

<b>Title:</b> <b>Merchant Shipping (Maritime Labour Convention)(Health and Safety) Regulations</b> <b>IA No:</b> <b>Lead department or agency:</b> Maritime and Coastguard Agency (MCA) <b>Other departments or agencies:</b> Department for Transport (DfT)	<b>Impact Assessment (IA)</b>		
	<b>Date:</b> 19/04/13		
	<b>Stage:</b> Consultation		
	<b>Source of intervention:</b> International		
	<b>Type of measure:</b> Secondary legislation		
<b>Contact for enquiries:</b> Julie Carlton Tel: 023 8032 9216			
<b>Summary: Intervention and Options</b>			<b>RPC:</b> RPC Opinion Status

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
£1.9m	£1.9m	£0.2m	No	NA

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

Employment conditions for seafarers vary across the world, with some seafarers working under unacceptable conditions and ship operators which operate substandard ships gaining a competitive advantage. Effective international standards are therefore needed to address these issues. The Maritime Labour Convention 2006 (MLC) aims to provide minimum living and working conditions for seafarers that are globally applicable and uniformly enforced, including on minimum standards of health and safety. Achieving this aim requires the MLC to be ratified by governments, which requires a package of new legislation in the UK. Ratifying the MLC in the UK would also avoid the costs of non-ratification.

**What are the policy objectives and the intended effects?**

The policy objective is to promote health and safety on ships, as part of the UK's implementation of the MLC, and to promote an international level playing field by a) bringing health and safety legislation for UK ships into line with the minimum global standards provided for in the MLC; and b) (once the entire package is in place) enabling UK ratification of the MLC, which would enable the MCA to issue MLC certification to UK-flagged ships, reducing potential delays at ports in ratifying countries; and to enforce these minimum global standards for recruitment on non-UK registered ships that call at UK ports. Specific objectives for health and safety can be found in the Evidence Base.

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

Doing nothing is not considered to be an appropriate course of action, as new legislation is required to enable the UK to ratify the MLC, and the British Chamber of Shipping and the seafarers' Trades Unions support ratification of the MLC. Failure to ratify the MLC would limit its effectiveness at addressing the issues on seafarer living and working conditions discussed above and would result in UK ships not being able to obtain MLC certification. The preferred policy option is therefore to introduce the proposed Regulations (Policy Option 1) which would make the minimum changes to existing legislation to implement the provisions of the MLC on health and safety at work, taking into account existing European and UK legislation in place in this field. No further measures have been deemed necessary and so only one policy option has been considered in this impact assessment.

**Will the policy be reviewed? It will be reviewed. If applicable, set review date:** 08/2018

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			Traded: NA		Non-traded: NA

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister: \_\_\_\_\_

Date: \_\_\_\_\_

# Summary: Analysis & Evidence

# Policy Option 1

**Description:** To implement the minimum requirements of the Maritime Labour Convention, 2006 in respect of health and safety

## FULL ECONOMIC ASSESSMENT

Price Base Year 2012	PV Base Year 2013	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£2.61	High: -£1.17	Best Estimate: -£1.89

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£0.003	£0.14	£1.17
High	£0.003	£0.30	£2.61
Best Estimate	£0.003	£0.22	£1.89

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

Costs to shipowners are estimated as follows: costs from extension of the health and safety duties to the self-employed (£11,000 to £57,000 in the first year, £11,000 to £29,000 per year in subsequent years); costs of reporting of occupational diseases (£3,000 in the first year, negligible in subsequent years); costs of operating safety committees on their ships (£56,000 to £203,000 per year); and costs of reviewing published accident statistics (£68,000 per year). Costs to MCA are estimated to be negligible.

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

1) Initial costs to shipowners of setting up safety committees. 2.) Potential costs to healthcare professionals.

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

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

No monetised benefits have been identified.

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

Although the rate of accidents on UK merchant ships is relatively high compared to accident rates ashore, MCA does not consider this is due to a lack of regulation, and so on UK ships there are not expected to be significant benefits from these regulations.

A record of occupational diseases on UK ships could potentially allow MCA to identify areas of risk of health impacts, and to target guidance/consider amendments to regulation accordingly. However, the expected low number of reports (based on HSE experience) means that this is only likely in isolated cases.

The key benefit is therefore that the regulations, as part of a package of measures, will allow the UK to ratify the MLC, as discussed in Annex 3.

### Key assumptions/sensitivities/risks

Discount rate (%)

3.50

1) Due to the limitations of the available evidence base, a range of assumptions has had to be made, and it has not been possible to monetise some of the costs and benefits. 2) The estimates are very sensitive to the data used and the assumptions that have had to be made. 3) The extent that the estimated monetised costs to UK registered ships would represent a cost to the UK is uncertain. 4) Further details of assumptions made are given in the Evidence Base.

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: £0.2m	Benefits: NQ	Net: -£0.2m	No	NA

# EVIDENCE BASE

## 1. TITLE OF PROPOSAL

Implementation of Title 4.3 of the International Labour Organization (ILO) Maritime Labour Convention, 2006 (MLC) on Health and Safety - The Merchant Shipping and Fishing Vessel (Health and Safety at work) (amendment) Regulations 20XX to be referred to hereafter as “the proposed Regulations”.

## 2. PROBLEM UNDER CONSIDERATION

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

The specific problem under consideration which the proposed Regulations would directly address is how to ensure the health and safety of seafarers on ships. Although no comprehensive data is available, there are indications of a high rate of both occupational fatalities and occupational injuries for seafarers internationally - see Bhattacharya, S. (2009) which quotes various other reports. The Marine Accident Investigation Branch (MAIB) Annual Report 2011 includes the following information for injuries reported to the MAIB in 2011 on merchant ships over 100 Gross Tonnage (GT) (Table 10).

MAIB receives reports from UK ships anywhere in the world and from non-UK ships in UK waters.

<i>Deaths and injuries to Merchant Vessel Crew: 1998 – 2011</i>		
	<i>Crew Injured</i>	<i>Of which resulted in death</i>
1998	330	2
1999	289	4
2000	302	3
2001	297	3
2002	304	5
2003	289	3
2004	310	4
2005	246	2
2006	233	3
2007	243	12
2008	224	5
2009	199	6
2010	223	3
2011	185	5*

\* Unconfirmed figure, when published

The fatal accident rate in UK merchant shipping during 1996 to 2005 was 12 times higher than in the general workforce of Great Britain. It was also 2.5 times higher than in the construction industry and 8.5 times higher than in manufacturing. The fatal accident rate in UK shipping was lower during 1996 – 2005 (12 per 100,000 seafarer years) than in previous years (e.g. 53 per 100,000 in 1976 to 1985). However, since there has been a comparable reduction over time in the fatal accident rate among the general British workforce during the last 50 years, compared with that in UK Merchant Shipping, the increased risk of a fatal accident in seafarer is similar to 50 years ago (DfT 2007).

UK ships are subject to a range of health and safety legislation, implementing European requirements. However, ships of other flags calling at UK ports are not subject to the same level of health and safety regulation. Current ILO Conventions on health and safety do not provide the range of protection that is provided by the MLC. Given that there are costs of providing seafarers with decent conditions of work

(including a safe working environment and safe systems of work), this means that shipowners who operate substandard ships can potentially undercut shipowners which provide seafarers with decent conditions of work, and can consequently potentially gain a competitive advantage.

### **3. RATIONALE FOR INTERVENTION**

Given the international nature of the shipping industry, it is considered that effective international standards are needed to address the issues and risks that have been raised in Section 2, and to provide decent working conditions and a level playing field for ships of different flags. This is why the MLC has been developed in the ILO by government, employer and seafarer representatives as a global instrument to address these. The MLC aims to provide minimum rights for all seafarers that are globally applicable and uniformly enforced, including on health and safety at work. It was adopted in the ILO by a record vote of 314 in favour and none against (two countries abstained for reasons unrelated to the substance of the MLC). The ratification criteria to bring the Convention into force internationally were met on 20 August 2012, and the MLC will therefore come into force internationally on 20 August 2013. It is expected to be widely ratified. The Government's social partners, the shipping industry and the seafarer's Trades Unions, strongly support ratification of the MLC in the UK.

Ratification of the MLC in the UK requires a package of new legislation to be introduced to implement some of the provisions of the MLC in UK law, including some provisions of the MLC regarding health and safety at work for all seafarers. Doing nothing is therefore not considered to be an appropriate course of action.

Widespread ratification of the MLC, including the provisions on occupational health and safety and the improved enforcement mechanisms introduced by the MLC, could improve the consistency of health and safety standards between ships of different flags, and could help to ensure that seafarers – including UK nationals - have a reasonable expectation of safe working conditions on ships of any flag where they work. The proposed Regulations would bring existing legislation for UK registered vessels into line with the minimum global standards for health and safety at work provided for in the MLC. In addition, once the UK has ratified the MLC, the proposed Regulations would allow the UK to enforce the minimum global standards for health and safety on non-UK registered vessels visiting UK ports on a “no more favourable treatment” basis.

Furthermore, UK ratification of the MLC would avoid the costs of not ratifying the MLC. In particular, regardless of whether the UK ratifies the MLC, UK registered vessels would still be subject to the provisions of the MLC on a “no more favourable treatment” basis when operating in foreign ports in countries that have ratified the MLC. This could result in UK registered vessels being delayed due to inspections to check their compliance with the MLC. By enabling the UK ratify the MLC once the entire package of legislation is in place, the proposed Regulations would enable UK registered vessels to benefit from the system of MLC certification, avoiding or reducing the likelihood of delays related to inspections in foreign ports in countries that have ratified the MLC.

Although the primary reason for UK ratification of the MLC is the benefits it will bring to UK shipping, and to avoid the risks of not ratifying, it should also be noted that there is a European Social Partners Agreement which seeks to implement the MLC. Council Directive 2009/13/EC annexes the Agreement between the European Community Shipowners' Association (ECSA) and European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006 and the agreement on amendments to the Agreement on the Organisation of Working Time of Seafarers dated 30 September 1998 (set out at Annex A to the Annex). When it is in force, Member States will be required by virtue of Directive 2009/13/EC to implement the European social partners' agreement on the MLC. The provisions of Regulation 4.3 and Standard A4.3 are transposed in full into the Annex to the agreement. The Directive will come into force on the date on which the MLC comes into force, which will be 20 August 2013. At that point the UK will have a duty to implement the social partners' agreement, which in practice will mean that the UK is under a European law requirement to implement some (but not all) MLC provisions in UK law. The transposition deadline is 12 months from the coming into force date i.e. 20 August 2014. However, as explained above, to support the UK shipping industry there is a need for the UK to ratify the MLC when it comes into force internationally, which is earlier than the transposition deadline for the European Directive. Implementation of the minimum changes required to bring UK legislation fully into line with Title 4.3 of the MLC on health and safety will also fully implement the provisions of the health and safety aspects of Directive 2009/13/EC. The Directive is not therefore considered further in this IA.

Further details of the requirements for and benefits of UK ratification of the MLC are provided in Annex 3.

## 4. POLICY OBJECTIVES

The purpose of the proposed Regulations is to bring existing UK legislation into line with the requirements of the MLC related to health and safety and enable the UK to ratify the MLC in order to:

- Secure decent working and living conditions for seafarers on UK registered ships and globally, including on health and safety at work.
- Promote a more level competitive playing field for international shipping by enforcing these standards on non-UK registered vessels that call at UK ports.
- Enable the MCA to issue MLC certification to UK registered vessels, reducing the potential for UK flagged vessels to experience delays in foreign ports in countries that have ratified the MLC.
- Comply with the UK's European legislative obligations in relation to the provisions in the MLC covered by Directive 2009/13/EC), thus avoiding the risk of infraction proceedings being taken against the UK.

In particular, the proposed Regulations would:

(a) bring UK legislation into line with Regulation 4.3 and Standard A4.3 of MLC, and extend UK health and safety legislation for seafarers to the self-employed; the MLC's definition of "seafarer" includes *"every person who is employed or engaged or works in any capacity on board a ship to which this Convention applies"*. (MLC, 2006 Article II.1(f), which specifically includes self employed persons;

(b) introduce a duty on the shipowner to report any occupational diseases contracted by a seafarer on a ship and notified by a medical practitioner;

(c) amend the existing criteria for the requirement to establish a safety committee on a UK ship, to bring them fully into line with the MLC. The current UK regulations require a safety committee where there are more than 5 employed workers and a safety representative has been elected. The MLC Standard A4.3.2(d) requires a safety committee to be set up if there are 5 or more seafarers, whether or not a safety representative has been elected; and

(d) introduce a requirement for the shipowner to refer to health and safety statistics when conducting a health and safety risk assessment.

In order to ensure a level playing field the MLC provides that a country which has ratified the MLC may enforce the same standards for health and safety on ships of other flags calling at its ports, since the Convention provides that ships of non-ratifying countries should have "no more favourable treatment" in the ports of ratifying countries. The proposed regulations would give the UK this power. This would remove the competitive advantage to shipowners operating into UK ports of flagging with a non-ratifying country.

## 5. DESCRIPTION OF POLICY OPTIONS

### Description of options considered

#### *Do nothing*

Despite the range of UK health and safety legislation applicable to workers on UK ships (which in this context means employees), largely implementing EC directives, existing UK legislation is not fully in compliance with the MLC in respect of health and safety at work. A 'Do nothing' option would not achieve the policy objectives that are outlined above, and is not therefore considered to be an appropriate course of action in respect of the merchant fleet as the UK government's social partners, the shipping industry and the seafarers' Trades Unions, support ratification of the MLC by the UK. The risks of not ratifying the Convention are summarised at the end of Annex 3.

One policy option has been considered in this IA.

*Policy Option 1: To implement only the minimum mandatory requirements of the Maritime Labour Convention, 2006 in respect of the application of health and safety legislation to self-employed seafarers.*

The minimum changes that are needed under Policy Option 1 are discussed below. Option 1 fulfils the policy objectives and is the preferred option.

### 5.1 Extending health and safety legislation to the self employed

While there is a considerable body of health and safety regulation and guidance for ships, which is based on EC Occupational Health and Safety Directives, the legislation applies only to employed people on ships. The MLC provisions apply to all “seafarers” which includes any person employed, engaged or working on a ship. UK merchant shipping health and safety legislation must therefore be extended to cover self-employed people in order to cover all “seafarers” as defined by the Convention.

The current legislation is out of step with shore-based health and safety legislation, where the Health and Safety at Work etc. Act 1974 (HSWA) applies to the self-employed. As a result of the Löfstedt Report<sup>1</sup>, the Health and Safety Executive (HSE) is reviewing the scope of application, with a view to excluding self-employed persons in low risk occupations, whose work poses no risk to themselves or others from the burdens of health and safety legislation. Where the activities of self-employed people could pose a risk to themselves or others, for example in the building trades, HSWA law will continue to apply. It is a principle of the MLC that seafarers (which includes self-employed persons at sea) should have the same responsibilities and protection as those working on land.

In view of the statistics quoted in “Problem Under Consideration” above, it is clear that the work of the self-employed on ships falls within the category of work which could pose a risk to seafarers or others, and so this proposal will bring UK health and safety legislation for ships more closely into line with HSE legislation.

### 5.2 Introduce a duty on the shipowner to report any occupational diseases contracted by a seafarer on a ship and notified by a medical practitioner.

The MLC requires the reporting of occupational accidents and diseases, and the use of this statistical information in developing health and safety policies and standards. In the UK, shipowners and masters are required to report the more serious occupational accidents to MAIB under the Merchant Shipping (Accident Reporting and Investigation) Regulations 2012, and MAIB produces statistical reports and digests which inform both MCA and shipowners and seafarers in the development of policies and guidance. Under the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, (“the general duties regulations”, all accidents must be recorded on board ship and investigated, usually by the Safety Officer. The International Safety Management Code for ships also requires accidents to be recorded and reviewed by the Company and lessons learnt. However, there are no provisions relating to the reporting of occupational diseases. The Health and Safety Executive’s (HSE) Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (“RIDDOR”), which include requirements for reporting of occupational diseases, only apply within Great Britain and as applied on the UK Continental Shelf by the Application outside Great Britain Order.

The proposed Regulations would create a new duty to report occupational diseases as defined in the shore-based Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) to the MCA for any UK ship anywhere in the world. This duty arises where a medical practitioner notifies an employer that someone they employ is suffering from an occupational disease which is believed to have been contracted as a result of their work.

The MCA proposes to use the RIDDOR list of diseases as a basis on which to satisfy this requirement. The MCA has circulated the list to the National Occupational Health and Safety Committee, and to the MLC Tripartite Working Group advising MCA on implementation on the MLC, and they have confirmed they are content this includes appropriate occupational diseases which might affect seafarers.

### 5.3 Amend the requirement for a Safety Committee on board ships

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<sup>1</sup> Department for Work and Pensions, November 2011, <http://www.dwp.gov.uk/docs/lofstedt-report.pdf>

The general duties regulations currently require a safety committee to be established on board a ship where there are more than 5 employed workers and a safety representative has been elected. Under the MLC, this requirement will apply on any ship with 5 or more seafarers on board, regardless of whether a safety representative has been elected. The proposed Regulations would implement this change.

#### **5.4 Require a shipowner to refer to health and safety statistics when conducting a health and safety risk assessment.**

Shipowners have records of health and safety incidents on their ships as a result of existing duties under the general duties regulations and, where applicable, under their safety management systems (a mandatory requirement for ships of 500GT and over operating internationally). The proposed Regulations would also require that they refer to published statistics. In the UK currently this would mean referring to MAIB's annual report and any special reports published.

### **6. COSTS AND BENEFITS OF THE PROPOSED REGULATIONS**

For the purposes of this impact assessment, the costs and benefits of the proposed Regulations (Option 1) have been monetised to the extent that is possible. Given the limitations of the available evidence base, it has not been possible to monetise some of the costs and benefits of the proposed Regulations (Option 1). Where it has not been possible to monetise a cost or benefit, a full qualitative description of the cost or benefit has been provided.

Following the consultation, we will consider whether further analysis could be undertaken to improve the extent to which the costs and benefits of the proposed Regulations (Option 1) are monetised. To assist with this process, **Consultees are invited to submit additional evidence on the costs and benefits of the proposed Regulations (Option 1)**. Any additional evidence that is submitted will be taken into account when the impact assessment is updated after the consultation.

#### **Comparison with 'Do Nothing' scenario**

The 'Do Nothing' scenario represents what would happen if the Government does not take any action. Under the 'Do Nothing' scenario, the MLC will come into force in August internationally regardless of whether the UK is ready or not.

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

Therefore, MCA expects that a proportion of any additional costs of complying with the minimum mandatory requirements of the MLC in respect of health and safety would have been incurred under the 'Do Nothing' scenario. As this proportion is uncertain, we do not know the extent to which any costs of complying with the minimum mandatory requirements of the MLC in respect of health and safety are truly additional costs of the proposed Regulations or whether they would have occurred anyway under the 'Do Nothing' scenario.

Given these uncertainties, this impact assessment assesses the additional costs to business of complying with the minimum mandatory requirements of the MLC in respect of health and safety relative to the requirements of existing UK legislation or existing industry practice as applicable. Where these costs have been monetised, the estimates are shown on the summary sheets. However, as discussed above, we do not know the extent to which these costs are truly additional costs of the proposed Regulations.

### **6.1 Costs to business of complying with the minimum mandatory requirements of the MLC in respect of health and safety**

#### **6.1.1 Extending the H&S regulations to the self employed**

##### **6.1.1.1 *Changes introduced by the proposals***

The general duties regulations currently place duties primarily on employers in relation to "workers" (which in this context means employees). The MLC requires shipowners to put in place measures for the occupational health and safety of all seafarers, which includes self-employed persons. The main duties in the general duties regulations which would be extended are summarised as follows:

- to carry out a risk assessment to identify and quantify the risk to seafarers from their work activities;
- to put measures in place to protect seafarers from those risks;
- to provide information and training on health and safety risks and the protection measures in place; and
- to require the shipowner to allow seafarers to make representations about health and safety issues.

It is not considered reasonable to extend other duties such as the provisions regarding consultation of workers and health surveillance to self-employed seafarers, since self-employed persons are unlikely to remain with the same shipowner for any extended period of time. Neither of these provisions is explicitly required by the MLC.

In addition to amendments to the general duties regulations, the proposed Regulations would place a duty on shipowners to ensure that where any person took any measures for the protection of workers under other health and safety regulations (listed in annex 7 to this IA), that action should as far as is reasonable also be applied to other seafarers exposed to the same risk.

The duty of care owed by workers towards themselves and others is also extended to all seafarers.

The general duties regulations require that the employer must, so far as is reasonably practicable, ensure the health and safety of workers and others, and in doing so must apply the health and safety principles set out in the regulations, including risk assessment.

Self-employed persons are therefore already protected (as “other persons”) where there is an employer and workers on board a ship. In addition, there is other legislation already in force which further demonstrates that the proposed amendment will have little or no impact on most vessels.

#### *6.1.1.2 Merchant Ships*

There are 1,018 merchant ships on the UK register. 734 of these are 500GT and over and operating internationally. They are therefore subject to the International Safety Management Code (ISM), which requires the Company (in most cases, the same entity as the “shipowner” under the MLC) to assess the risks of all operations on board the ship, and to put in place measures to ensure these can be carried out with as little risk as possible to persons and the environment. Since the ISM Code requires the safety management system (SMS) to cover all operations on board, it must also cover all seafarers, including any self-employed persons working on board. The SMS is also intended to provide information to the crew and others about the procedures to be followed. The extension of the health and safety duties to the self-employed on such ships is therefore not expected to have any impact on such ships.

Some ships under 500GT or operating on domestic voyages only voluntarily comply with the ISM Code.

Taking together the existing duty to protect “others” under the current general duties regulations, and existing duties under the ISM Code, the extension of the health and safety duties to the self-employed on merchant ships is not expected to have any impact.

**Consultees are invited to submit any additional evidence on the impact of the extension of the health and safety general duties regulations to the self-employed on merchant shipping.**

#### *6.1.1.3 Small commercial vessels*

“Small commercial vessels” in this IA is used as a general term to cover all vessels under 24m operating commercially, carrying no more than 12 passengers and not carrying cargo. This includes charter yachts, passenger-carrying vessels, pilot boats, harbour launches, police boats and workboats. These vessels may operate under statutory Codes which provide an alternative standard to the full international standards for ships, more suited to small vessels. Code vessels are subject to regular inspection by certifying authorities, authorised and monitored by MCA for the purpose.

There are an estimated 5,500 commercially operated vessels with MCA certification according to the MCA Small Commercial Vessel database, at the end of January 2013. There is no accurate data available on the number of these vessels on which workers are employed, and the proportion operated by self-employed seafarers.

From its experience of implementing and maintaining the statutory Codes for small commercial vessels, MCA considers that the majority of self employed seafarers will operate small vessels undertaking a range of activities including angling and wildlife trips, dive boats, workboats, safety boats at construction sites etc. close to the UK coast. Where a self-employed person runs the vessel with employed crew, the duty of care towards “others” referred to above would apply, and no impact is expected. However, a small proportion of these vessels, mainly operating around the UK coast, may be operated by a single



owner-operator or by a partnership with no employed crew. The requirements of health and safety legislation would apply to them for the first time.

MCA has no data on the employment status of those operating small commercial vessels. However, based on MCA's experience of the small commercial vessel operations, it is assumed that the number of vessels operated by self-employed persons with no employed persons on board is between 10% and 25% (i.e. between 550 and 1,375 vessels) for the purposes of this IA. The reasons for this assumption are discussed below.

The MCA holds a database with details of each small commercial vessel, which includes the owners name, the type of vessel and the maximum number of persons to be carried. The data, which is provided by certifying authorities, is not entered in a consistent way, so extracting statistics is difficult. Nonetheless, the following observations have been made.

- For small commercial vessels, which may carry passengers, the number of persons cannot be used to estimate the number of crew. However, work boats cannot carry passengers, and therefore the number of persons is equivalent to the number of crew.
- Out of the 5,500 vessels holding current Code certification on 31 January 2013, more than 3,500 are owned by companies or by individuals with more than one vessel. It is assumed for the purposes of this IA that those working on these vessels are or include employees. The breakdown of the use of other vessels is more difficult to ascertain from the data, and so estimates are uncertain. However, a further 700 vessels appear to be yachts used for bareboat charter (i.e. there is no professional crew). This would leave an estimated 1,300 vessels which would be owned by individuals running their own businesses (assumed to be self-employed persons), and only a handful of these have crews of one or two, suggesting that even on these vessels, some crew are employed.

However, given the uncertainties surrounding this data, it is assumed that 10% to 25% of the 5,500 vessels holding current Code certification are vessels operated by self-employed persons with no employed persons on board in this IA.

For such seafarers, the amended regulations would require that a risk assessment is carried out, and measures taken for the protection of seafarers.

This is not expected to be an onerous task. The statutory Codes lay down extensive standards relating to the safety of the vessel itself and ensuring that adequate safety equipment is on board. There are also provisions for the protection of personnel. The greatest hazards of operating a small vessel are therefore already addressed through the Code standards. Because the crews on these vessels are very small, provisions relating to providing information to seafarers and allowing them to make representations about health and safety will not require new systems and so are not expected to incur any new costs. The only cost assessed therefore is the cost of carrying out the risk assessment.

**Consultees are invited to submit any additional evidence on the impact of the extension of the health and safety general duties regulations to the self-employed on small commercial vessels, including any evidence on the number of small commercial vessels that would be affected.**

#### *6.1.1.4 The cost of risk assessment:*

The HSE in a recent consultation on removing health and safety duties from the self-employed in low-risk businesses, estimated it takes about 15 minutes to conduct a risk assessment and minor costs for compliance with other health and safety duties<sup>2</sup>.

For comparison purposes, HSE's consultation document on the implementation of the EC Directive on legislation to implement the Physical Agents (Artificial Optical Radiation) Directive<sup>3</sup>, the estimated cost of reviewing a risk assessment was 0.5 to 2 hours. A risk assessment for exposure to Artificial Optical Radiation may include technical measurements and calculations of the exposure level possibly for a number of workers.

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<sup>2</sup> Source: HSE CD 242 <http://www.hse.gov.uk/consult/condocs/cd242.htm>

<sup>3</sup> Source: HSE CD 227 <http://www.hse.gov.uk/consult/condocs/cd227.htm>

While operating a small commercial vessel is not low risk, because of the risks inherent in operating a vessel at sea, and although the risks are more complex than the sort of office-based business envisaged for the HSE consultation on health and safety duties for self-employed persons, there is also a considerable amount of guidance available to the small boat operator about risks and mitigating measures. MCA do not expect the process to take longer than between one and two hours initially and considerably less than one hour for review in subsequent years.

Since a self-employed person is likely to carry out this process at times when the vessel is idle, rather than during time when they could be using the vessel to earn income, the opportunity costs for the self-employed person are uncertain. It is estimated that the mean gross hourly pay in the water transport sector was around £16.03 per hour in 2012<sup>4</sup>. This has been uplifted by 30% to account for overheads in line with the Standard Cost Model<sup>5</sup>. Therefore, for the purposes of this IA, the opportunity cost is assumed to be around £20.84 per hour in 2012 prices.

Estimates for the annual costs in the first year are given below.

	High Estimate	Low Estimate
Number of vessels applicable to	1,375	550
Hours required	2	1
Cost per hour	£20.84	£20.84
Total cost	£57,307	£11,461

Taking the midpoint of our range as the best estimate, the best estimate of the cost to business is around £34,384 in the first year. All estimates in £'s have been rounded to the nearest £1,000 on the 'Summary: Analysis & Evidence' sheet.

In subsequent years a conservative estimate of the hours required is 1 hour. Estimates for the yearly cost in subsequent years are given below

	High Estimate	Low Estimate
Number of vessels applicable to	1,375	550
Hours required	1	1
Cost per hour	£20.84	£20.84
Total cost	£28,655	£11,461

Taking the midpoint of our range as the best estimate, the best estimate of the cost to business is around £20,058 per year in the subsequent years.

**Consultees are invited to submit any additional evidence on the cost of carrying out a risk assessment on small vessels.**

***6.1.1.5 New duty of care on seafarers who are not employed***

The proposed Regulations extend the duty of care owed by workers to ensure the health and safety of themselves and others is extended to self-employed seafarers. This duty is not expected to impose any costs, since where self-employed seafarers are working alongside employed workers, the measures required to fulfil this duty will already apply through the employer or Company duty to ensure co-operation on board to protect workers; where they are working with other self-employed persons, the requirements already discussed above will ensure they meet this duty.

**Consultees are invited to submit any additional evidence on the impact of a new duty of care towards themselves and others, on seafarers who are not employed.**

<sup>4</sup> Office of National Statistics, Annual Survey of Hours and Earnings, 2012 Provisional results.  
<http://www.ons.gov.uk/ons/rel/ashe/annual-survey-of-hours-and-earnings/2012-provisional-results/index.html>

<sup>5</sup> Better Regulation Executive, Measuring Administrative Costs: UK Standard Cost Model Manual  
<http://www.berr.gov.uk/files/file44503.pdf>

## 6.1.2 The new requirement to report occupational diseases to the MCA

### *6.1.2.1 Costs to shipowners*

The duty to report occupational diseases exists in UK health and safety legislation ashore (the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations), but has not previously applied on board ships. HSE's regulations have not however been particularly successful in providing data to support decisions on preventative action by HSE because of the long latency periods for some occupational diseases, and because of suspected severe under-reporting. As a result of the Löfstedt Report<sup>6</sup>, HSE has recently consulted on a proposal (CD243) to remove the reporting requirement for cases of occupational disease, other than those resulting from a work-related exposure to a biological agent. HSE will use other sources of data for identifying trends in occupational diseases such as the Labour Force Survey (LFS) and other schemes for work-related illnesses (such as The Health Occupation Reporting network (THOR) in which medical professionals, both specialist hospital consultants and general practitioners with training in occupational medicine, report cases of specific types of disease and conditions they have diagnosed and/or treated). It is not clear how effective such sources will be for occupational diseases of seafarers, and this will be tested during the consultation exercise. However, our assumption is that, in order to ensure consistency between reporting for seafarers and for shore-based personnel, MCA would follow the same procedures.

MCA particularly considered the impact of this new requirement on ships which carry dangerous cargoes and which would potentially present a higher risk to seafarers of contracting related occupational diseases. Under the Safety of Life At Sea Convention 1974 (SOLAS), and related Codes, rigorous construction requirements and operational standards apply for ships carrying dangerous goods in bulk; and similarly rigorous requirements for the packaging, labelling, and stowage of packaged dangerous goods, all of which are designed to minimise the risk of exposure on board. The risk of seafarers being exposed to such cargoes is considered very low, to the extent that a statutory requirement for more frequent medical surveillance for seafarers working on such ships was revoked in 2002.

- SOLAS Regulation II-2/54.1 and II-2/19.1 - lays down the international requirements for ships carrying Dangerous Goods and deals with the Document of Compliance and the Class of Dangerous Goods that the vessel can carry. The UK implements these requirements in The Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995.
- All package dangerous cargo needs must be packed and shipped in accordance with the International Maritime Dangerous Goods (IMDG) Code, this lays down international requirements for the packaging of the products to reduce the likelihood of a leak. Also the goods should be secured in accordance with MSC/Circ.787 IMO/ILO/UN ECE Guidelines for Packing of Cargo Transport Units (CTUs).
- In addition to the packing requirements, there are also The EMS Guide "Emergency Response Procedures for Ships Carrying Dangerous Goods", which provides details to the Master of the ship on how to deal with an incident when carrying Dangerous Goods.

Under the current RIDDOR requirements, the number of such reports received by HSE and local authorities from shore-based industry each year is low (around 1,800 reports each year across GB<sup>7</sup> for a total working population of around 29.7 million<sup>8</sup>). The MCA does not have accurate figures for the number of people working on the UK fleet, but it is estimated that around 89,000 seafarers are working on UK registered ships (merchant ships)<sup>9</sup>. If it is assumed that the same ratio would apply to the UK shipping workforce, and that the UK shipping workforce is of the order of magnitude of 89,000, it is estimated that there could be around five additional reports per year from extending this requirement to UK ships. However, this estimate is subject to uncertainty (e.g. there is suspected under-reporting at present in HSE's figure for shore-based industry.).

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<sup>6</sup> Department for Work and Pensions, November 2011, <http://www.dwp.gov.uk/docs/lofstedt-report.pdf>

<sup>7</sup> Source: HSE CD 243 <http://www.hse.gov.uk/consult/condocs/cd243.htm>

<sup>8</sup> Source: Office of National Statistics, Labour Market Statistics, February 2013, [http://www.ons.gov.uk/ons/dcp171778\\_297429.pdf](http://www.ons.gov.uk/ons/dcp171778_297429.pdf)

<sup>9</sup> Source: Estimated using administrative data from the MCA Seafarer documentation system and from an industry survey undertaken by the Chamber of Shipping.

**Consultees are invited to submit any additional evidence of the incidence of reportable occupational diseases among seafarers.**

Shipowners would have to pass on those reports to MCA, which would incur some administrative costs. HSE estimated that a RIDDOR report takes 37.5 minutes of a manager's time<sup>10</sup>. Although this is based on electronic reporting through the HSE website, and the MCA system may initially require manual dispatch of the form, the time taken is not expected to be significantly different. Therefore, it is assumed that each report would take around 40 minutes. For the purposes of this IA, the opportunity cost of workers' time is assumed to be around £20.84 per hour in 2012 prices (see Section 6.1.1.4). Our estimate for the yearly cost to business is therefore:

5 reports x 40 minutes x £20.84 per hour = £69 per year.

In addition, the National Maritime Occupational Health and Safety Committee (which is made up of representatives of member companies of the UK Chamber of Shipping and the maritime unions), has confirmed that in their view reporting the disease is not expected to impose extra significant costs on shipowners. Despite this being a new requirement, there is general view that reputable shipowners already require as part of their own company policy to report any suspected incidence of occupational disease and carry out the investigations as part of their safety management systems and as a matter of good practice. Given the rarity of the cases, and the indication that industry has already partially adopted the practice of investigating occupational disease, this is unlikely to present significant extra costs to shipowners.

**Consultees are invited to submit any additional evidence on the cost of reporting occupational diseases among seafarers to MCA.**

#### *6.1.2.2 Costs to healthcare professionals*

MCA would adopt the same list of occupational diseases and the same reporting procedures as apply ashore, which are known and understood by healthcare professionals. Healthcare professionals notify employers where a disease which is identified as an occupational disease under RIDDOR can be linked to an individual's employment. We do not know whether such notifications are generated for seafarers, since there is currently no duty for the employer to report that notification to the authorities. But even if this is not the case, the small increase in the number of cases generated by extending the requirement to cover seafarers is unlikely to be statistically significant for healthcare professionals.

Were HSE's proposal to use alternative sources of data for the incidence of occupational diseases (outlined under 6.1.2.1 above) found suitable in the case of seafarers, this would remove the burden of reporting from shipowners to healthcare professionals, for whom the small increase in the number of cases is unlikely to be statistically significant. The MCA therefore does not expect there to be a significant cost to healthcare professionals.

There may be costs on health-care professionals outside the UK, who would be requested (but cannot be required) to report occupational diseases among non-UK nationals working on UK ships to UK shipowners, but these costs would not fall on UK businesses and are therefore outside the scope of this IA.

#### **6.1.3 Safety Committee required for 5 or more workers on board**

A minor amendment will be required to the MS and FV (Health and Safety at Work ) Regulations 1997 to amend the existing requirement for a safety committee to be established where there are more than 5 workers on board and a safety representative has been elected to 5 or more seafarers.

Under the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, safety representatives and safety committees have certain powers (and no duties). Safety representatives and safety committees may –

- (a) participate, subject to the concurrence of the safety officer, in any of the investigations or

<sup>10</sup> Source: HSE CD 243 <http://www.hse.gov.uk/consult/condocs/cd243.htm>

inspections carried out by the safety officer under regulation 16, or after notification to the master or his deputy, undertake similar investigations or inspections themselves, whether or not such investigations or inspections have already been carried out by the safety officer;

(b) make representations to the employer on potential hazards and dangerous occurrences at the workplace which affect, or could affect, workers on the ship;

(c) make representations to the master and the employer on general matters affecting the health and safety of workers on the ship and, in particular, on such matters as those on which the employer carries out consultation under regulation 20;

(d) request the safety officer to carry out any occupational health and safety inspection they consider necessary and to report the findings to them.

This change is assumed not to affect small commercial vessels since they will rarely have a crew of five or more.

The following ships would potentially be affected :

Group A : Ships with exactly 5 seafarers working on board;

Group B: Ships with more than 5 seafarers working on board, where seafarers have not previously elected safety representatives and therefore have not constituted a safety committee.

Group A, we have no reliable data. MCA holds a database of ships with safe manning documents, which shows that only 43 ships have exactly five crew. This is not reliable data as to the number of ships are affected by the proposal for the following reasons:

- 1) Only ships of 500GT or more require a safe manning document. This data does not therefore include ships under 500gt. There are 167 ships of 200GT – 500GT (ships under 200GT are not expected to have a crew of five).
- 2) Of the 43 ships, a large proportion are harbour tugs and may therefore operate a shore-based safety committee covering more than one vessel, instead of a safety committee on board. These harbour tugs would not therefore be affected by the proposal.
- 3) A number of the 43 ships have a safe manning level of 5 crew when they are operating in near coastal waters (which is a defined area around the coast of the UK and Ireland) but a higher level when they operate worldwide. Many of these are expected to have safety committees as a result.
- 4) The safe manning level is the statutory minimum number of crew with which the ship must operate, as agreed with the MCA. Many ships operate with additional crew on board – for example, the safe manning document does not include hotel staff on passenger ships.

However, on the basis of the above information and based on MCA knowledge, from regular inspections of ships' safety management systems, MCA would expect the number of ships with exactly five crew which do not already have a safety committee to support current health and safety duties, to be small.

For Group B, from regular inspections of safety management systems, MCA knows of about 40 ships with more than five crew which do not have safety committees on board, because the crew has not elected safety representatives. However, this knowledge may be incomplete.

To account for this uncertainty, we are therefore using a "high scenario" for the total of both groups of 100 ships and a "low scenario" for the total of both groups of 40 ships (which is the number of ships MCA is currently aware of falling into this group).

**Consultees are invited to submit any additional evidence of the number of ships which would be affected by this change.**

The cost of setting up and running a safety committee is also expected to be small, given that there are existing duties under the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, whether or not safety committees are constituted -

- for the employer, to consult workers on health and safety on board, the risks identified, the measures taken for their protection, and any changes to technology; and
- for the Company, to co-ordinate health and safety between employers on board.

There is considerable overlap between the duty to consult workers, and the role of a safety committee as set out in UK regulations. The UK Code of Safe Working Practices for Merchant Seamen, which is carried on all UK merchant ships, gives guidance on implementation of the regulations. The Code recommends that Safety Committee should meet every 4 to 6 weeks – i.e. between 9 and 13 times a year. MCA experience suggests that on average a safety committee meeting would last about 1.5 hours.

The Code advises that the minimum attendance for a Safety Committee is three people (master, safety officer and safety representative) but a more realistic average estimate is 5 people (master, safety officer and 3 representatives one each for officers, deck ratings and engineer ratings.)

Since staff will attend during working time for which they are already paid, this IA assesses the opportunity cost for affected members of the crew of the time to attend meetings. For the purposes of this IA, the opportunity cost of workers' time is assumed to be around £20.84 per hour in 2012 prices (see Section 6.1.1.4).

Our estimates for the yearly cost to business are therefore given below:

	High Estimate	Low Estimate
Seafarers involved	5	5
Wage per hour	£20.84	£20.84
Hours per meeting	1.5	1.5
Meetings per year	13	9
Number of ships applicable to	100	40
Total Cost	£203,180	£56,265

Taking the midpoint of our range as the best estimate, the best estimate of the yearly cost to business is around £129,723.

In addition, there would be an initial cost to set up the Committee and its procedures. Given the amount of guidance available in the Code of Safety Working Practices, this is not considered to be onerous. However, it is not possible to monetise these costs, which will vary depending on the type of ship, the seniority of those involved in the Committee, and how significant the changes are from the current arrangements for consultation of workers by the employer.

**Consultees are invited to submit any additional evidence of the additional costs of setting up and running a safety committee, in comparison with current procedures for dealing with health and safety issues on board, including consulting and informing crew about health and safety issues.**

#### **6.1.4 New statutory requirement for shipowners to refer to published statistics on health and safety when conducting health and safety risk assessments**

In the United Kingdom, the Marine Accident Investigation Branch publishes an annual report based on the reports they have received from UK ship and other ships in UK waters, under the Merchant Shipping (Accident Reporting and Investigation) Regulations. This includes summary statistics. Those relating to occupational accidents for merchant ships are presented on a single page. The cost to the shipowner of referring to this report, and assessing any trends which might affect the shipowner's own risk assessment is therefore considered to be no more than 30 minutes of the appropriate officer's time on average.

Although there is a significant difference in the complexity of a risk assessment for a large merchant ship and a small commercial vessel, the process of checking published information will not be significantly different.

For the purposes of this IA, the opportunity cost of workers' time is assumed to be around £20.84 per hour in 2012 prices (see Section 6.1.1.4).

The yearly cost to business is therefore conservatively estimated at:

1,020 merchant ships + 5,500 small commercial vessels x 30 minutes x £20.84 per hour = £67,935

The MCA will publish a Marine Guidance Notice to provide details of the information available, including the MAIB annual statistics. In wider (non-MLC-related) discussions with the National Maritime Occupational Health and Safety Committee, MCA has been asked to review the statistical information available to industry to make this more comprehensive and directly applicable. Any revisions to the data available would be reflected in updates to the MGN referred to above.

**Consultees are invited to submit any additional evidence of any additional cost of referring to their own and published health and safety statistics when conducting risk assessments.**

## **6.2 Familiarisation Costs**

In respect of the new requirement for reporting of occupational diseases, 75 of the 150 companies operating UK merchant ships do not have an office in the UK11 and so may be unfamiliar with HSE's RIDDOR procedures, and will need to familiarise themselves with the MCA requirements as a new requirement. MCA estimates this will take one hour of a middle manager's time to read the guidance issued and one hour to incorporate the requirement into company procedures. For the purposes of this IA, the opportunity cost of workers' time is assumed to be around £20.84 per hour in 2012 prices (see Section 6.1.1.4). Therefore, this one-off cost is estimated as follows.

75 companies x 2 hours x £20.84 per hour = £3,126 (one-off)

MCA will publish information about the proposed changes. The Agency has consulted widely with seafarer and shipowner representatives on the Tripartite Working Group on the MLC, the NMOHSC for the merchant fleet, and the Domestic Passenger Ship Steering Group, and there have been a number of events publicising the changes resulting from the MLC as a whole. These actions will minimise the other costs for shipowners, seafarers and the fishing industry of becoming familiar with the new requirements, which are considered to be too small to quantify for this element alone.

## **6.3 Costs to Non-UK ships**

After UK ratification of the MLC, the MCA would have the authority to enforce these minimum global standards for health and safety on non-UK registered vessels that call at UK ports under the no more favourable treatment clause. The costs associated with this are discussed in the impact assessment for the 'Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations'.

## **6.4 Costs to MCA**

### **6.4.1 Cost of processing reports of occupational diseases**

The cost to MCA of processing reports of occupational diseases is estimated to be comparable with HSE costs quoted in CD 243<sup>12</sup> which is about £11 per report – or £55 per year.

The cost to MCA of analysing and publishing the data, given the small number of reports expected, is expected to equate to an hour of the chief medical adviser's time which in the absence of any specific evidence and for illustration is assumed to be £50 and an hour of a middle manager's time at an hourly rate of £18.89<sup>13</sup>. The total estimated cost is therefore around £69 per year.

Therefore, the total cost of these two tasks is estimated at around £124 per year.

### **6.4.2 Cost of preparing Marine Guidance Note (MGN)**

MCA will also need to prepare a Marine Guidance Note (MGN) on health and safety statistics to support the shipowner's duty to consult published statistics. The cost of publishing an MGN is £52.40 and the cost of MCA's time in preparing it is estimated at 5 hours of a middle manager's time in the first year (around £94) and 3 hours per year thereafter (around £57). The total cost is therefore estimated at around £147 in the first year, and around £109 per year in subsequent years.

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<sup>11</sup> source: UKSR data

<sup>12</sup> <http://www.hse.gov.uk/consult/condocs/cd243.htm>

<sup>13</sup> This is the average pay costs per hour for the HEO Grade in 2012/13 prices. Pay costs taken into account in these estimates include wages, pensions and national insurance

## 6.5 Benefits

Extending the protection in the regulations to self-employed persons should help to ensure consistent standards of health and safety on board ships, regardless of the employment status of the seafarers.

Although the rate of health and safety accidents on UK ships is high compared to the rate of accidents in industry ashore, given the range of existing health and safety regulations applying to UK ships (see Annex 7), MCA does not consider that lack of regulation is the cause of this. The introduction of global minimum health and safety standards through the MLC may improve protection for UK seafarers serving on non-UK ships flagged with countries which have ratified the MLC. As a result of the “no more favourable treatment” clause in the MLC, which allows ratifying countries to apply MLC standards to the ships of non-ratifying countries calling at their ports, seafarers working on ships flagged with non-ratifying countries will also benefit.

Reporting of occupational diseases is intended to provide data to the competent authority to identify health problems arising from work on ships. This could potentially allow MCA to target guidance and consider possible amendments to regulation to address health risks. However, the expected low number of reports (based on HSE experience) means that this is only likely in isolated cases.

Amending the criteria for safety committees will close a loop-hole in the existing regulations which allows companies to decide not to constitute a safety committee where the crew does not elect a safety representative.

Although on UK ships the changes are considered minor, they are necessary in order for the UK to be in a position to ratify the MLC. Ratification will enable the MCA to inspect non-UK flagged vessels calling at UK ports against the minimum standards of the MLC on a “no more favourable treatment” basis. The benefits of the UK ratifying the MLC are considered in Annex 3.

**Consultees are invited to submit any additional evidence of the benefits of these proposals to UK shipowners and seafarers on UK ships.**

## 6.6 Overall costs and benefits of the proposal

Best estimates of the costs of the proposal are given below.

Cost	Imposed upon	Estimate
<u>6.1.1 Extending the H&amp;S regulations to the self employed</u>	Shipowners	£34,384 in the first year £20,058 for subsequent years
<u>6.1.2 The new requirement to report occupational diseases to the MCA</u>	Shipowners	£69 per year
<u>6.1.3 Safety Committee required for 5 or more workers on board</u>	Shipowners	£129,723 per year
<u>6.1.4 New statutory requirement for shipowners to refer to published statistics on health and safety when conducting health and safety risk assessment</u>	Shipowners	£67,935 per year
6.2 Familiarisation Costs	Shipowners	£3,126 (one-off)
<u>6.4.1 Cost to MCA of processing reports of occupational diseases</u>	MCA	£124 per year
<u>6.4.2 Cost to MCA of preparing Marine Guidance Note (MGN)</u>	MCA	£147 in the first year, and £109 in subsequent years

For the merchant fleet, this IA demonstrates that, assuming that all UK ships are complying with current requirements, the Best estimates of the costs arising from these proposals for UK shipowners or the MCA is around £235,508 in the first year, and around £218,018 in subsequent years.



The benefits on UK ships are also not expected to be significant. The regulations are however needed in order that the UK can ratify the MLC, and the MCA supported by its social partners, believe that the benefits of this to UK shipping (as explained in Section 3 and Annex 3) outweigh any costs arising from the individual requirements and justify the changes to these Regulations.

## **6.7 Benefits of UK Ratification of the MLC**

Section 3 and Annex 3 discuss the overall benefits of UK ratification of the MLC. The proposed Regulations will be necessary in order for these benefits to be realised. However, it is not possible to determine the precise contribution of the proposed Regulations to realising these benefits.

**Consultees are invited to submit any additional evidence of the benefits of UK Ratification of the MLC.**

## **6.8 Monitoring and Enforcement**

The requirements contained in the proposed Regulations would be monitored and enforced by the Maritime and Coastguard Agency in the UK, and other maritime safety administrations when UK ships visit ports in other countries, as part of their maritime labour inspections. The Survey and Certification costs apply across all requirements of the MLC and are investigated in the Impact Assessment for the 'Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations'.

## **7. RATIONALE AND EVIDENCE THAT JUSTIFY THE LEVEL OF ANALYSIS IN THIS IA**

The MLC was developed on a tripartite basis and is strongly supported by UK shipowner and seafarer representative organisations, which also support the ratification of the MLC. Discussions on the proposals for implementing the MLC provisions for health and safety at the MLC Tripartite Working Group and the National Maritime Occupational Health and Safety Committee have been non-controversial, with both sides of industry stating that they reflect current good practice. Further evidence on specific impacts will be sought through the consultation exercise. Further analysis of the impacts at this stage is not therefore considered necessary.

## **8. RISKS**

The proposed Regulations need to be implemented in order to allow the UK to ratify the Maritime Labour Convention, 2006. The risks of ratifying the Convention, and of not ratifying the Convention, are explored in Annex 3.

## **9. SPECIFIC IMPACT TESTS**

### **9.1. Statutory Equality Duties**

The proposed Regulations would be applicable to all seafarers working on UK sea-going vessels to which the Regulations apply, irrespective of their age, ethnic origin, gender, nationality, race, sexual orientation or disability. The Maritime Labour Convention, 2006 is based on the fundamental rights and principles of workers (Article III):

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

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

### **9.2 Competition Assessment**

The proposed Regulations would bring existing UK legislation into line with the requirements of the (MLC). The MLC aims to provide a benchmark for the decent employment of seafarers globally. A high threshold

was set for bringing the MLC into force internationally and this has been met, and it is expected that the MLC will be very widely implemented internationally.

By introducing a set of minimum standards that apply internationally, the MLC should promote a more level playing field internationally and reduce the ability of ship operators to gain a competitive advantage through poor treatment of seafarers.

It is likely that this would reduce the competitiveness of ship operators that are currently less compliant with the requirements of the MLC and improve the competitiveness of ship operators that are currently more compliant with the requirement of the MLC. The MLC is expected to bring competitive benefits to UK and other European flagged ships. However, the magnitude of this impact is uncertain.

By enabling the ratification of the MLC in the UK, it is possible that the proposed Regulations could have an impact on competition. The precise impact would depend on how the proposed Regulations affect relative costs.

Cost increases introduced through new Regulations that change costs of some suppliers relative to others have the potential to impact competition (for example) if they thereby limit the range of suppliers. However, industry sources have indicated an expectation that the proposed Regulations would not cause significant additional costs for UK flagged vessels.

Ratification of the convention will allow the MCA to issue MLC certification, which will ensure that UK flagged vessels are not subject to unnecessary delays when visiting ships in ports of ratifying states. This should ensure that UK flagged vessels do not suffer a competitive disadvantage as a result of the introduction of the MLC globally.

**Consultees are invited to offer any additional evidence on the potential for the proposed Regulations to impact on competition.**

### **9.3. Small Firms Impact Test**

It is appropriate that the working conditions for all seafarers should be underpinned by common minimum standards regardless of the size of the company for which they work. Any costs arising from these proposals will inevitably have the greatest impact on small firms with a small turnover. As the Convention sets minimum standards for “decent work”, it does not generally make concessions in those standards.

In the case of health and safety, existing legislation already applies to all ships where workers are employed, regardless of size and to all sizes of business. The current proposals broaden the scope of existing legislation to cover the self-employed.

The UK is making use of any flexibility in the MLC designed for smaller vessels or likely to apply to small companies. The MCA has discussed the implications of the MLC with the Domestic Passenger Ship Steering Group and representatives of the Small Commercial Vessel sector, who represent the majority of small firms operating vessels affected by the Regulations. A significant proportion of the ships referred to above actually operate on domestic voyages within 60 miles of a safe haven in the UK and will not therefore be covered by some aspects of the UK's implementation of the MLC. They will however be covered by the health and safety provisions since existing regulations apply to all ships regardless of size and where they operate.

During the public consultation exercise on the draft regulations, consultees will include micro, small, medium and large businesses, and in particular, a meeting is planned to discuss the implications of these proposals with operators of small commercial vessels.

**Consultees are invited to provide any additional evidence on the potential impacts of the proposed Regulations on small firms.**

### **9.4 Health Impact Assessment**

The objective of the Maritime Labour Convention is to provide all seafarers with decent employment by setting minimum global standards for living and working conditions, providing an effective regime to ensure that those standards are enforced, and a framework for continuous improvement.

Collecting data on occupational diseases for seafarers should enable MCA and others to identify any particular concerns in respect of health risks on board ships so that policies and guidance can be developed accordingly. However, the expected low number of reports (based on HSE experience)

means that this is only likely in isolated cases.

## **9.5 Human Rights**

The proposed regulations implement provisions of the International Labour Organization's Maritime Labour Convention, 2006 which requires respect for the following fundamental rights and principles of workers (Article III):

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

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

## **9.6 Justice System**

The main enforcement mechanism for these proposed Regulations will be through the inspection and certification of UK ships under the MLC by MCA surveyors. There are however also offences and penalties laid down in the existing Regulations amended by these proposals. In the current proposals those will remain unaltered. MCA will review these offences and penalties with the Ministry of Justice and HSE to ensure a consistent approach in all sets of regulations implementing the MLC, and as far as appropriate with similar offences and penalties in the equivalent legislation applying to shore-based workers.

## **10. REDUCING REGULATION POLICY**

### **10.1 Direct costs and benefits to business calculations (following OITO methodology)**

As these requirements are international in origin, and the proposals do not gold plate the requirement (i.e. not going beyond the minimum necessary), the measure is outside the scope of OITO.

### **10.2 Copy out**

In preparing the regulations, Government policy on "copy out" has been applied as a means of transposing international legal requirements wherever possible. However, the Convention was not always drafted in a manner which facilitates this approach, and further elaboration is required in some cases. Particular difficulties are:

- Requirements which are set by reference to existing "national laws, regulations and other measures", and
- Provisions which require the Member to determine a particular standard in consultation with shipowner and seafarer representative organisations.

In addition, where existing UK legislation is considered to meet Convention standards, changes to adopt the language of the Convention have not always been made to avoid costs to business from dealing with unnecessary changes.

### **10.3 Alternatives to regulations**

Introducing the requirements without recourse to legislation has been considered. However, as one of the key objectives is to enable the UK to ratify the MLC, UK legislation must be brought fully into line with the MLC, and the Convention explicitly requires ratifying States to take action to deliver the measures. Therefore no satisfactory alternative mechanism has been identified at this stage.

### **10.4 Review clauses**

The proposed Regulations include a clause which requires a Ministerial review five years after they are made, and every five years thereafter, in line with the "review policy" on introducing international obligations.

The basis of this review will be the “Article 22 report” required by the International Labour Organisation (ILO). Parties to the Maritime Labour Convention, 2006 will be required to submit a report to the ILO, under Article 22 of the ILO Constitution, providing evidence of effective implementation of the Convention. Preparing for this review will enable the UK to establish the effectiveness of the policy (enforcement action taken) and identify any necessary amendments to UK or to the Convention.

The review will examine UK MLC inspection reports and of any enforcement action taken under the regulations, and of the port state control record of UK ships in non-UK ports. In addition, complaints from seafarers on UK Ships to the UK as a flag state, and from seafarers in non-UK ships in UK ports, and the results of MCA investigations will be analysed.

A continuously reducing number of serious breaches and deficiencies in UK MLC inspections and Port State inspections, and complaints to MCA would demonstrate that the regulations were improving the standards on ships.

Successful resolution of complaints would also demonstrate that the regulations were having a positive impact.

## **11. SUMMARY AND PREFERRED OPTION**

The proposed Regulations will implement in legislation the minimum changes required to ensure that health and safety requirements for seafarers on UK ships comply fully with Regulation 4.3 and Standard A4.3 of the MLC. They will extend health and safety regulations to cover all seafarers, not just those who are employed. They will introduce a new duty to report occupational diseases to the MCA, and close a loop-hole in the criteria for setting up a safety committee. Shipowners will be required to refer to published health and safety statistics when undertaking their health and safety risk assessments.

Although these changes have relatively minor impacts on UK ships, they will contribute to allowing the UK to ratify the MLC, which in turn will enable the UK to enforce the same health and safety standards on all ships calling at UK ports, whether or not they fly the flag of a country which has ratified the MLC.

## **12. IMPLEMENTATION PLAN**

The proposed Regulations are part of a package of Regulations that are required to allow the UK to ratify the MLC. There are two criteria for the MLC to come into force internationally: ratification by flag states representing 33% of the world's tonnage; and ratification by 30 member states. Both criteria have already been met, and the MLC will come into force 12 months after both thresholds were passed, on 20 August 2013.

A Marine Guidance Note would be published to accompany the Regulations which would explain the provisions and give guidance on their practical interpretation. Information would also be available on the MCA website.

The primary enforcement mechanism for these regulations on UK ships would be through Flag State inspections for issue or renewal of a Maritime Labour Certificate. MCA surveyors would check the provisions for health and safety in the shipowners' declaration of maritime labour compliance (DMLC) Part II as part of the inspection of UK ships.

Furthermore, shipowners must have published procedures to deal with seafarers' complaints about their working and living conditions, including health and safety, and seafarers will also have the right to complain to an MCA surveyor in the UK or to any port state control officer in other countries, if they are not receiving their entitlements.

Both the inspection of the DMLC Part II and the requirement for a complaints procedure will be implemented in UK law by the draft 'Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations' and is therefore not assessed in this impact assessment. The consultation document and Impact Assessment on these regulations is being consulted on separately.

## References

No.	Legislation or publication
1	Maritime Labour Convention, 2006 <a href="http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_090250/lang--en/index.htm">http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_090250/lang--en/index.htm</a>
2	ILO (2001) The impact of seafarers' living and working conditions of changes in the structure of the shipping industry. Report JMC/29/2001/3 <a href="http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_PUBL_9221122379_EN/lang--en/index.htm">http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_PUBL_9221122379_EN/lang--en/index.htm</a>
3	European Commission (2006) Communication from the Commission under Article 138(2) of the EC Treaty on the strengthening of maritime labour standards. <a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0287:FIN:EN:PDF">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0287:FIN:EN:PDF</a> .
4	ILO (2012) Maritime Labour Convention, 2006: Frequently asked questions. <a href="http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_177371/lang--en/index.htm">http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_177371/lang--en/index.htm</a>
5	ILO (2011) Advantages of the Maritime Labour Convention, 2006. <a href="http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_153450/lang--en/index.htm">http://www.ilo.org/global/standards/maritime-labour-convention/WCMS_153450/lang--en/index.htm</a>
6	Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (S.I. 1997/2967) <a href="http://www.legislation.gov.uk/ukxi/1997/2962/contents/made">http://www.legislation.gov.uk/ukxi/1997/2962/contents/made</a>
7	Health and Safety Executive Consultation Document (CD 242) "Proposals to exempt from health and safety law those self-employed whose work activities pose no potential risk of harm to others" <a href="http://consultations.hse.gov.uk/qf2.ti/f/16802/442789.1/PDF/-/CD242%20Complete.pdf">http://consultations.hse.gov.uk/qf2.ti/f/16802/442789.1/PDF/-/CD242%20Complete.pdf</a>
8	The impact of the ISM Code on the Management of Occupational Health and Safety in the Maritime Industry – Syamantak Bhattacharya, Ph.D 2009 (published by SIRC) <a href="http://www.sirc.cf.ac.uk/Uploads/Thesis/Bhattacharya.pdf">http://www.sirc.cf.ac.uk/Uploads/Thesis/Bhattacharya.pdf</a>
9	Update of mortality for workers in the UK merchant shipping and fishing sectors – Report for the Maritime and Coastguard Agency and the Department for Transport July 2007 <a href="http://www.dft.gov.uk/mca/rp_578_final_report_revision_2-2.pdf">http://www.dft.gov.uk/mca/rp_578_final_report_revision_2-2.pdf</a>

Annexes 2 to 6 are provided under separate cover.

Annex 7 follows on below.

### **LIST OF H&S REGULATIONS (DUTIES ON EMPLOYERS)**

<b>Year</b>	<b>No.</b>	<b>Name</b>
1988	1637	<u>Merchant Shipping (Means of Access) Regulations</u>
1988	1638	<u>Merchant Shipping (Entry into Dangerous Spaces) Regulations</u>
1988	1641	<u>Merchant Shipping (Safe Movement on Board Ship) Regulations</u>
1988	2274	<u>Merchant Shipping (Safety at Work Regulations) (Non-UK Ships) Regulations</u>
1997	2962	<u>Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations</u>
1998	2411	<u>Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Employment of Young Persons) Regulations</u>
1998	2857	<u>Merchant Shipping and Fishing Vessels (Manual Handling Operations) Regulations</u>
1999	2205	<u>Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations</u>
2006	2183	<u>The Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</u>
2006	2184	<u>The Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006</u>
2001	3444	<u>The Merchant Shipping and Fishing Vessels (Safety Signs and Signals) Regulations 2001</u>
2007	3075	<u>The Merchant Shipping and Fishing Vessels (Control of Noise at Work) Regulations 2007</u>
2007	3077	<u>The Merchant Shipping and Fishing Vessels (Control of Vibration at Work) Regulations 2007</u>
2007	3100	<u>The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007</u>
2010	323	<u>The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Biological Agents) Regulations 2010</u>
2010	330	<u>The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Chemical Agents) Regulations 2010</u>
2010	332	<u>The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Work at Height) Regulations 2010</u>
2010	2984	<u>The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Asbestos) Regulations 2010</u>
2010	2987	<u>The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Artificial Optical Radiation) Regulations 2010</u>