Table of Principle Consultation Comments. Proposed Changes to Legislation to Implement the 2014 Amendments to the Maritime Labour Convention into UK Law.

This table includes the principal comments raised by those responding to the public consultation exercise on UK implementation of the 2014 Amendments to the Maritime Labour Convention 2006 relating to the proposed new regulations. The consultation ran from 10 October 2016 to 5 December 2016. The MCA has refined the proposed implementing regulations in relation to these comments and after further discussions with industry and union stakeholders through the Tripartite Working Group (TWG).

	Comments				Comment
	International Group of P&I Clubs	UK CoS	Nautilus	RMT	MCA Initial Response
General Comments				On the first set of amendments, resulting from changes to the MLC made at the International Labour Organisation (ILO), we note that these changes tighten the rules around shipowner liability for meeting costs in the event of seafarer abandonment, repatriation, occupational injury or death. The enforcement of these new rules will also be added to the list of responsibilities for flag state inspectors checking international vessels for compliance with the MLC. As noted during the Tri-partite Working Group discussions of the ILO amendments, RMT accept these changes. However, we do not think it necessary or helpful for the Department for Transport or the MCA to state as a 'Viable Policy Option' in the 'Regulatory Triage Assessment' that:	Note acceptance of the implementation of the MLC (2014) amendments. The proposed regulations will fully implement the MLC (2014) amendments into UK law enabling the UK to remain fully compliant with the MLC. "Minimum standards" means that we have not imposed anything beyond the requirements of these amendments. It is government policy not to "gold-plate" international requirements in order to maintain a level playing field between UK ships and those on other registers. This is usually expressed as "doing the minimum required". It does not suggest that the international standards are in any way under-implemented.

				"For the MLC amendments, only one policy option is being developed: to do the minimum required to comply…"[1] The Government's policy option is unhelpful in promoting better employment and welfare standards for seafarers through the MLC. The lack of protection and enforcement of seafarers' rights, in the UK and internationally, is routinely exploited by ship owners seeking to register their vessels in jurisdictions subject to minimum regulatory standards. In other words, vessel registration decisions are too frequently made on the basis of where the lowest crewing costs will be encountered. This sets the needs of private ship owners against those of seafarers across the world and the job of government and regional regulators should be to mitigate the negative impact on seafarers and maritime skills. It is, therefore, highly inappropriate for the Government to talk of doing 'the minimum required' in a consultation about improving enforcement standards and the	

[1] Pg. 2 DfT Regulatory Triage Assessment of *Merchant Shipping (Maritime Labour Convention) (Amendment) Regulations 2016.*

				effectiveness of the MLC in protecting seafarers' rights.	
2(3)a			Should read para (1) or 1(A)		Noted
2(3)b			Is there any reason why costs incurred by the SOS under new sub paragraph (1B) are not included in new sub para (1A)?		If the costs under 1 or 1A are recoverable as a civil debt it will be via the Courts. The SOS will be able to recover his costs of bringing action under the usual mechanisms
53A	Insert the word "contractual" between 'assure' and 'compensation'. The reference to contractual claims is consistent with the Maritime Labour Convention. These Regulations should provide an accurate reference to the financial security requirement which arises in Regulation 4.2, Standard A4.2. An event which may give rise to a liability other than in accordance with this (MLC) Regulation and Standard is not covered by the requirement to provide security for injury, disability or death of a seafarer. 2. 53A (3) Delete the full stop and add "in accordance with the provisions of Regulation 2.5.2, Standard A2.5.2 and	Concerned that some of the MCA's proposals in respect of financial security will increase burdens on ship owners and insurers beyond what is required under the MLC Liability for claims in respect of death and personal injury, MLC Standards A4.2.1 para 8 refers to contractual claims but draft regulation 53A (3) widens the scope to include any compensation claim possibly arising from a claim in tort. This is beyond the scope of the provision required by the MLC. The only liability that the	(b)After "occupational injury" add "illness" to comply with words used in the ILO amendments. Shipowner's liability financial security. Nautilus agrees with the requirement being a "contract of insurance" (as stated) but disagrees with the other option "or other form of security". These latter words are too general and uncertain and may permit the shipowner to self-insure. Nnautilus requests that the only form of insurance is to be a "contract of insurance" Should "financial assurance instead read "financial assistance (as in reg 53B (2)		A4.2.1 "any claim which relates to death or long-term disability of seafarers due to an occupational injury, illness or hazard as set out in national law, the seafarer's employment agreement or collective agreement". Comments noted. *Contract of insurance or other form of security….* Is the language already used in the existing regulations It seems sensible to keep them the same.

	Regulation 4.2, Standard A4.2 of the Maritime Labour Convention. This amendment clarifies the root of the requirement which is to provide security in respect of the aforementioned MLC provisions. It is not a general requirement to provide security for liabilities that may arise outside of the scope of MLC Regulations 2.5 and 4.2. Consequently, the financial security certification is limited to liability that arises under these MLC provisions. There is no MLC obligation or requirement to provide security that goes beyond the scope of such provisions.	financial security needs to cover is set out in the SEA or CBA. Reg 53A (3) needs to be amended accordingly, as do 53B(2) and (3).			
53B 53B (2)	No comment on **[1?]** , providing 53A.(1)(b) and 53A.(3) are amended. This should follow Standard A.4.2.1 (b) and refer to "as set out in national law, the seafarer's employment agreement or collective agreement". The term "(including a liability under a seafarer employment agreement" does not restrict the scope to contractual compensation.		53B2 after "SEA", please insert "or collective bargaining agreement or any law" to comply with standard A4.2.2		Any relevant CBA forms part of the SEAs and so does not need to be included directly in this provision.

53C (2) 53C (3) 53C (4) 53C(4)(a) 53C(5) (a)	This assumes that the financial security provider sets the quantum payable to a seafarer. However, the security provider will pay following either a court judgment which is not subject to appeal or it complies with the seafarer's contractual entitlements or a binding settlement with the seafarer, but it is unlikely that the provider will determine the quantum to which a seafarer may be entitled. We are asked not to draft the Regulations but we suggest the wording could be clarified as follows "*once the compensation to be paid in respect of the claim has been established either by agreement or by a judgment which is not subject to appeal, the financial security provider must pay the full amount within [x] days"* It is in the interests of a security provider to make prompt full and final settlement of claims, and the clubs generally do so. However, the proposed 7 days' time limit is too restrictive. Making payment	53C and 53M require financial security providers to determine amounts to be paid to seafarers. A claim in respect of death or personal injury must then be settled within seven days, whilst an abandonment-related claim must be paid "promptly". If this is not complied with, the payment will be subject to 20% interest. None of this is required by the MLC. In many/most cases the compensation will be set out in the SEA or CBA. It will not be for the financial security provider to determine the amount. Where there is a determination to be made by the providers, the Chamber is concerned that imposing such requirements once a claim has been assessed will lead to	53C (5) (b)(ii) there needs to be some input from the claimant/beneficiary as to what the final claim may be worth. Request that after " as estimated by the financial security provider" insert "after consultation with the beneficiary, claimant or their representative"		Comments noted A.4.2.8 (a) The amendments provide that the compensation must be paid "without delay". We believe that implementation into UK law must include penalties to provide a sanction and an enforcement mechanism. The suggested method is of a type used elsewhere in legislation in respect of late payment of wages. Timespan for interim payment. Further discussions at resulted in agreement that where a shipowner's security provider determines that the conditions to make a payment are satisfied, payment must be made within 21 days of receipt of request from the seafarer

53C (5)(b) 53 C (6) 53 C(9)b	to a beneficiary or relatives of a beneficiary can be a complicated process. It is crucial that the club correctly identifies the beneficiary or beneficiaries who are actually entitled to receive payment. Establishing the beneficiary of a death claim in particular can result in considerable delay and legal dispute delaying payments. We have no objection to setting a time limit in the Regulations but it needs to reflect reality and we therefore suggest that a period of 21 days is more reasonable. You may find the interim report on the compensation of passengers under EU Regulation 329/2009 informative in this regard. We would be happy to elaborate on this orally. There is no corresponding provision in the MLC and we would ask MCA to justify the inclusion of what is in effect a penalistic rate of 20%. We therefore object to the inclusion of this provision which is misplaced in these Regulations. If MCA consider it necessary to regulate on this issue the	delays in the assessment and the payment of claims, as insurers will seek to minimise the risk of being required to make interest payments			

	wording of this clause should simply refer to the applicable rate determined by the UK courts. We have no objection to the interim payment provision which is consistent with Standard 4.2.8(c), but for the reasons previously given we would prefer the time period to be increased to 21 days. See previous comment on 53C (2) See previous comment on 53C (2)…determined by whom? Sufficient is subjective. We would prefer the amount to be a sum that is agreed between the claimant and the security provider. See previous comment on 53C 5(a) See previous comment on 53C (3). Between 'person and 'making' add "to whom or on whose behalf Regulation 4.2 of the MLC applies"				We think it is unnecessary to add a reference to Reg 4.2 at this point. We are making an amendment to existing regulations implementing the MLC into UK Law

53D	Insert the word "agreed" between 'of' and 'compensation'. We object to a disproportionately stringent penalty which should not be the subject of these Regulations. Delete the text in square brackets. MLC imposes a civil liability. It is not appropriate to criminalise this obligation. Further "undue pressure" is much too vague to form a basis for criminal penalty. What is meant by "undue pressure" and who defines it? MLC imposes a requirement that there is a certificate on board. It does not impose a duty on the financial security provider. There is no need to regulate the arrangements between the shipowner and the financial security provider. That is commercial matter. Further it is completely inappropriate to introduce criminalisation.				Comments noted "undue pressure' is a concept used elsewhere in legislation.
53E (1)	. The MLC imposes a duty to obtain a certificate of security on the shipowner not a duty on the security				Comments noted for further discussion. We feel it unlikely that a Financial provider would fail to provide a certificate. There is no penalty in latest draft of the

53E (3)	provider to issue a certificate and this provision should reflect that requirement. It should not introduce an obligation on a security provider to issue a certificate, at least not as currently drafted. We wonder how the UK will enforce a provision on a security provider incorporated, regulated or domiciled outside the UK e.g. one that is based in the US or Japan or any other jurisdiction? Delete for the reasons given above. If there is no Certificate on board the reason is almost certainly that the shipowner has not arranged financial security i.e there is no financial security provider.				regulations for failing to issue a certificate.
53F	Is "shipowner" given the broad meaning in the Maritime Labour Convention Article II 1 (j) or is this the narrower meaning given in the Merchant Shipping (Minimum Requirements for Seafarers etc.) Regulations 2014, Part 1, Interpretation? If the latter, MCA is aware that MLC financial security	It is unclear whether the Government has taken sufficient account of the fact that the "shipowner" named on certificates of financial security may not be the same entity as the MLC "shipowner" as named on the Maritime Labour Certificate. A			We agree that the definition of ship owner is a problematic area and following additional stakeholder discussions we have rephrased some provisions of the latest draft.

	certificates will be issued in the name of the ship's Registered Owner who will always fall under the MLC definition of shipowner. We have explained in previous correspondence that the person named on the financial security certificates may be different to the person named on the DMLC. It is crucially important that this distinction and clarification is made in these Regulations	mechanism will be required in order to ensure that shipowners avoid being issued with deficiencies through having different names on each certificate. The chamber has seen the response to the consultation from the International Group of P&I Clubs (IG) and fully subscribes to the views expressed therein.			
53G (1)	See comment on 53H below.				
53H (1) 53H (1) 53H (3)	The drafting of 53H(1) and 53G could be consolidated. As we are not encouraged to provide drafting suggestions, we would merely comment that the drafting in 53 G and H could be clarified. In accordance with clause 53G the valid termination of the financial security will only be effective if at least 30 days' prior notice is given to the Secretary of State. However, Clause 53H (3) states that failure to give notice within the period of 30 days beginning with the security terminating is an		Allowing 30 days for the financial security provider to give 30 days' notice of termination to the SoS seems excessive considering that their time starts to run after the security has terminated(which is itself effective subject to a 30 day notice period). Seven days should be sufficient.		Noted. This sets out the MLC requirement for a Provider to give 30 days' notice to the SoS before a policy can be terminated before the end of the end of the period of validity. This requirement to notify alerts the flag state to the possibility that a ship will not have the required cover after the 30 days and prevents ships continuing to sail with void certificates without the flag state being aware. Noted that cover cannot cease until the SoS has been notified by the FSP and therefore the additional 30 days period is unnecessary. 53I (3) creates an offence.

	offence. Upon my reading, these two paragraphs appear to be slightly at odds to each other. Therefore, for example, a situation could arise where the financial security provider terminates a certificate on 1 April, but does not give notice to the Secretary of State until 15 April – during which time the insured will be on risk because notification or termination of cover has not been provided. Whilst under clause 53G there would be no offence, the certificate would only actually be effectively terminated on 15 May, NOT 30 April, as Clause 53G states that at least 30 days' prior notice must be given to the Secretary of State and the time would only begin running from the date of the notification There is no need for criminalisation. In many cases. the reason will be that the owner changes insurer. Is the intention that seafarers should be notified even if the certificate is to be replaced?				

	Is this wording intended to apply to a shipowner who has been informed that cover will be terminated by the security provider or is it intended to include a requirement on the shipowner to give advance notice to the Secretary of State when the owner terminates his cover or both?				
53I (1) 53I (2) (b)	Surely this should be a knowledge test "knows or should have known that..". The phrase "Becomes aware" is far too vague. And what if cover is terminated with one security provider for perfectly acceptable operational reasons and it is reinstated with another provider? Is this clause intended to cover only those circumstances where cover is terminated, not renewed or reinstated? In other words where the ship is uninsured for a Standard 4.2.1 para (b) risk If so the drafting needs to be much more precise and make correct reference to the applicable MLC Standard. How is this to be achieved in practice if the ship is at sea?	Reg 53I requires a ship owner to give notice in in writing to all seafarers working on board a ship when financial security is to be terminated MLC standard A4.2.1 para 9 requires SF to be notified but there is nothing to state that such notifications must be in writing. Does the Govt intend that each seafarer must be provided with an individually addressed letter, or does a notice on the noticeboard or message via a company intranet meet this requirement? Is notification necessary whenever a shipowner changes provider? The	The words" all seafarers who work on the ship during the remainder of the period of notice referred to in in reg 53G (1)". This will ensure that seafarers who join the ship subsequent to the shipowner becoming aware of the termination will also be informed of the same.		Comments noted We believe that notice should be given immediately in writing (including electronic means) This can be expanded in guidance and does not need to form part of the regulations. Changing provider is not termination. Notice needs to be given only if there is a break in policy "i.e. a period when the ship is not covered" Otherwise the new Certificate will replace the old and be displayed as per the regulations.

	A seafarer should be informed immediately if the shipowner has or is about to terminate cover so we would favour the inclusion of a specific time period of not more than 5 days from the point at which the owner terminates cover or cover is terminated by the security provider. But this should only apply where cover is not transferred from one security provider to another.	Chamber suggests not. Principle concern is that shipowner complies with the requirement for provision of FS.			
53J 53J (b)	For clarification we would like to see a reference to the correct MLC Standard. The MLC uses the word “nominated” and to the extent possible these Regulations should mirror the wording of the MLC.		Regarding the final words “shipowners liability financial security” has the same meaning given by regulation 53A(3). Nautilus questions whether these words are necessary as the words in regulation 53A suffice to provide the definition of “shipowners liability financial security”, and there is no need to refer back to them only a few regulations later in the same part.		Noted The abandonment amendments use the term nominated representative. “next of kin or representative or designated beneficiary” is used in the context of the shipowners’ liability. “Personal representative is a construction in UK law and is the person administering the deceased seafarer’s will We have redrafted to include a definition of personal representative at 2(2
53K			Agrees with the contract of insurance but disagrees with the other option “or any other form of security”		Noted but MLC provides for other forms of security.

53L 53L (5)(a) 53L(5)b)ii 53L(5)(v) 53L(5)(c)(iii) 53L(5)(d)	Standard A2.5.2.4 narrows the scope to “any abandoned seafarer **on** a ship flying the flag of the member”. It does not apply to seafarers who worked on the ship prior to its abandonment. The addition of “outstanding” would bring this closer to the MLC text Standard A2.5.2.9(b) Standard 2.5.2.9(c) refers to “clothing where necessary”. “suitable clothing” could mean anything; Bermuda shorts, flipflops and swimming trunks. It would be preferable to maintain the wording of the convention. It is there for a reason It is not clear why this clause is here? It goes beyond MLC, where there is no such requirement and it has very little meaning. What mischief is this supposed to prevent? This should be limited to “personal effects” as in Standard 2.5.2.10. Delete the word “all” which is unnecessary. The MLC refers to “reasonable costs	Reg 53L(5)(b) states that the financial security related to abandonment should cover “suitable clothing” and sufficient fuel to move the ship to a safe location in the event of danger to those on board” The MLC requires the coverage of essential items, including clothing “where necessary” and essential fuel “for survival on board”. The Chamber does not consider it acceptable for the Government to attempt to extend the scope of the provision beyond what was agreed at ILO	53L(2) after the first reference to “seafarer insert or his nominated representative” to comply with Standard A2.5.2para 8 after receive insert “expeditious” to comply with Standard A2.5.5 para 4 53L95)a after “agreement” insert “applicable collective bargaining agreement or any law”, to comply with Standard A2.5.2 para 9(a) 53L(5)(b) insert “accommodation” to comply with standard A2.5.2 para 9(c) 53L95)© after repatriation insert “which will normally be by air” 53L(7)(e) regarding “the seafarer dies” to do this goes further than the MLC amendments which do not include such a provision. Please remove this as the seafarer’s body would in the event of death still have to be repatriated, with eventual funeral fees and both these expenses should be		Comments noted however we believe the regulations reflect the items covered by abandonment security. Including fuel and suitable clothing The seafarer’s representative is not mentioned in this regulation because he is not entitled to receive assistance under A2.5.2.8 only to make a request for assistance on the seafarer’s behalf. We provide for expedited assistance with the substance of the provisions and believe that inserting the word is unnecessary. We suggest that guidance could be used to expand on the details of this provision.

	or charges arising from the abandonment”		covered by financial security.		
53 M (3) 53 M (4) 53 M (6)	See previous comments above. In addition, abandonment may occur in undeveloped jurisdictions where it may take time to arrange payments. Ships may be located off the coast with consequent transportation problems. See preceding comment on (3) above. See above	53C and 53M require financial security providers to determine amounts to be paid to seafarers. A claim in respect of death or personal injury must then be settled within seven days, whilst an abandonment-related claim must be paid “promptly”. If this is not complied with, the payment will be subject to 20% interest. None of this is required by the MLC. Regulation 53(M) states, in sub-paragraph 1, that it is for the financial security to decide whether a claim in respect of an alleged abandonment is valid. However, sub para 4 requires payment to be made before a decision as to the validity of the claim has been taken. This is not required by the MLC. Any claim for relief must be	53M(4) 10 days is excessive and is not prompt. The seafarers will often need immediate assistance. The abandonment security provider should be proactively involved in the process and chasing any information it requires to make a decision. Five days should be sufficient in all cases. 53M(5) After abandonment security provider” please insert 2(Taking into account all relevant circumstances and information” 53M(7) The sub-section is too wide and needs to be limited so that advance payments can only be deducted if the seafarer has or would otherwise, be paid more than he was entitled to. Nautilus suggests replacing the current wording with “Where appropriate, advance payments actually made		Assistance to be provided A2.5.2.8 “promptly” See comments from 53C and D above Comments on 53M(7) noted however, the purpose of this provision which is to prevent double entitlement.

		supported by justification of the entitlement. It would be entirely inconsistent with standard practise for any insure to make a payment in respect of a claim before it is satisfied that the claim is valid. The provision in sub para 8 is not satisfactory safeguard.	may be set0off against further payments, but only to the extent that the seafarer has or would recover more than he is entitled to under these Regulations” Insert (9) Any payment made to the seafarer under Part 10B of these regulations is without prejudice to any other legal rights of the seafarer.” To comply with Standard A2.5.2 para 14		
53 N	The Clause as drafted is not the same as the MLC provision in Standard 2.5.2.12 and as a consequence it is narrower. Is there a good reason for not simply copying the text of 2.5.2.12? The purpose of the subrogation provision in the MLC is that it confers a right on the security provider to stand in the seafarer’s shoes. The pecking order for claimants may be subject to the applicable law in the jurisdiction seized of the vessels arrest or where an action in court is pursued against the owner’s assets, but we cannot see any reason to deviate from the		Nautilus does not see any reason to absolve the shipowner from the liability, at least before the seafarer has been repaid the relevant costs or expenses by the abandonment security provider. If the clause is to remain, we suggest that the last words “limited to the amount of financial assistance provided” should be replaced by limited to the amount of the financial assistance available to the seafarer under the abandonment financial security “		Noted we have considered and redrafted.

	perfectly clear wording of the aforementioned standard.				
53O	37. See comment on 53E etc.				Noted
53R (1) 53R (2)	38. See above comments on the corresponding issue for Standard 4.2. financial security. 39 Ditto previous comments apply		Suggest that the words “all seafarers who work on the ship” should read “all seafarers who work on the ship during the remainder of the period of the notice referred to in regulation 53Q(1)”. This will ensure that seafarers who join the ship subsequent to the shipowner becoming aware of the termination will also be informed of the same.		Noted and redrafted
53S 53S (b)(iii) 53S (c)	This whole section is clearly set out in the MLC, as amended. It would be more helpful and provide greater clarity and consistency if the drafter of these Regulations transpose the relevant wording from Standard 2.5.2 Add “on board the ship” – see Standard 2.5.2.9 (c) 42. This is not what MLC provides. The MLC refers to “outstanding” wages and entitlements – see MLC Standard 2.5.2.9(a).	Chamber does not understand why Govt is proposing a different definition of “abandonment” from that agreed in the MLC. The definition proposed by MCA in reg 53S makes no reference to unilateral severance of ties. It appears to make it considerably easier for a seafarer to claim that they have been abandoned EG when a shipowner fails to provide “necessary	53(s) (c) delete “falls” and replace with “has otherwise unilaterally severed its ties with the seafarer including failure”, to comply with Standard A2.5.2 para 2 (c)		The relevant provision is A2.5.2.5, The definition of abandonment in the amendments refers to “failure to pay contractual wages for a period of at least two months” see A2.5.2.2(c) The provisions in the amendments as written are not suitable for direct transposition into UK Law

	…limited to a maximum of 4 months' or why not simply refer to the wording of the MLC?	medical care" What medical care is deemed to be necessary may be subjective matter and dependent on specialist medical examination. The chamber can see no reason to depart from the MLC definition and would like to see this replicated in the UK regulations.			
53T		Under the Government's proposals, shipowners, financial security providers and ship's Masters will face criminal liabilities for breaches of the proposed Regulations. This includes the requirement to carry a certificate of insurance on board. The MLC does not require the imposition of fines or penalties or custodial sentences. The chamber considers the provisions for criminal penalties to be unnecessary, disproportionate and			The terms of the MLC require Governments to adopt laws and regulations to implement the provisions of these amendments. We believe that these provisions are proportionate and in line with similar provisions existing in UK law to implement other parts of the MLC.

		un warranted criminalisation of seafarers, shipowners and insurers. The chamber is not aware whether fines will be imposed on UK ships calling at ports overseas.			