

PART A

CHAPTER 28

MLC 2006

Introduction

A new ILO Consolidated Maritime Labour Convention (MLC 2006) was agreed in February 2006 and came into force internationally on 20 August 2013. The UK has ratified the Convention and also applied its standards from 15 August 2013. It incorporates and replaces about 65 existing maritime labour instruments and includes a strong enforcement regime, backed by a certification system.

28.1 Legal Requirements

28.1.1 The Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013 – SI 2013 No. 1785 - came into force on 15 August 2013.

28.1.2 The Regulations refer to Merchant Shipping Notice MSN 1848(M) for:

- (i) The format of the Maritime Labour Certificate, Interim Maritime Labour Certificate, and Declaration of Maritime Labour Compliance (DMLC) Part 1;
- (ii) Information about MLC survey and inspections;
- (iii) The standards against which MLC survey and inspection is to be carried out.

28.1.3 Furthermore, The Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014 – SI 2014 No. 1613 implements the various MLC Titles. MSN 1848(M) details the individual standards from the various titles of the MLC against which UK ships are to be assessed.

28.1.4 Note that MGN 470 (M) contains a list of ALL presently applicable SIs and MSNs, MGNs and MINs and cross references them to the MLC Titles.

28.2 Definitions

28.2.1 Reference should be made to the Convention, the Regulations (SI 2013 No. 1785, as amended), MSN 1848 and MGN 471.

28.3 Responsibility

28.3.1 MLC surveys are in general carried out by MCA surveyors on UK ships.

28.3.2 On occasions it may be necessary to appoint a surveyor from a Recognised Organisation (RO) on a case by case basis to undertake the interim survey and issue of an interim Maritime Labour Certificate to a ship flagging in or to approve crew accommodation arrangements for a new build. In these circumstances the normal procedure for issuing an Instrument of Appointment should be followed, by the HQ coordination team (see Part B Chapter 8 of these instructions and MCA 320).

28.3.3 If a vessel is positioned in an area of the world that an MCA surveyor cannot readily get to, due to travel restrictions, the MCA can also exercise the option of delegating a survey (other than an interim survey which is covered above) to an RO. This is however subject to an additional inspection by an MCA surveyor at the first available opportunity thereafter. Surveyors are required to get in touch with the Maritime Security and Safety Management Branch for issuance of the necessary Instrument of Appointment (IoA) to the RO surveyor.

28.3.4 Inspections on ships of less than 500GT to which the Convention applies (that have not requested a Maritime Labour Certificate) will be carried out by the relevant Small Commercial Vessel Certifying Authority in conjunction with the UK Small Commercial Vessel codes of practice survey regime. For ships to which the codes of practice do not apply, inspections will be undertaken by MCA.

28.3.5 Ships operating solely on domestic voyages and no more than 60 miles from a safe haven in the UK are not subject to regular MLC inspection.

28.4 Surveys Required

28.4.1 Regulation 5 of the MLC Regulations requires, for ships of 500GT and over:

- an **initial survey**, prior to first issue of a Maritime Labour Certificate;
- an **intermediate survey**, in the period between the anniversary dates of a Maritime Labour Certificate in its second and third years of validity; and,
- a **renewal survey**, within five years of the issue of a Maritime Labour Certificate;

28.4.2 Regulation 8 of the MLC Regulations allows for an **interim survey** under certain conditions for ships of 500GT and over, noting that two consecutive interim certificates cannot be issued.

28.4.3 MLC surveys should, as far as practicable, be conducted in conjunction with the audits required under the International Safety Management (ISM) Code in order to limit the number of ship visits required.

28.4.3 For ships under 500GT, certification is voluntary. Such ships issued with a Maritime Labour Certificate will have the survey regime in 28.4.1 applied. All other ships under 500GT to which the Convention applies will be inspected

twice in a five year period. Reference should be made to MSN 1848, MGN 490 and MGN 491.

28.5 Pre-Survey Actions

28.5.1 The following items may be checked prior to commencing the survey:

- SIAS
- MCA Survey Files
- Exemption Certificates
- New Legislative requirements
- Class Survey Status (via password protected websites)
- PSC Inspection history

Remarks from previous surveys and outstanding deficiencies must be resolved to the satisfaction of the surveyor before the issue of the Maritime Labour Certificate.

28.5.2 The surveyor/s should ensure that sufficient time will be available for the survey and should liaise with owners beforehand, noting that various options may be available such as submission of documentation in advance (for verification only on board), more time in port, sailing with the ship for suitable short voyages, providing more than one surveyor.

28.5.3 Where work is to be carried out on behalf of another administration a written request must be obtained from that administration requesting the MCA to carry out the work on their behalf. For REG ships fees are charged at the wider market rate (see Part C Ch2.3).

28.5.4 Surveys should only be commenced on receipt of a completed "Application for Survey" form (MSF 5100) and after sufficient fees have been received. Further guidance on fees is described in Part C, Chapter 2 of these instructions.

28.5.5 The relevant Business Support Unit administration team processes the application. CERS/SVD must be interrogated to ensure that the correct ship is on the system; if the vessel is not yet on the system (e.g. newbuild, flag-in), the Administrator (TST) should be contacted, who will check the details and arrange for the vessel to be added to the Single Vessel Database (SVD) if appropriate. A "Survey Works Order sheet" is produced which is then tracked for charter standard purposes. This is then passed to the Manager, or other person nominated by them, who then appoints the Lead Surveyor (LS) for the survey.

28.5.6 The DMLC - Pt II is completed by the shipowner and sets out the procedures and measures put in place to ensure compliance with the MLC, 2006. It is the starting point for all MLC surveys and the owner must submit a copy for review prior to a ship being inspected. In order to minimise the time

spent on board, it is advisable that a document review be undertaken prior to attending the ship by the attending surveyor.

28.5.7 Refer to 28.10.8 for guidance on dealing with complaints on UK ships and contact with the social partners.

28.6 Items to be Surveyed

28.6.1 The survey is to be carried out using the relevant instructions, guidance notes and HQ advice, which may be found on MLD/SCMS. Surveyors should be mindful of their own health and safety during surveys and take account of all guidance provided by MCA as well as their professional judgement in relation to the prevailing circumstances.

28.6.2 Surveyors should make use of the guidance contained in Chapter 3 of the MLC 2006 booklet “Guidelines for Flag State Inspections” when surveying the maritime labour requirements. The aide memoire MSF1719 should be used as a guide for this purpose.

28.6.3 The working and living conditions that **must** be inspected under the MLC,2006 are detailed in Appendix A5.1 on page 91 of the Convention. These are:

- Minimum age
- Medical certification
- Qualification of seafarers
- Seafarers’ employment agreements
- Use of any licensed or certified or regulated private recruitment and placement service
- Hours of work and rest
- Manning levels for the ship
- Accommodation
- On-board recreational facilities
- Food and catering
- Health and safety and accident prevention
- On board medical care
- On-board complaint procedures
- Payment of wages

28.7 Post Survey Actions

28.7.1 Deficiencies

28.7.1.1 The lead surveyor is responsible for recording and closing out any deficiencies found during the inspection/s in the SIAS database, in accordance with the requirements of Part C Ch 4 of these instructions. A Report of Inspection of Seafarers Working and Living Conditions (MSF1721) is to be completed at the time of the survey and left on board with the Master. An MLC

Inspection Report (MSF1722) should be completed as soon as practicable after the inspection and a copy forwarded to the Master.

28.7.1.2 When deficiencies have been rectified, the shipowner or the master should confirm this in writing to MCA, and a copy of this notification should also be attached to the ship's notice board, for the information of the crew. Following a suitable period of at least two weeks, the master may then remove the report from the notice board and retain the report with their official ships documents, so it is available for inspection at all times (The report must be retained on board for a period of at least three years).

28.7.1.3 In the event of a complaint triggered inspection this should be recorded on the **MCA copy only** and it **should not be left on board**. In these cases form MSF 2404 should also be completed and stapled to the **MCA copy**. The MSF 2404 data is kept separate from SIAS. A legible copy should be emailed to Technical Support Team (Ships).

28.7.2 Declaration and Certificates

28.7.2.1 The requirements for the issue of certificates, i.e. type, format, extension, cancellation, issuing authority etc., are in The Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013, as amended.

28.7.2.2 On completion of a survey, the lead surveyor prepares the certificate, following the guidance in Part C Chapter 3 of these instructions.

28.7.2.3 When satisfactory surveys have been completed every ship should be issued with a **Maritime Labour Certificate** (MSF 2403) valid for a period not exceeding 5 years from the date of expiry of the existing certificate. Alternatively, subject to the conditions in Regulation 8 of the MLC Regulations, an **interim Maritime Labour Certificate** (MSF 2402) may be issued valid until the expiry of the Safety Management Certificate or for a period not exceeding 6 months, whichever is sooner, noting that two consecutive interim certificates cannot be issued.

28.7.2.4 The expiry date and dates of intermediate verification of the Maritime Labour Certificate and Safety Management Certificate should be harmonised.

28.7.2.5 The date of initial/first registry is to be populated on the MLC certificate, which should be picked up from the Continuous Synopsis Record or from the Fleet Management system. This should be the date when the vessel was first registered on the UK flag.

28.7.2.6 In addition to the Maritime Labour Certificate, MSF 1721 and MSF 1722, the attending surveyor should forward two copies of the DMLC Pt I (MSF 2400) & Pt II (MSF 2401) to the shipowner. Following a satisfactory renewal survey, the DMLC Pt II should be endorsed.

28.7.2.7 The MLC Certificate is only valid when the DMLC is attached with its place and date of issue being recorded on the MLC Certificate. The date and place of issue are those recorded on the DMLC Pt I.

28.7.3 Review of Exemptions/Substantial equivalents

28.7.3.1 Applications for substantial equivalence should be forwarded to Maritime Security and Safety Management Branch for consideration. A list of the substantial equivalents available for ships is published in the MLC pages of the MCA website under Title 5.

28.7.3.2 Any exemption or equivalents must be reviewed to ensure they are still current and that the qualifying conditions are complied with. Guidance on exemptions and equivalents are described in Part B Chapter 4 of these instructions.

28.7.4 Documentation and Records

28.7.4.1 The table below describes the minimum documents to be completed and filed following an inspection.

Item	Record
Record on SIAS?	Yes MSF 1602/3
Place copy on registered file, CM xxxxx/27/11 Cross reference ISM (SMC) File	Yes Maritime Labour Certificate (MSF 2403) / interim Maritime Labour Certificate (MSF 2402) DMLC Pt I (MSF 2400) DMLC Pt II (MSF 2401) Statement / Power of attorney issued by MLC shipowner in respect of delegated authority MLC Inspection Plan (MSF 1720) MSF 2404 (if applicable) Report of Inspection of Seafarer Working and Living Conditions (MSF 1721) MLC Inspection Report (MSF 1722) MSF 1602/3 Aide memoire (MSF 1719) Crew list Crew Wages Letter Relevant test reports/ results, drawings and photographs Exemptions/substantial equivalents
Minute required on registered file?	Yes

28.8 Fees

28.8.1 Where relevant, the **Survey Works Order sheet** must be closed out and sent to the relevant Business Unit so that fee accounts may be balanced and relevant refunds made to the customer.

28.8.2 **Since 15 August 2013, MLC surveys have been a statutory requirement and thus should be charged at the rate of £94/hour (VAT is not applicable). For work undertaken on behalf of the Red Ensign Group, refer to Part C Chapter 2 of these instructions.**

28.9 Flow Chart

None.

28.10 Special Instructions and Guidance

28.10.1 The MCA will act as the UK central co-coordinating authority for the purposes of the MLC and in this respect may need to advise other public institutions or government departments when a complaint has been received or when an apparent breach of non - merchant shipping legislation is discovered. Responsibility for enforcement of non - merchant shipping legislation remains with the appropriate authority and MCA will only act as informant or in a liaison capacity.

28.10.2 While the majority of the obligations under the Convention are the responsibility of the MCA to enforce, some obligations such as access ashore in the UK or social security issues will fall in the **scope** of other government departments. Where cross - departmental enforcement of these obligations occurs MCA will look to identify this as a relevant issue at an early stage and seek to inform the appropriate authority accordingly.

28.10.3 Social Issues Arising

28.10.3.1 Seafarer employment agreements (SEAs)

(a) The Merchant Shipping (Maritime Labour Convention)(Seafarer Employment Agreement) Regulations 2013 require that unless specifically exempted, every seafarer on a UK registered sea-going ship shall be a party to a legally enforceable seafarer employment agreement (SEA) between themselves and the shipowner of the vessel on which they are serving.

(b) All seafarers are required to sign the list of crew. This should be available for inspection. **Note that it no longer** shows individual seafarers wages as this information is contained in the SEA **or, if applicable, Collective Bargaining Agreement (see 28.10.3.2).**

(c) MGN 477(M) sets out the basic requirements for SEAs for UK registered ships. When carrying out an MLC inspection the surveyor should ascertain whether a “sample” of the SEAs carried on board accord with the requirements set out in MGN 477 and UK merchant shipping law. Should any SEA be found to be non compliant, the matter should be referred to MCA HQ for further investigation.

28.10.3.2 Collective Bargaining and non- UK Crew Agreements

A Collective Bargaining Agreement between the shipowner and a union is not acceptable on its own as an SEA for seafarers working on UK ships, However provision is made for CBAs, “**by incorporation**”, to form part of an SEA for use on UK ships subject to it complying with UK law.

SEAs are required to be inspected as part of the flagging in process and this will include ensuring that such SEAs fully accord with UK requirements.

While it is recognised that some companies may be reluctant to publish wage scales as this could possibly lead to resentment among crew members, it is a requirement that **the amount of the seafarer’s wages or, where applicable, the formula used for calculating them,** are shown in the SEA and that this is made available to an MCA surveyor for inspection.

28.10.3.3 Explanation of “incorporation”

An SEA is a legally enforceable agreement between the seafarer and the shipowner, although there may also be an employer other than the shipowner who has an employment agreement with the individual, which forms the major part of that agreement. An SEA can “incorporate” or import the provisions of another document by referring to that document sufficiently for it to be identified and by stating that the provisions of that other document apply to that contract. This is essentially a legal drafting technique to avoid having to repeat clauses every time an agreement is made. However, it is open to abuse because it may allow an employer to hide unlawful or onerous clauses in a document which forms part of the agreement but which they refuse to produce. For example the SEA might state that the wage scales or an in-house code of conduct form part of the SEA. Legal advice is that we have the right to demand sight of access to any document which forms part of the SEA.

28.10.3.4 Evidence of parallel or conflicting terms

If the SEA **includes provisions on all the required items and** contains no wording to suggest that another agreement or document is incorporated into it, if the seafarers appear content and there are no signs of health and safety problems or serious hardship and the seafarers have no complaints then the surveyor need go no further. If on the other hand the seafarer does have a complaint or is unclear about their rights it may be necessary to seek evidence from the master or the shipowner’s copy of the applicable SEA. Without evidence the surveyor can do little.

If the surveyor notices that there appears to be another agreement in force to which the seafarers are subject but that no reference is made to that other agreement in the SEA, they may need to probe more deeply. Technically, such parallel documents do not form part of the seafarer employment agreement, but the seafarers may be treated as if they do. Such documents might be found as follows:

1. exhibited on a notice board or in a public space on board; or
2. amongst the ship's certificates.

If such a document seems to bear no relation to the SEAs on board, the master should explain what the document is and whether and how it relates to the SEAs. The surveyor should record this explanation. In such cases, if the document contains terms which conflict with the terms in the SEA (for example different pay rates) or terms which are unlawful (see below) a copy should be obtained to allow the surveyor to follow the matter up with the owner.

28.10.3.5 Reason for examining the whole document

The purpose of examining provisions in the SEA other than the minimum provisions **referred to** above is to ensure that they do not conflict with UK law or make it difficult or impossible for a seafarer to enforce their rights under their SEA. Examples include provisions which:

- restrict a seafarer's right to join a trade union;
- restrict a seafarer from making complaints to officials or national authorities about health safety and welfare;
- appear to impose a restriction on the right of a seafarer to take legal action against the owner or their employer. These might take the form of requiring the seafarer to take any legal action in a place with which the seafarer has no obvious connection so that to do so would be prohibitively expensive; or conflict with ILO conventions, STCW 78/95 or SOLAS.

Many provisions may be of marginal relevance, such as those dealing with health insurance and benefits provided by the employer. Guidance is given in **MGN 477** and could be drawn to their attention.

28.10.3.6 Action to take on finding breaches or illegal clauses

If the surveyor finds illegal clauses **these may be recorded** as deficiencies. If the seafarer has other issues relating to rates of wages (other than non-payment of National Minimum Wage – see below) or other conditions which do not involve a breach by the employer of criminal law, they should be advised that this is a civil matter and they may wish to contact a lawyer, trade union or citizens advice or similar and if employed overseas may have to take action through their own legal system.

In cases where Merchant Shipping regulations appear to have been breached or where health and safety are endangered, the surveyor should consider enforcement action.

28.10.3.7 Contracts of Employment / Manning Agencies

Evidence of these should be available at inspection. These can be different from different employers (manning agents).

Every seafarer must have a copy of any applicable disciplinary Code/procedures (which may differ between employers/manning agencies) and of the shipowner's complaints procedure, including information about how to make a complaint to the MCA or to their national authorities.

28.10.3.8 Terms and Conditions of Employment

MCA's role in inspecting SEAs is to ensure that seafarers are receiving their statutory entitlements under UK legislation implementing the MLC¹.

The Department for Business, Innovation and Skills (BIS) is the policy department responsible for terms and conditions for UK workers more generally. Their advice is however that they have no enforcement powers in relation to these rights. For any employment conditions exceeding the statutory requirements, which MCA can enforce, it is for the aggrieved individual to complain to an employment tribunal, where they have the right to do so, or to enforce their SEA through the courts. Within the EU, any worker has the right to enforce their employment contract through their national courts (i.e. in their country of residence). BIS cannot give advice on individual cases. The most they are likely to be able to do is to indicate whether a potentially relevant right exists and suggest that the worker in question contacts ACAS for advice. As with any other issue relating to an MLC breach, Maritime Security and Safety Management Branch will make the initial contact with the relevant OGD contact point.

28.10.4 *Wage Inspection*

28.10.4.1 Where there are no records of payment of crew wages, or there is evidence that seafarers have not been paid in accordance with their SEA's, this is a deficiency, against item 14 on Report of Inspection of Seafarer Working and Living Conditions (MSF 1721) and a note to that effect should be made in the "Remarks" box. A deficiency should not be recorded if the wage rate shown is less than say ITF rates. However a comment may be made in the "Remarks" box to record the fact. DfT Legal advice is that wage rates agreed are a matter between the seafarer and their employer. The presence of a Nautilus/ ITF agreement is not a mandatory requirement in UK legislation. The value at inspection is to ensure that seafarers are paid in accordance with their SEA, that they obtain an account of their wages (so that they can see that they have

¹ As explained in MGNs on SEAs, wages, hours of work (including annual leave), repatriation, social protection, medical care.

been paid the correct amount) and that no unauthorised deductions are made. Withholding part of wages for payment at the end of the contract is not permitted.

National Minimum Wage (NMW).

28.10.4.2 UK policy is that the amount of wages is a matter between the ship owner and employee, unless the National Minimum Wage applies.

28.10.4.3 Seafarers are covered by the minimum wage legislation (BIS) whilst employed to work on a United Kingdom registered ship working in the United Kingdom or its internal waters (i.e. estuaries and also the sea between the United Kingdom mainland and many islands). In addition, when working on board a ship registered in the United Kingdom, a seafarer must be paid at least the minimum wage (wherever in the world that ship may be) unless :-

- 1) all their work takes place outside the United Kingdom (and its internal waters) or;
- 2) they are not normally resident in the United Kingdom and the ship is outside the United Kingdom (and its internal waters).

28.10.4.4 When considering wage issues, check that the crew are paid according to their SEA.

28.10.4.5 If a crew complaint is received about the amount of wages in relation to the National Minimum Wage, surveyors do not have the legal competence to investigate, but should take note of the relevant details with the intention of passing the matter on to HM Revenue & Customs (who are responsible for enforcement on behalf of DTI).

Contacts and a check list for NMW purposes (produced by HMRC) is at Annex A. This should be followed when handling a complaint relating to application of the NMW.

EXAMPLE SITUATIONS FOR NATIONAL MINIMUM WAGE (UK Ships)

for illustration purposes only

Example Ship	Typical Trade Pattern	Time in UK 'Internal Waters'	NMW(UK Resident)	NMW (Non-UK Resident)
IoW Ferry	Southampton to Isle of Wight (internal waters)	100 %	Always applies	Always applies
Passenger Ferry	Dover – Calais, perhaps 4	25%	Always applies	Applies for 25% of wages

	calls to Dover per day			
Passenger Cruise Ship	World Cruising – regular caller UK	3%	Always applies	Applies for 3% of wages
Cargo Ship	World Trade – e.g. Japan - Australia	Nil	Does not apply (provided employment wholly outside UK)	Never applies
Offshore Supply Vessel	Aberdeen – Offshore Installation (UK Continental Shelf – but outside 'internal waters')	30%	Always applies	Applies for 30% of wages

There is no requirement for payment of a minimum wage for non-UK registered vessels.

28.10.5 Seafarers Personal Safety

If a seafarer does not have 6 months sea service prior to 1st August 1998, they are required to have undergone STCW personnel survival techniques. Additionally a seafarer undertaking safety or pollution prevention duties has to complete the relevant STCW safety course. This means that all seafarers, except very specific cases, mainly within the cruise industry, have to complete the four STCW basic safety courses.

28.10.6 Young Persons and Hours of Rest

The requirement for 2 days off in every 7 days derives from the MS and FV (Health and Safety at Work)(Employment of Young Persons) Regs 1998, as amended by the MS (Hours of Work) Regs 2002. Within the 1998 Regs there is scope (Reg 6(7) as amended) for young persons to work during the required two day rest period provided that the arrangements are covered by a "relevant agreement" (workforce or collective agreement or other agreement in writing which is legally enforceable); that there is compensatory rest, and that measures are taken to ensure there is no risk to health and safety. The requirement for two days off must be met, unless the conditions stipulated are met.

1. 28.10.7 Annual Report

UK's compliance with MLC 2006 requires the compiling of an Annual National Report. This is agreed internally and with the Social Partners and copied to Marine Offices for information.

28.10.8 Onboard complaints and social partners

28.10.8.1 Welfare issues may require contact with the unions/ ITF. If it is felt that an approach may be appropriate contact **Maritime Security and Safety Management** Branch.

28.10.8.2 Where a complaint arises on a UK ship, this should be notified to HQ who will take matters forward with other government departments (OGD), such as HMRC, as appropriate. In any event, in general it should be up to the complainant to inform their own union or organisation, not MCA. However, MCA will notify both unions and the Chamber of Shipping of serious issues in certain circumstances.

28.10.8.3 Complaint Confidentiality

28.10.8.3.1 The MLC points out the need to treat as confidential the source of any complaint. MGN 487 (M) confirms the need for strict confidence but qualifies this with the warning that efforts should be made to use the shipboard complaints procedure first (MSN 1849(M)). While MCA cannot give any guarantee, every effort should be made to preserve confidentiality. Allowing a seafarer to suffer detriment as a result of making a complaint is prohibited by the Regulations.

28.11 References

28.11.1 Further guidance can be found in:

- **SAN 18 "Maritime Labour Convention, 2006 Inspections" (to be incorporated into MLC Instructions to Surveyors in due course).**

ANNEX A

Checklist for NMW purposes

Regulation 38 of the National Minimum Wage Regulations 1999 states that “The employer of a worker who qualifies for the national minimum wage shall keep in respect of that worker records sufficient to establish that they are remunerating the worker at a rate at least equal to the national minimum wage.”

What information the Inland Revenue (IR) would like from MCA

In practice this means that adequate records for each worker should include as a minimum:

1. A record of time worked
2. A record of payments made before any deductions

Employers must keep records for at least three years from the end of the pay reference period to which the records relate (Regulation 38(7)). They are advised to keep records for six years, since that is the limitation period for a claim in civil proceedings.

The following information should be available for each worker or leaver:

1. Name
2. Address
3. Date of Birth

What the IR will investigate after MCA

When reviewing payroll records the following questions should be asked:

1. What is the rate of pay for each worker? (Regulations 8 & 9)
2. Are premium rates paid? (Regulation 31(1)(c))
3. How is it paid?
4. Are there any deductions at source other than income tax & NIC?

Deductions

Apart from the provision of accommodation and limited provisions under regulation 33, no deductions are allowable from the calculation of NMW unless the worker has a true choice. For example, a worker takes a meal in the staff canteen and asks the employer to deduct the cost from their wages, the rest of the week they choose to eat out and does not suffer any deduction. However, if the employer provides meals and charges the worker whether they eat them or not this would not be an allowable deduction in the calculation of NMW. (Regulation 9)

Accommodation

Does the employer provide any accommodation?

Does the employer charge for the accommodation? If yes, how much do they charge? The employer is entitled to take into account the accommodation offset up to the amount of rent charged. If no rent is charged the full amount of the offset can be taken into account. (Regulations 31(1)(i), 36A & 37).

The excess above the accommodation offset is not an allowable deduction for the calculation of NMW. Are there any additional accommodation charges, for example, for utilities? If yes, do these charges relate directly to the worker's consumption of the utility or is it a standard payment for all?

Administration

What is this for? If it is for the employer's benefit then it is not allowable (Regulation 32).

Charges

What are the charges for? Example - charges for paying by cheque, charges for paying in cash, charges for setting up a bank account, charges for administering PAYE. These charges could also be seen as being for the employer's benefit.

Insurance

What is this for? Is it voluntary? Is it for the employer's use or benefit?

Medical certificates

Medical certificates are often required for workers in the food industry and are therefore connected to their employment. They are not an allowable deduction. (Regulation 32).

Transport

Is this a voluntary charge?

Who is providing the transport? Do they hold a PSV licence? If not, they should not be charging for transport.

Uniform

Is there a deduction for uniform or overalls? This is not an allowable deduction for the calculation of NMW. However, if the worker fails to return the uniform then an amount could be deducted as a penalty. (Regulation 35)

Is it safety clothing, for example safety boots? This is not an allowable deduction for the calculation of NMW. (Regulation 32)

HMRC NMW Contact point

In view of the uniqueness of the issue HMRC advise that rather than go to the NMW helpline MCA seek advice from their Risk Team on 0191 22 55091 or 0191 22 56269

All case details to be sent to Head of Branch:

HMRC/NMW
Risk Team
Room P7201
Norham House
Benton Park View
Longbenton
Newcastle
NE98 1ZL

Author	S Ireland	Branch	Survey Operations
Approved by	S Roberts	Branch	Survey Operations
Authorised by	T Elder	Branch	Tech Performance