discussion with certifying authorities and agreed arrangements for training.

10.7 However, please note that regulations 20 and 22 apply to non-UK seagoing ships of any size while they are in United Kingdom waters, subject to regulation 6(3)(e).

## **General Issues**

10.8 Title 5.1 sets out the role of the State in relation to ships that fly its flag. General comments in relation to 5.1 are outlined below.

10.9 Title 5.1.1 sets out the general principles for compliance and enforcement. The existing UK system for the inspection of seafarers' living and working conditions on UK ships is set out in MSN 1769(M). This system was developed in full consultation with UK Social Partners. The MLC survey and inspection regime in the UK will in effect build on this system by introducing an inspection requirement for all ships covered by the Convention, regardless of size, and a certification regime for ships over 500GT operating internationally or between two ports in another country.

## **Survey of Ships**

10.10 All ships covered by the Convention, not simply those which require to be certificated under the MLC, are to be subject to inspection of their seafarer living and working conditions. As already noted, the UK has implemented ILO 178 through MSN 1769(M), but this only provides for such inspection of UK ships over 500GT. To implement the MLC we need to provide for inspection of all UK ships covered by the MLC.

10.11 Ships of 500GT and over, operating on international voyages or from a non-UK port require a Maritime Labour Certificate, subject to satisfactory survey. The draft regulation 7(2) of the new Survey and Certification Regulations and draft MSN provides for the survey regime. It is intended to introduce a penalty for non-compliance (regulation 17(1)) if a ship proceeds to sea which does not comply with the survey regime set out in regulation 7(2)..

10.12 For other ships, in accordance with Convention standard A5.1.4 para 4, inspections are to be conducted at least every 3 years. This will be implemented by regulation 7(3) and the [draft] MSN. Draft regulation 17(1) provides the penalty for non-compliance.

10.13 MLC Regulation 5.1.2 allows for the delegation to recognised organisations of the inspection and certification responsibilities introduced by the MLC. In practice, for the UK and many other countries this would mean delegation to the Classification Societies, to whom much survey and certification work is already delegated. As a matter of policy our intention is that the majority of inspections and certification work under the MLC would be done by MCA and not delegated. Nevertheless, we do wish to have the option to delegate in certain circumstances. In particular we may want to delegate some of the work entailed in inspection of crew accommodation to Class, and might also wish to delegate interim inspections, as provided for by A5.1.3 paragraph 5, in the case of a ship based outside the UK. This is provided for in regulation 7 - which requires the survey to be conducted by a certifying authority.

10.14 "Certifying authority" is defined in regulation 2 as the Secretary of State (ie. the MCA) or any person authorised by the Secretary of State. Any authorisation would specify what the organisation was authorised to do, and could be issued case by case.

10.15 Where a Member delegates responsibilities under the Convention, it nevertheless remains fully responsible for the inspection of living and working conditions (MLC Regulation 5.1.1 paragraph 3.) There is already in place a system for monitoring classification societies acting on behalf of MCA and this would be amplified to cover any MLC delegated role in respect of MLC inspection work.

10.16 The MCA is subject to both internal quality assurance processes and external audit, e.g by the National Audit Office, in relation to all its functions including those covering inspection and certification.

10.17 MCA's own surveyors have undergone training on the requirements of the MLC and in conducting MLC surveys and inspections. Where practicable, to ensure efficient use of the time of both MCA and shipboard personnel, survey will be conducted in conjunction with ISM procedures.

### **Issue of Maritime Labour Certificates**

10.18 The MLC requires all ships over 500 GT engaged in international voyages or operating from or between ports in another country to be certificated to confirm that living and working conditions comply with the MLC.

10.19 The maritime labour certificate and document of compliance are to correspond to the models given in Appendix A5-II of the MLC. The definitions of these terms (maritime labour certificate, interim maritime labour certificate, Part 1 document of maritime labour compliance and Part 2 document of maritime labour compliance) in regulation 2 of the proposed Merchant Shipping (Maritime Labour Convention)(Survey and Certification) Regulations, states that the form of the certificate is given in a Merchant Shipping Notice. The draft Merchant Shipping Notice including these forms is included in this consultation package.

10.20 Other ships operating internationally may request that they be issued with a MLC certificate.

Sub-paragraph (5) provides MCA to take into account surveys carried out before the regulations come into force, when issuing a maritime labour certificate. This is specifically included to cover transitional arrangements when these Regulations come into force, where MCA will be issuing certificates on the basis of the record of voluntary inspections carried out during 2012/13, supplemented as necessary by evidence of rectification of any deficiencies found.

### **Survey of UK ships by other administrations**

10.21 Regulation 9 permits the Secretary of State to request that another convention state carry out a MLC survey on the UK's behalf. A copy of any such certificate must be provided to the MCA as soon as possible.

### **Interim Certificates**

10.22 There is provision for interim certification for new ships, ships changing flag or when a shipowner assumes responsibility for the operation of a ship which is new to that shipowner, for a maximum of six months. This is covered in regulation 10.

### **Survey and Certification of non-UK ships by UK authorities**

10.23 Regulation 11 permits the UK to carry out MLC inspections at the request of other Convention nations. A copy of any such certificate must be provided to the ship's Flag State as soon as possible.

### **Duration and validity of Certificates**

10.24 Regulation 12 deals with the duration and validity of certificates. The MLC certificate is to be valid for 5 years, subject to intermediate inspection and endorsement of the certificate between the 2nd and 3rd anniversary of the date of issue. In effect, this means that no ship subject to the Convention's certification requirements should go more than 3 years without undergoing either a full or an interim maritime labour inspection.

10.25 Cancellation and suspension of certificates is also addressed in this regulation, in particular in the event of a certificate issued on the basis of falsehood or error, and when a shipowner fails to act appropriately on an improvement notice.

### **Declaration of Maritime Labour Compliance (DMLC)**

10.26 Regulation 13 requires each individual certificated ship is to have a Declaration of Maritime Labour Compliance (DMLC). Part 1 is drawn up by the Secretary of State, ie., the MCA, and part 2 by the shipowner to demonstrate how the particular ship complies with the Convention. The UK's provisional DMLC Part 1, and guidance to shipowners on completion of the Part 2, are available on the MCA website, as guidance on Title 5. The standard DMLC Part 1 (or a provisional DMLC Part 1) will be published as an MSN in support of these regulations to set out the UK standards against which ships will be surveyed and inspected..

### **Duty on shipowner in respect of recruitment and placement services**

10.27 Draft regulation 13 would implement the requirement under Title 1.4 of the MLC for the shipowner to ensure that they only use recruitment and placement services which are compliant with MLC standards. The statutory standards are contained in separate legislation, and are published in the [draft] MGN accompanying the Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations. The impact of this provision is assessed in the impact assessment accompanying those regulations.

### **Documents to be carried**

10.28 A new regulation is needed to implement A5.1.1 paragraph 2 which provides that all ships have a copy of the MLC on board. This is implemented at regulation 14(1).

10.29 Standard A5.1.3.12 states that the maritime labour certificate and declaration of maritime labour compliance must be carried on the ship and a copy shall be posted in a conspicuous place on board, where it is available to seafarers. Copies must be made available to both flag state and port state inspectors on request, as well as to shipowners' and seafarers' representatives (see draft regulation 14(2) and (3))

10.30 MLC Standard A5.1.3.12 also requires that if the vessel is engaged in an international voyage, the maritime labour certificate and declaration of maritime labour compliance if not in English, must be accompanied by a translation in to English. This has not been transposed because the UK form for the certificate will be in English, and all UK ships will be required to carry the UK documentation.

### **On-shore and on-board complaint procedure**

#### On shore complaints

10.31 Standard A5.1.4.5 provides for investigation where a complaint has been received or where there is evidence that a ship does not comply with the Convention standards, and for the inspector to require that action is taken to remedy any deficiencies found.

10.32 While it is current practice for MCA surveyors to investigate complaints there is no mandatory requirement to do so. Accordingly regulation 15(4) would introduce a requirement in line with the MLC for MCA to follow up complaints etc., with appropriate enquiries and to require remedying of any deficiencies identified. A draft MGN explaining the procedures is part of this consultation package.

#### *Revocations*

10.33. It should be noted that section 33 of the Merchant Shipping Act 1995, which provides for investigation of complaints about payment of wages (only) where a dispute is referred by both parties, is to be repealed by the proposed Merchant Shipping (Maritime Labour Convention)(Wages) Regulations. This new provision would partially replace that obsolete section, but does not require agreement between the parties on whether there are grounds for complaint, and has wider scope.

10.34 In addition section 44 of the Merchant Shipping Act 1995 requires that any complaint raised by 3 or more seafarers about the food and water provisions on board ship, made to the master, must be investigated. This provision will also be repealed and replaced by the new provision for on board complaints.

#### On board complaints

10.35 MLC regulation 5.1.5 requires all ships to have a documented on-board complaints procedure. Under existing UK law and practice, on-board complaints procedure is regarded as a matter for the shipping company, and while most will have a complaints procedure in place there is no mandatory requirement for such a procedure.

10.36 Regulation 15(1) introduces a mandatory requirement to have an on-board complaints procedure. Following the requirements of MLC regulation 5.1.5 and Standard A.5.1.5 such a procedure must provide the seafarer with certain safeguards including:

- a right to be accompanied or represented during the complaints procedure (regulation 15(2)(c));
- safeguards against victimisation of seafarers for filing complaints (regulation 15(5));

All seafarers must have a copy of the on-board complaint procedures applicable on the ship, contact details on board and ashore and for the certifying authority and competent authority responsible for the ship in respect of enforcement of the MLC (regulation 15(3)).

10.37 Further guidance on the requirements for complaints procedures has been drawn up by MCA and agreed by members of the Tripartite Working Group and is attached as a draft MSN. It conforms with ACAS Guidelines.

#### **Arbitration**

10.38 Regulation 16 provides for a person who is dissatisfied with result of a MLC survey on a UK ship to request that the matter be referred to an arbitrator, and prescribes detail in connection with this.

#### **Offences and Penalties**

10.39 Regulation 17 outlines offences and penalties in connection with the Regulations. In particular, these are in relation to proceeding to sea without a valid MLC certificate and falsifications associated with a MLC certificate.

#### **Detention**

10.40 Regulation 19 provides for a vessel to be detained in connection with failure to comply with the MLC requirements on certification or complaints procedures.

#### **Inspection of non-UK ships (Port State Control)**

10.41 Regulations 20 – 22 give MCA the powers to carry out port state control inspections, once these regulations and the MLC itself are in force. Where the flag state of the ship has

ratified the MLC, and the ship carries a Maritime Labour Certificate and Declaration of Maritime Labour Compliance, the first step is for the inspector to check those documents. Where the conditions in draft regulation 22(1) (MLC Standard A5.1.2) are met, further inspection will be undertaken.

10.42 If the ship flies the flag of a non-ratifying state, the inspector may carry out an inspection in accordance with Standard A5.1.2.

### **Fees**

10.43 We propose that a fee will be charged to cover the cost of MCA surveyor time to inspect and certificate ships under the MLC (ie., those ships over 500GT which are required to hold a Maritime Labour Certificate, and those under 500GT where the shipowner requests issue of a certificate). Other MLC inspections (ie., inspections that are not related to issue of a certificate) would not be chargeable.

10.44 This would be implemented by regulation 23, which would amend Schedule 1 to the Merchant Shipping (Fees) Regulations 2006 (SI 2006/2055).

### **Review**

10.45 Regulation 24 makes the regulations subject to statutory review, every five years, once the Regulations are in force, in line with government policy.

MCA Seafarer Safety and Health Branch  
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