



## **Isle of Man Ship Registry**

### **Consultation Paper:**

## **Maritime Labour Convention 2006**

# **Title 1 –Minimum requirements for seafarers to work on a ship.**

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This consultation paper is part of a series setting out the Isle of Man Ship Registry's proposals for implementing the International Labour Organizations Maritime Labour Convention 2006 (MLC).

The Isle of Man has chosen to break the consultation into distinct and manageable parts and this paper deals with proposals for the implementation of Title 1 –Minimum requirements for seafarers to work on a ship. Consultation documents on the remaining Titles will follow as soon as they are prepared.

You are invited to examine these proposals and provide written feedback to the Isle of Man Ship Registry by 23<sup>rd</sup> September 2011. Feedback can be accepted by mail or email and should be sent to:

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A public summary of the responses received to the consultation will be made available to the public within 3 months of the closing date of the consultation.

## **Background to the Maritime Labour Convention:**

In 2006, the ILO adopted the Maritime Labour Convention (MLC) which consolidates and updates more than 65 international maritime labour instruments adopted over the last 80 years. For the first time, the Convention provides a global legal instrument for maritime labour standards for the world's ship owners, seafarers and maritime nations. The Convention sets out a wide range of rights relating to decent working conditions for seafarers and covers subjects including health, safety, minimum age, recruitment, hours of work and other vital issues affecting seafarers' lives.

The Convention is made up of 3 related parts, the Articles, the Regulations and the Code. The Articles and Regulations set out the core rights and principles, whilst the Code contains details for the implementation of the Regulations. The Code is made up of two parts, Part A mandatory standards and Part B non mandatory standards. The Regulations and the Code are organised into five titles:

Title 1: Minimum requirements for seafarers to work on a ship

Title 2: Conditions of employment

Title 3: Accommodation, recreational facilities, food and catering

Title 4: Health protection, medical care, welfare and social security protection

Title 5: Compliance and Enforcement

## **Application of MLC:**

MLC applies to any ship whether publically or privately owned, ordinarily engaged in commercial activities, except for:

- (a) Ships engaged in fishing or similar pursuits;
- (b) Ships of traditional build such as dhows and junks;
- (c) Warships or naval auxiliaries; or
- (d) Ships which navigate exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply.

MLC applies to all seafarers and this means any person who is employed or engaged or works in any capacity on board a ship.

The majority of MLC requirements place a responsibility on the shipowner for which Article 2(1)(j) of the Convention contains the following definition:

“shipowner” means the owner of a ship or any other organisation or person such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with the Maritime Labour Convention, regardless of whether any other organisation or persons fulfil certain of the duties or responsibilities on behalf of the owner.

### **Isle of Man Implementation of MLC:**

The Isle of Man government is committed to operating a high quality international registry and to providing an international framework in compliance with the applicable international maritime conventions established by IMO and ILO, whilst supporting best practice in the operation of registered vessels.

In preparation for ratification of the MLC, the Isle of Man Ship Registry is developing regulations which will provide the framework for Isle of Man registered vessels to which MLC applies (MLC ships) to achieve compliance.

The intent of Isle of Man MLC regulations is to give effect to the Maritime Labour Convention 2006:

- without any expansion of scope;

and to the greatest extent possible

- without any requirements additional to those of the convention; and
- to allow shipowners and seafarers to develop flexible approaches to compliance with required standards.

Accordingly, Isle of Man MLC regulations (and any related legislative amendments) will not affect requirements for ships to which MLC does not apply and these ships shall continue to be required to comply with existing regulations.

For ships to which MLC applies, existing regulations about similar matters will no longer apply.

## **Proposed Implementation of Title 1 –Minimum requirements for seafarers to work on a ship.**

MLC title 1 consists of 4 regulations and associated standards and guidelines.

Regulation 1.1 – Minimum age

Purpose: To ensure that no under-age persons work on a ship

Regulation 1.2 – Medical certificate

Purpose: To ensure that all seafarers are medically fit to perform their duties at sea

Regulation 1.3 – Training and qualifications

Purpose: To ensure that seafarers are trained or qualified to carry out their duties on board ship

Regulation 1.4 – Recruitment and placement

Purpose: To ensure that seafarers have access to an efficient and well-regulated seafarer recruitment and placement system.

It is proposed Isle of Man MLC regulations will implement Title 1 regulations and standards as set out in the table below. For ease of reference the complete MLC text for Title 1 regulations and standards is included in the table.

If there is no entry in the right hand column of the table then the Isle of Man regulations will implement MLC Title 1 as per the MLC text.

The Isle of Man Ship Registry has given appropriate consideration to all MLC guidelines for implementation of standards. Where the Isle of Man Ship Registry intends to follow the approach suggested by particular guidelines this will be noted in the following table, using the prefix (B). Where particular guidelines are not referenced below, it can be assumed that the Isle of Man Ship Registry is not adopting the approach suggested by the guideline.

The requirements in Regulation 1.4 will primarily affect recruitment and placement services that operate on the Isle of Man. The Isle of Man Ship Registry has held additional presentations of these requirements and consultations with appropriate stakeholders.

## 1.1 – Minimum age

Ref.	MLC text or title	Isle of Man proposal
R1.1.1	No person below the minimum age shall be employed or engaged or work on a ship.	
R1.1.2	The minimum age at the time of the initial entry into force of this Convention is 16 years.	
R1.1.3	A higher minimum age shall be required in the circumstances set out in the Code.	
A1.1.1	The employment, engagement or work on board a ship of any person under the age of 16 shall be prohibited.	
A1.1.2	Night work of seafarers under the age of 18 shall be prohibited. For the purposes of this Standard, "night" shall be defined in accordance with national law and practice. It shall cover a period of at least nine hours starting no later than midnight and ending no earlier than 5 a.m.	
A1.1.3	An exception to strict compliance with the night work restriction may be made by the competent authority when:	
A1.1.3a	the effective training of the seafarers concerned, in accordance with established programmes and schedules, would be impaired; or	Allowable exceptions will be training towards a first STCW qualification, primarily cadet training.
A1.1.3b	the specific nature of the duty or a recognized training programme requires that the seafarers covered by the exception perform duties at night and the authority determines, after consultation with the shipowners' and seafarers' organizations concerned, that the work will not be detrimental to their health or well-being.	This will be considered on a case-by-case basis for which a written submission must be made to the Ship Registry, which will consult and make a decision.
1.1.4	The employment, engagement or work of seafarers under the age of 18 shall be prohibited where the work is likely to jeopardize their health or safety. The types of such work shall be determined by national laws or regulations or by the competent authority, after consultation with the shipowners' and seafarers' organizations concerned, in accordance with relevant international standards.	<b>See annex I</b>
B 1.1.1	When regulating working and living conditions, Members should give special attention to the needs of young persons under the age of 18.	

## 1.2 Medical certificate

1.2.1	Seafarers shall not work on a ship unless they are certified as medically fit to perform their duties.	
1.2.2	Exceptions can only be permitted as prescribed in the Code.	
A1.2.1	The competent authority shall require that, prior to beginning work on a ship, seafarers hold a valid medical certificate attesting that they are medically fit to perform the duties they are to carry out at sea.	
A1.2.2	In order to ensure that medical certificates genuinely reflect seafarers' state of health, in light of the duties they are to perform, the competent authority shall, after consultation with the shipowners' and seafarers' organizations concerned, and giving due consideration to applicable international guidelines referred to in Part B of this Code, prescribe the nature of the medical examination and certificate.	Medical certificates must be: <ul style="list-style-type: none"> <li>* issued in accordance with the requirements of STCW; or</li> <li>* meet the substance of STCW requirements for seafarers not covered by STCW; or</li> <li>* issued in accordance with the ILO 73; or</li> <li>* issued in accordance with MLC 2006 and following the ILO/ WHO Guidelines for Conducting Pre-sea and Periodic Medical Fitness Examinations for Seafarers.</li> </ul>
A1.2.3	This Standard is without prejudice to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended ("STCW").  A medical certificate issued in accordance with the requirements of STCW shall be accepted by the competent authority, for the purpose of Regulation 1.2.  A medical certificate meeting the substance of those requirements, in the case of seafarers not covered by STCW, shall similarly be accepted.	
A1.2.4	The medical certificate shall be issued by a duly qualified medical practitioner or, in the case of a certificate solely concerning eyesight, by a person recognized by the competent authority as qualified to issue such a certificate. Practitioners must enjoy full professional independence in exercising their medical judgement in undertaking medical examination procedures.	

A1.2.5	Seafarers that have been refused a certificate or have had a limitation imposed on their ability to work, in particular with respect to time, field of work or trading area, shall be given the opportunity to have a further examination by another independent medical practitioner or by an independent medical referee.	
A1.2.6	Each medical certificate shall state in particular that:	
A1.2.6a	the hearing and sight of the seafarer concerned, and the colour vision in the case of a seafarer to be employed in capacities where fitness for the work to be performed is liable to be affected by defective colour vision, are all satisfactory; and	
A1.2.6b	the seafarer concerned is not suffering from any medical condition likely to be aggravated by service at sea or to render the seafarer unfit for such service or to endanger the health of other persons on board.	
A1.2.7	Unless a shorter period is required by reason of the specific duties to be performed by the seafarer concerned or is required under STCW:	
A1.2.7a	a medical certificate shall be valid for a maximum period of two years unless the seafarer is under the age of 18, in which case the maximum period of validity shall be one year;	
A1.2.7b	a certification of colour vision shall be valid for a maximum period of six years.	
A1.2.8	In urgent cases the competent authority may permit a seafarer to work without a valid medical certificate until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that:	
A1.2.8a	the period of such permission does not exceed three months; and	
A1.2.8b	the seafarer concerned is in possession of an expired medical certificate of recent date.	'Recent date' will be accepted as expired medical certificates where the period of expiry is less than 1 month.
A1.2.9	If the period of validity of a certificate expires in the course of a voyage, the certificate shall continue in force until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that the period shall not exceed three months.	

A1.2.10	The medical certificates for seafarers working on ships ordinarily engaged on international voyages must as a minimum be provided in English.	
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### 1.3 Training and qualifications

R1.3.1	Seafarers shall not work on a ship unless they are trained or certified as competent or otherwise qualified to perform their duties.	The Isle of Man does not intend to make new regulations to implement the requirements of 1.3. Other than minor amendments to some definitions, 1.3 can be implemented through existing IOM regulations. SD723/96 Merchant Shipping (Manning and Training Regulations 1996, SD 421/98 Merchant Shipping (ISM Code) Regulations 1998 and SI 1998 No. 2771 the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998 which applies LY2 and is applied to the Island by SD865/02.
R1.3.2	Seafarers shall not be permitted to work on a ship unless they have successfully completed training for personal safety on board ship.	
R1.3.3	Training and certification in accordance with the mandatory instruments adopted by the International Maritime Organization shall be considered as meeting the requirements of paragraphs 1 and 2 of this Regulation.	
R1.3.4	4. Any Member which, at the time of its ratification of this Convention, was bound by the Certification of Able Seamen Convention, 1946 (No. 74), shall continue to carry out the obligations under that Convention unless and until mandatory provisions covering its subject matter have been adopted by the International Maritime Organization and entered into force, or until five years have elapsed since the entry into force of this Convention in accordance with paragraph 3 of Article VIII, whichever date is earlier.	

### 1.4 Recruitment and placement

R1.4.1	All seafarers shall have access to an efficient, adequate and accountable system for finding employment on board ship without charge to the seafarer.	
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R1.4.2	Seafarer recruitment and placement services operating in a Member's territory shall conform to the standards set out in the Code.	
R1.4.3	Each Member shall require, in respect of seafarers who work on ships that fly its flag, that shipowners who use seafarer recruitment and placement services that are based in countries or territories in which this Convention does not apply, ensure that those services conform to the requirements set out in the Code.	
A1.4.1	Each Member that operates a public seafarer recruitment and placement service shall ensure that the service is operated in an orderly manner that protects and promotes seafarers' employment rights as provided in this Convention.	
A1.4.2	<p>Where a Member has private seafarer recruitment and placement services operating in its territory whose primary purpose is the recruitment and placement of seafarers or which recruit and place a significant number of seafarers, they shall be operated only in conformity with a standardized system of licensing or certification or other form of regulation.</p> <p>This system shall be established, modified or changed only after consultation with the shipowners' and seafarers' organizations concerned.</p> <p>In the event of doubt as to whether this Convention applies to a private recruitment and placement service, the question shall be determined by the competent authority in each Member after consultation with the shipowners' and seafarers' organizations concerned.</p> <p>Undue proliferation of private seafarer recruitment and placement services shall not be encouraged.</p>	<p>The Isle of Man will prohibit by regulation the operation of recruitment and placement agencies in the Isle of Man without a certificate issued by the Department. The Ship Registry will inspect seafarers' recruitment and placement agencies operating on the Isle of Man to verify compliance with MLC Title 1.4 requirements and issue certification to those who comply with the requirements of this Standard. For details of the proposed inspection and certification regime <b>see Annex II</b></p>

A1.4.3	The provisions of paragraph 2 of this Standard shall also apply – to the extent that they are determined by the competent authority, in consultation with the shipowners’ and seafarers’ organizations concerned, to be appropriate – in the context of recruitment and placement services operated by a seafarers’ organization in the territory of the Member for the supply of seafarers who are nationals of that Member to ships which fly its flag. The services covered by this paragraph are those fulfilling the following conditions:	There are no recruitment and placement services operated by seafarers’ organisations in the Isle of Man.
A1.4.3(a)	the recruitment and placement service is operated pursuant to a collective bargaining agreement between that organization and a shipowner;	
A1.4.3(b)	both the seafarers’ organization and the shipowner are based in the territory of the Member;	
A1.4.3c	The Member has national laws or regulations or a procedure to authorize or register the collective bargaining agreement permitting the operation of the recruitment and placement service; and	
A1.4.3d	the recruitment and placement service is operated in an orderly manner and measures are in place to protect and promote seafarers’ employment rights comparable to those provided in paragraph 5 of this Standard.	
A1.4.4	Nothing in this Standard or Regulation 1.4 shall be deemed to:	
A1.4.4a	prevent a Member from maintaining a free public seafarer recruitment and placement service for seafarers in the framework of a policy to meet the needs of seafarers and shipowners, whether the service forms part of or is coordinated with a public employment service for all workers and employers; or	
A1.4.4b	impose on a Member the obligation to establish a system for the operation of private seafarer recruitment or placement services in its territory.	
A1.4.5	A Member adopting a system referred to in paragraph 2 of this Standard shall, in its laws and regulations or other measures, at a minimum:	

A1.4.5a	prohibit seafarer recruitment and placement services from using means, mechanisms or lists intended to prevent or deter seafarers from gaining employment for which they are qualified;	
A1.4.5b	require that no fees or other charges for seafarer recruitment or placement or for providing employment to seafarers are borne directly or indirectly, in whole or in part, by the seafarer, other than the cost of the seafarer obtaining a national statutory medical certificate, the national seafarer's book and a passport or other similar personal travel documents, not including, however, the cost of visas, which shall be borne by the shipowner; and	
A1.4.5c	(c) ensure that seafarer recruitment and placement services operating in its territory:	
A1.4.5c(i)	maintain an up-to-date register of all seafarers recruited or placed through them, to be available for inspection by the competent authority;	
A1.4.5c(ii)	make sure that seafarers are informed of their rights and duties under their employment agreements prior to or in the process of engagement and that proper arrangements are made for seafarers to examine their employment agreements before and after they are signed and for them to receive a copy of the agreements;	
A1.4.5c (iii)	verify that seafarers recruited or placed by them are qualified and hold the documents necessary for the job concerned, and that the seafarers' employment agreements are in accordance with applicable laws and regulations and any collective bargaining agreement that forms part of the employment agreement;	
A1.4.5c (iv)	make sure, as far as practicable, that the shipowner has the means to protect seafarers from being stranded in a foreign port;	
A1.4.5c(v)	examine and respond to any complaint concerning their activities and advise the competent authority of any unresolved complaint;	

A1.4.5c (vi)	establish a system of protection, by way of insurance or an equivalent appropriate measure, to compensate seafarers for monetary loss that they may incur as a result of the failure of a recruitment and placement service or the relevant shipowner under the seafarers' employment agreement to meet its obligations to them.	
A1.4.6	The competent authority shall closely supervise and control all seafarer recruitment and placement services operating in the territory of the Member concerned. Any licences or certificates or similar authorizations for the operation of private services in the territory are granted or renewed only after verification that the seafarer recruitment and placement service concerned meets the requirements of national laws and regulations.	To introduce a inspection and certification regime for seafarer recruitment and placement services operating from the Isle of Man to verify compliance with A1.4.5. The inspection and certification regime will consist of:  1. After initial inspection the issue of a certificate valid for 5 years; 2. An annual inspection , 3 months either side of the anniversary date to verify continued compliance; and 3. Certificate renewal every 5 years within 3 months of the expiry date.  <b>See annex II</b> for details of how to get a Certificate of Compliance.
A1.4.7	The competent authority shall ensure that adequate machinery and procedures exist for the investigation, if necessary, of complaints concerning the activities of seafarer recruitment and placement services, involving, as appropriate, representatives of shipowners and seafarers.	<b>See annex III</b> for detail
A1.4.8	Each Member which has ratified this Convention shall, in so far as practicable, advise its nationals on the possible problems of signing on a ship that flies the flag of a State which has not ratified the Convention, until it is satisfied that standards equivalent to those fixed by this Convention are being applied. Measures taken to this effect by the Member that has ratified this Convention shall not be in contradiction with the principle of free movement of workers stipulated by the treaties to which the two States concerned may be parties.	

A1.4.9	Each Member which has ratified this Convention shall require that shipowners of ships that fly its flag, who use seafarer recruitment and placement services based in countries or territories in which this Convention does not apply, ensure, as far as practicable, that those services meet the requirements of this Standard.	
A1.4.10	Nothing in this Standard shall be understood as diminishing the obligations and responsibilities of shipowners or of a Member with respect to ships that fly its flag.	
B1.4.1(d)	determining, with due regard to the right to privacy and the need to protect confidentiality, the conditions under which seafarers' personal data may be processed by seafarer recruitment and placement services, including the collection, storage, combination and communication of such data to third parties;	
B1.4.2(c)	maintaining up-to-date lists of the ships for which the seafarer recruitment and placement services provide seafarers and ensuring that there is a means by which the services can be contacted in an emergency at all hours;	

## Questions for feedback

**Q1.** Can you foresee any problems complying with these provisions and if so are you able to prescribe a suitable alternative?

## **Annex 1**

### **1. Types of work which young persons are prohibited from carrying out**

1. Work which is objectively beyond their physical or psychological capacity;
2. Work involving harmful exposure to agents which are toxic, carcinogenic, cause heritable genetic damage, or harm to the unborn child or which in any other way chronically affect human health;
3. Work involving harmful exposure to radiation;
4. Work involving the risk of accidents which it may be assumed cannot be recognised or avoided by young persons owing to their insufficient attention to safety or lack of experience or training; or
5. Work in which there is a risk to health from extreme cold or heat, or noise, or vibration.

The only exception to this prohibition applies if the young person needs to carry out the work as an indispensable part of their established training programme and the work is carried out under the direct supervision of a competent person and that in such a case the duty shall be to ensure the health and safety of the young person when performing that activity.

Young persons are also prohibited from working at night except where the effective training of the young persons concerned, in accordance with established training programmes and schedules, would be impaired.

## **ANNEX II**

### **Requirements for Isle of Man recruitment and placement services under MLC.**

#### **General requirements**

1. For the purposes of Isle of Man R&P Regulations, a recruitment and placement (R&P) service is an R&P service operating on the Isle of Man whose primary purpose is the recruitment and placement of seafarers or which recruits and places a significant number of seafarers.
2. In the event of doubt as to whether Isle of Man R&P Regulations apply to a private recruitment and placement service, the Department will decide after consultation with shipowners and seafarers organisations.
3. Isle of Man R&P Regulations will require R&P services operating on the Isle of Man to comply with the requirements of MLC Title 1.4, to be subject to annual inspection by the Department and to have an MLC certificate of compliance issued by the Department.
4. The MLC certificate of compliance will be valid for 5 years but this will be subject to successful completion of an annual inspection of the R&P service by the Department following which the MLC certificate of compliance will be endorsed.
5. Operation of an R&P service without a MLC certificate of compliance issued by the Department will be an offence.
6. If a service provider is found to be carrying out a R&P service without a MLC certificate of compliance, the Department will issue a written notice of their failure to comply with MLC requirements and invite them to submit an application for inspection within 28 days.
7. The Department will produce a public list of R&P services issued with MLC certificate's of compliance.
8. If an Isle of Man ship is found to be using an Isle of Man R&P service that is not certified, the Department will notify the shipowner.
9. The Department will have a general complaints process for all complaints about MLC registered ships and their operation. As part of this process it is possible that a complaint will be received about an R&P service on the Isle of Man.
10. The Department will work with local R&P services to support their compliance and to help them respond effectively to any complaints or identified issues.

## **Existing R&P services**

11. R&P services operating prior to commencement of the R&P regulations, will have six months to achieve certification from the date the R&P regulations come into force.

## **How to get an MLC certificate of compliance**

12. On application the Department will send an inspector (a surveyor from the Ship Registry) who will assess the R&P service for compliance with Isle of Man R&P Regulations.
13. After inspection the department will provide a written assessment of compliance to the R&P service and issue a MLC certificate of compliance, if appropriate.
14. If, following an inspection, a certificate of compliance is not issued, the R&P service will be provided with a statement of reasons why and given 28 days to request another inspection or agree an action plan for compliance.
15. There will be a 28 day period for the R&P service to request an internal review of the decision not to issue a MLC certificate of compliance.
16. Applications for internal review of decisions related to issue of MLC certificates of compliance to R&P services will be accepted in writing and referred, for decision, to the Director of the Ship Registry.

### **ANNEX III**

#### **Complaints against the activities of a local R&P service under MLC.**

A1.4.5(c)(v). A5.1.5

1. For the purposes of this procedure an R&P service is an R&P service operating on the Isle of Man whose primary purpose is the recruitment and placement of seafarers or which recruits and places a significant number of seafarers.
2. The department will consider complaints, in writing from a seafarer, a seafarer's family, a shipowner or a seafarers organisations with regard to the activities of an Isle of Man R&P service.
3. Notification should include details of what has happened/ is happening and what aspects of the R&P services activities are considered to contravene MLC requirements/regulations.
4. The department will examine all complaints and determine whether or not an investigation is required.
5. If the department deems that no further investigation is required, the complainant will be provided with written notice of this decision including a statement of reasons.
6. If the department deems that the complaint warrants investigation the ship registry investigating officer (surveyor) will take whatever action is required to investigate the facts of the issue and advise the complainant and the R & P service of the outcome of the investigation.
7. If an R&P service is found to be non-compliant with MLC requirements then they shall be given a non compliance note using the inspection timescale of 3 months in which to amend/cease the activity.
8. Internal review. If a complainant or the R&P service how the complaint is about not satisfied with the department's decision in relation to a complaint they can submit in writing an application for internal review of the decision. The review will be referred, for decision, to the Director of the Ship Registry, or a person appointed by him.
9. The Director may take whatever action is necessary, including ordering another investigation into the facts of the issue.
10. Following any review the decision will be final.