

## **Department of Economic Development**

### **Isle of Man Ship Registry**

#### **Consultation Paper:**

## **Maritime Labour Convention 2006**

### **Title 5 – Compliance and Enforcement**

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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).

This paper documents proposals for implementation of the provisions of Title 5 – Compliance and Enforcement

You are invited to examine these proposals and provide written feedback to the Isle of Man Ship Registry by 12<sup>th</sup> August 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 (the 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 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, 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 general areas under 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 5 – Compliance and Enforcement:**

MLC title 5 consists of 3 regulations and associated standards and guidelines.

### Regulation 5.1 – Flag State Responsibilities

Purpose: To ensure that each member implements its responsibilities under this Convention with respect to ships that fly its flag.

### Regulation 5.2 – Port State Responsibilities

Purpose: To enable each member to implement its responsibilities under this Convention regarding international cooperation in the implementation and enforcement of the Convention standards on foreign ships.

### Regulation 5.3 – Labour Supplying Responsibilities

Purpose: To ensure that each member implements its responsibilities under this Convention as pertaining to seafarer recruitment and placement and the social protection of its seafarers.

It is proposed Isle of Man MLC regulations will implement Title 5 regulations and standards as set out in the table below. For ease of reference the complete MLC text for Title 5 regulations and standards is included in the table.

If there is no response or clarification in the right hand column of the table then the Isle of Man regulations will implement MLC Title 5 as per the MLC text. MLC Title 5 does not give much scope for interpretation by Members and therefore there is very little use of the right hand column to clarify any of the requirements of the regulations or standard.

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.

## 5.1 Compliance and Enforcement

### Regulation 5.1.1 – General principles

Ref	MLC text or title	Isle of Man response
R5.1.1.1	Each Member is responsible for ensuring implementation of its obligations under this Convention on ships that fly its flag.	
R5.1.1.2	Each Member shall establish an effective system for the inspection and certification of maritime labour conditions, in accordance with Regulations 5.1.3 and 5.1.4 ensuring that the working and living conditions for seafarers on ships that fly its flag meet, and continue to meet, the standards in this Convention.	
R5.1.1.3	In establishing an effective system for the inspection and certification of maritime labour conditions, a Member may, where appropriate, authorize public institutions or other organizations (including those of another Member, if the latter agrees) which it recognizes as competent and independent to carry out inspections or to issue certificates or to do both. In all cases, the Member shall remain fully responsible for the inspection and certification of the working and living conditions of the seafarers concerned on ships that fly its flag.	
R5.1.1.4	A maritime labour certificate, complemented by a declaration of maritime labour compliance, shall constitute prima facie evidence that the ship has been duly inspected by the Member whose flag it flies and that the requirements of this Convention relating to working and living conditions of the seafarers have been met to the extent so certified.	
R5.1.1.5	Information about the system referred to in paragraph 2 of this Regulation, including the method used for assessing its effectiveness, shall be included in the Member's reports to the International Labour Office pursuant to article 22 of the Constitution.	
A5.1.1.1	Each Member shall establish clear objectives and standards covering the administration of its inspection and certification systems, as well as adequate overall procedures for its assessment of the extent to which those objectives and standards are being attained.	
A5.1.1.2	Each Member shall require all ships that fly its flag to have a copy of this Convention available	

	on board.	
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### **Regulation 5.1.2 – Authorization of recognised organisations**

R5.1.2.1	The public institutions or other organizations referred to in paragraph 3 of Regulation 5.1.1 (“recognized organizations”) shall have been recognized by the competent authority as meeting the requirements in the Code regarding competency and independence. The inspection or certification functions which the recognized organizations may be authorized to carry out shall come within the scope of the activities that are expressly mentioned in the Code as being carried out by the competent authority or a recognized organization.	For information – It is the intention of the Isle of Man Ship Registry to carry out all MLC inspections and issue the certification. However, the ability to give authorisation on a case by case to the current recognised organisations will be permitted.
R5.1.2.2	The reports referred to in paragraph 5 of Regulation 5.1.1 shall contain information regarding any recognized organization, the extent of authorizations given and the arrangements made by the Member to ensure that the authorized activities are carried out completely and effectively.	
A5.1.2.1	For the purpose of recognition in accordance with paragraph 1 of Regulation 5.1.2, the competent authority shall review the competency and independence of the organization concerned and determine whether the organization has demonstrated, to the extent necessary for carrying out the activities covered by the authorization conferred on it, that the organization:	
A5.1.2.1 (a)	has the necessary expertise in the relevant aspects of this Convention and an appropriate knowledge of ship operations, including the minimum requirements for seafarers to work on a ship, conditions of employment, accommodation, recreational facilities, food and catering, accident prevention, health protection, medical care, welfare and social security protection;	
A5.1.2.1 (b)	has the ability to maintain and update the expertise of its personnel;	
A5.1.2.1 (c)	has the necessary knowledge of the requirements of this Convention as well as of applicable national laws and regulations and relevant international instruments; and	
A5.1.2.1 (d)	is of the appropriate size, structure, experience and capability commensurate with the type and degree of authorization.	
A5.1.2.2	Any authorizations granted with respect to inspections shall, as a minimum, empower the	

	recognized organization to require the rectification of deficiencies that it identifies in seafarers' working and living conditions and to carry out inspections in this regard at the request of a port State.	
A5.1.2.3	Each Member shall establish:	
A5.1.2.3 (a)	a system to ensure the adequacy of work performed by recognized organizations, which includes information on all applicable national laws and regulations and relevant international instruments; and	
A5.1.2.3 (b)	procedures for communication with and oversight of such organizations.	
A5.1.2.4	Each Member shall provide the International Labour Office with a current list of any recognized organizations authorized to act on its behalf and it shall keep this list up to date. The list shall specify the functions that the recognized organizations have been authorized to carry out. The Office shall make the list publicly available.	

### **Regulation 5.1.3 – Maritime Labour Certificate and declaration of maritime labour compliance**

R5.1.3.1	1. This Regulation applies to ships of:	
R5.1.3.1 (a)	500 gross tonnage or over, engaged in international voyages; and	
R5.1.3.1 (b)	500 gross tonnage or over, flying the flag of a Member and operating from a port, or between ports, in another country.	
	For the purpose of this Regulation, "international voyage" means a voyage from a country to a port outside such a country.	
R5.1.3.2	This Regulation also applies to any ship that flies the flag of a Member and is not covered by paragraph 1 of this Regulation, at the request of the shipowner to the Member concerned.	
R5.1.3.3	Each Member shall require ships that fly its flag to carry and maintain a maritime labour certificate certifying that the working and living conditions of seafarers on the ship, including measures for ongoing compliance to be included in the declaration of maritime labour compliance referred to in paragraph 4 of this Regulation, have been inspected and meet the requirements of national laws or regulations or other measures implementing this Convention.	
R5.1.3.4	Each Member shall require ships that fly its flag to carry and maintain a declaration of maritime labour compliance stating the national requirements implementing this Convention for the working and living conditions for seafarers and setting out the measures adopted by the shipowner to ensure compliance with the	

	requirements on the ship or ships concerned.	
R5.1.3.5	The maritime labour certificate and the declaration of maritime labour compliance shall conform to the model prescribed by the Code.	
R5.1.3.6	Where the competent authority of the Member or a recognized organization duly authorized for this purpose has ascertained through inspection that a ship that flies the Member's flag meets or continues to meet the standards of this Convention, it shall issue or renew a maritime labour certificate to that effect and maintain a publicly available record of that certificate.	
R5.1.3.7	Detailed requirements for the maritime labour certificate and the declaration of maritime labour compliance, including a list of the matters that must be inspected and approved, are set out in Part A of the Code.	
A5.1.3.1	The maritime labour certificate shall be issued to a ship by the competent authority, or by a recognized organization duly authorized for this purpose, for a period which shall not exceed five years. A list of matters that must be inspected and found to meet national laws and regulations or other measures implementing the requirements of this Convention regarding the working and living conditions of seafarers on ships before a maritime labour certificate can be issued is found in Appendix A5-I.	
A5.1.3.2	The validity of the maritime labour certificate shall be subject to an intermediate inspection by the competent authority, or by a recognized organization duly authorized for this purpose, to ensure continuing compliance with the national requirements implementing this Convention. If only one intermediate inspection is carried out and the period of validity of the certificate is five years, it shall take place between the second and third anniversary dates of the certificate. Anniversary date means the day and month of each year which will correspond to the date of expiry of the maritime labour certificate. The scope and depth of the intermediate inspection shall be equal to an inspection for renewal of the certificate. The certificate shall be endorsed following satisfactory intermediate inspection.	
A5.1.3.3	Notwithstanding paragraph 1 of this Standard, when the renewal inspection has been completed within three months before the expiry of the existing maritime labour certificate, the new maritime labour certificate shall be valid from the date of completion of the renewal inspection for a period not exceeding	

	five years from the date of expiry of the existing certificate.	
A5.1.3.4	When the renewal inspection is completed more than three months before the expiry date of the existing maritime labour certificate, the new maritime labour certificate shall be valid for a period not exceeding five years starting from the date of completion of the renewal inspection.	
A5.1.3.5	A maritime labour certificate may be issued on an interim basis:	
A5.1.3.5 (a)	to new ships on delivery;	
A5.1.3.5 (b)	when a ship changes flag; or	
A5.1.3.5 (c)	when a shipowner assumes responsibility for the operation of a ship which is new to that shipowner.	
A5.1.3.6	An interim maritime labour certificate may be issued for a period not exceeding six months by the competent authority or a recognized organization duly authorized for this purpose.	
A5.1.3.7	An interim maritime labour certificate may only be issued following verification that:	
A5.1.3.7 (a)	the ship has been inspected, as far as reasonable and practicable, for the matters listed in Appendix A5-I, taking into account verification of items under subparagraphs (b), (c) and (d) of this paragraph;	
A5.1.3.7 (b)	the shipowner has demonstrated to the competent authority or recognized organization that the ship has adequate procedures to comply with this Convention;	
A5.1.3.7 (c)	the master is familiar with the requirements of this Convention and the responsibilities for implementation; and	
A5.1.3.7 (d)	relevant information has been submitted to the competent authority or recognized organization to produce a declaration of maritime labour compliance.	
A5.1.3.8	A full inspection in accordance with paragraph 1 of this Standard shall be carried out prior to expiry of the interim certificate to enable issue of the full-term maritime labour certificate. No further interim certificate may be issued following the initial six months referred to in paragraph 6 of this Standard. A declaration of maritime labour compliance need not be issued for the period of validity of the interim certificate.	
A5.1.3.9	The maritime labour certificate, the interim maritime labour certificate and the declaration of maritime labour compliance shall be drawn	

	up in the form corresponding to the models given in Appendix A5-II.	
A5.1.3.10	The declaration of maritime labour compliance shall be attached to the maritime labour certificate. It shall have two parts:	
A5.1.3.10 (a)	Part I shall be drawn up by the competent authority which shall: (i) identify the list of matters to be inspected in accordance with paragraph 1 of this Standard; (ii) identify the national requirements embodying the relevant provisions of this Convention by providing a reference to the relevant national legal provisions as well as, to the extent necessary, concise information on the main content of the national requirements; (iii) refer to ship-type specific requirements under national legislation; (iv) record any substantially equivalent provisions adopted pursuant to paragraph 3 of Article VI; and (v) clearly indicate any exemption granted by the competent authority as provided in Title 3; and	
A5.1.3.10 (b)	(b) Part II shall be drawn up by the shipowner and shall identify the measures adopted to ensure ongoing compliance with the national requirements between inspections and the measures proposed to ensure that there is continuous improvement. The competent authority or recognized organization duly authorized for this purpose shall certify Part II and shall issue the declaration of maritime labour compliance.	
A5.1.3.11	11. The results of all subsequent inspections or other verifications carried out with respect to the ship concerned and any significant deficiencies found during any such verification shall be recorded, together with the date when the deficiencies were found to have been remedied. This record, accompanied by an English-language translation where it is not in English, shall, in accordance with national laws or regulations, be inscribed upon or appended to the declaration of maritime labour compliance or made available in some other way to seafarers, flag State inspectors, authorized officers in port States and shipowners' and seafarers' representatives.	
A5.1.3.12	12. A current valid maritime labour certificate and declaration of maritime labour compliance, accompanied by an English-language translation where it is not in English, shall be carried on the ship and a copy shall be posted in a	

	conspicuous place on board where it is available to the seafarers. A copy shall be made available in accordance with national laws and regulations, upon request, to seafarers, flag State inspectors, authorized officers in port States, and shipowners' and seafarers' representatives.	
A5.1.3.13	13. The requirement for an English-language translation in paragraphs 11 and 12 of this Standard does not apply in the case of a ship not engaged in an international voyage.	
A5.1.3.14	14. A certificate issued under paragraph 1 or 5 of this Standard shall cease to be valid in any of the following cases:	
A5.1.3.14 (a)	(a) if the relevant inspections are not completed within the periods specified under paragraph 2 of this Standard;	
A5.1.3.14 (b)	(b) if the certificate is not endorsed in accordance with paragraph 2 of this Standard;	
A5.1.3.14 (c)	(c) when a ship changes flag;	
A5.1.3.14 (d)	(d) when a shipowner ceases to assume the responsibility for the operation of a ship; and	
A5.1.3.14 (e)	(e) when substantial changes have been made to the structure or equipment covered in Title 3.	
A5.1.3.15	15. In the case referred to in paragraph 14(c), (d) or (e) of this Standard, a new certificate shall only be issued when the competent authority or recognized organization issuing the new certificate is fully satisfied that the ship is in compliance with the requirements of this Standard.	
A5.1.3.16	16. A maritime labour certificate shall be withdrawn by the competent authority or the recognized organization duly authorized for this purpose by the flag State, if there is evidence that the ship concerned does not comply with the requirements of this Convention and any required corrective action has not been taken.	
A5.1.3.17	17. When considering whether a maritime labour certificate should be withdrawn in accordance with paragraph 16 of this Standard, the competent authority or the recognized organization shall take into account the seriousness or the frequency of the deficiencies.	

#### **Regulation 5.1.4 – Inspection and enforcement**

R5.1.4.1	Each Member shall verify, through an effective and coordinated system of regular inspections, monitoring and other control measures that ships that fly its flag comply with the requirements of this Convention as implemented in national laws and regulations.	
R5.1.4.2	Detailed requirements regarding the inspection	

	and enforcement system referred to in paragraph 1 of this Regulation are set out in Part A of the Code	
A5.1.4.1	Each Member shall maintain a system of inspection of the conditions for seafarers on ships that fly its flag which shall include verification that the measures relating to working and living conditions as set out in the declaration of maritime labour compliance, where applicable, are being followed, and that the requirements of this Convention are met.	
A5.1.4.2	The competent authority shall appoint a sufficient number of qualified inspectors to fulfil its responsibilities under paragraph 1 of this Standard. Where recognized organizations have been authorized to carry out inspections, the Member shall require that personnel carrying out the inspection are qualified to undertake these duties and shall provide them with the necessary legal authority to perform their duties.	
A5.1.4.3	Adequate provision shall be made to ensure that the inspectors have the training, competence, terms of reference, powers, status and independence necessary or desirable so as to enable them to carry out the verification and ensure the compliance referred to in paragraph 1 of this Standard.	
A5.1.4.4	Inspections shall take place at the intervals required by Standard A5.1.3, where applicable. The interval shall in no case exceed three years.	
A5.1.4.5	If a Member receives a complaint which it does not consider manifestly unfounded or obtains evidence that a ship that flies its flag does not conform to the requirements of this Convention or that there are serious deficiencies in the implementation of the measures set out in the declaration of maritime labour compliance, the Member shall take the steps necessary to investigate the matter and ensure that action is taken to remedy any deficiencies found.	
A5.1.4.6	Adequate rules shall be provided and effectively enforced by each Member in order to guarantee that inspectors have the status and conditions of service to ensure that they are independent of changes of government and of improper external influences.	
A5.1.4.7	Inspectors, issued with clear guidelines as to the tasks to be performed and provided with proper credentials, shall be empowered:	
A5.1.4.7 (a)	to board a ship that flies the Member's flag;	

A5.1.4.7 (b)	to carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the standards are being strictly observed; and	
A5.1.4.7 (c)	to require that any deficiency is remedied and, where they have grounds to believe that deficiencies constitute a serious breach of the requirements of this Convention (including seafarers' rights), or represent a significant danger to seafarers' safety, health or security, to prohibit a ship from leaving port until necessary actions are taken.	
A5.1.4.8	Any action taken pursuant to paragraph 7(c) of this Standard shall be subject to any right of appeal to a judicial or administrative authority.	
A5.1.4.9	Inspectors shall have the discretion to give advice instead of instituting or recommending proceedings when there is no clear breach of the requirements of this Convention that endangers the safety, health or security of the seafarers concerned and where there is no prior history of similar breaches.	
A5.1.4.10	Inspectors shall treat as confidential the source of any grievance or complaint alleging a danger or deficiency in relation to seafarers' working and living conditions or a violation of laws and regulations and give no intimation to the shipowner, the shipowner's representative or the operator of the ship that an inspection was made as a consequence of such a grievance or complaint.	
A5.1.4.11	Inspectors shall not be entrusted with duties which might, because of their number or nature, interfere with effective inspection or prejudice in any way their authority or impartiality in their relations with shipowners, seafarers or other interested parties. In particular, inspectors shall:	
A5.1.4.11 (a)	be prohibited from having any direct or indirect interest in any operation which they are called upon to inspect; and	
A5.1.4.11 (b)	subject to appropriate sanctions or disciplinary measures, not reveal, even after leaving service, any commercial secrets or confidential working processes or information of a personal nature which may come to their knowledge in the course of their duties.	
A5.1.4.12	Inspectors shall submit a report of each inspection to the competent authority. One copy of the report in English or in the working language of the ship shall be furnished to the master of the ship and another copy shall be posted on the ship's notice board for the	

	information of the seafarers and, upon request, sent to their representatives.	
A5.1.4.13	The competent authority of each Member shall maintain records of inspections of the conditions for seafarers on ships that fly its flag. It shall publish an annual report on inspection activities within a reasonable time, not exceeding six months, after the end of the year.	
A5.1.4.14	In the case of an investigation pursuant to a major incident, the report shall be submitted to the competent authority as soon as practicable, but not later than one month following the conclusion of the investigation.	
A5.1.4.15	When an inspection is conducted or when measures are taken under this Standard, all reasonable efforts shall be made to avoid a ship being unreasonably detained or delayed.	
A5.1.4.16	Compensation shall be payable in accordance with national laws and regulations for any loss or damage suffered as a result of the wrongful exercise of the inspectors' powers. The burden of proof in each case shall be on the complainant.	
A5.1.4.17	Adequate penalties and other corrective measures for breaches of the requirements of this Convention (including seafarers' rights) and for obstructing inspectors in the performance of their duties shall be provided for and effectively enforced by each Member.	

### **Regulation 5.1.5 – On-board complaints procedure**

R5.1.5.1	Each Member shall require that ships that fly its flag have on-board procedures for the fair, effective and expeditious handling of seafarer complaints alleging breaches of the requirements of this Convention (including seafarers' rights).	Isle of Man Ship Registry will produce a recommended content for an onboard complaint procedure which if used will be deemed to comply with Isle of Man regulatory requirements. See Annex I
R5.1.5.2	Each Member shall prohibit and penalize any kind of victimization of a seafarer for filing a complaint.	
R5.1.5.3	The provisions in this Regulation and related sections of the Code are without prejudice to a seafarer's right to seek redress through whatever legal means the seafarer considers appropriate.	
A5.1.5.1	Without prejudice to any wider scope that may be given in national laws or regulations or collective agreements, the on-board procedures may be used by seafarers to lodge complaints relating to any matter that is alleged to constitute a breach of the requirements of this Convention (including seafarers' rights).	
A5.1.5.2	Each Member shall ensure that, in its laws or regulations, appropriate on board complaint	

	procedures are in place to meet the requirements of Regulation 5.1.5. Such procedures shall seek to resolve complaints at the lowest level possible. However, in all cases, seafarers shall have a right to complain directly to the master and, where they consider it necessary, to appropriate external authorities.	
A5.1.5.3	The on-board complaint procedures shall include the right of the seafarer to be accompanied or represented during the complaints procedure, as well as safeguards against the possibility of victimization of seafarers for filing complaints. The term "victimization" covers any adverse action taken by any person with respect to a seafarer for lodging a complaint which is not manifestly vexatious or maliciously made.	
A5.1.5.4	In addition to a copy of their seafarers' employment agreement, all seafarers shall be provided with a copy of the on-board complaint procedures applicable on the ship. This shall include contact information for the competent authority in the flag State and, where different, in the seafarers' country of residence, and the name of a person or persons on board the ship who can, on a confidential basis, provide seafarers with impartial advice on their complaint and otherwise assist them in following the complaint procedures available to them on board the ship.	
B5.1.5.1	1. Subject to any relevant provisions of an applicable collective agreement, the competent authority should, in close consultation with shipowners' and seafarers' organizations, develop a model for fair, expeditious and well-documented on-board complaint-handling procedures for all ships that fly the Member's flag. In developing these procedures the following matters should be considered:	

### **Regulation 5.1.6 – Marine Casualties**

R5.1.6.1	Each Member shall hold an official inquiry into any serious marine casualty, leading to injury or loss of life, that involves a ship that flies its flag. The final report of an inquiry shall normally be made public.	
R5.1.6.2	Members shall cooperate with each other to facilitate the investigation of serious marine casualties referred to in paragraph 1 of this Regulation	
A5.1.6.	No provision	

## Regulation 5.2 – Port State Responsibilities

### Regulation 5.2.1 – Inspections in port

R5.2.1.1	Every foreign ship calling, in the normal course of its business or for operational reasons, in the port of a Member may be the subject of inspection in accordance with paragraph 4 of Article V for the purpose of reviewing compliance with the requirements of this Convention (including seafarers' rights) relating to the working and living conditions of seafarers on the ship.	
R5.2.1.2	Each Member shall accept the maritime labour certificate and the declaration of maritime labour compliance required under Regulation 5.1.3 as prima facie evidence of compliance with the requirements of this Convention (including seafarers' rights). Accordingly, the inspection in its ports shall, except in the circumstances specified in the Code, be limited to a review of the certificate and declaration.	
R5.2.1.3	Inspections in a port shall be carried out by authorized officers in accordance with the provisions of the Code and other applicable international arrangements governing port State control inspections in the Member. Any such inspection shall be limited to verifying that the matter inspected is in conformity with the relevant requirements set out in the Articles and Regulations of this Convention and in Part A only of the Code.	In verifying the matters to be inspected the Isle of Man Ship Registry will use the ILO Guidelines for Port State Control inspections
R5.2.1.4	Inspections that may be carried out in accordance with this Regulation shall be based on an effective port State inspection and monitoring system to help ensure that the working and living conditions for seafarers on ships entering a port of the Member concerned meet the requirements of this Convention (including seafarers' rights).	
R5.2.1.5	Information about the system referred to in paragraph 4 of this Regulation, including the method used for assessing its effectiveness, shall be included in the Member's reports pursuant to article 22 of the Constitution.	
A5.2.1.1	Where an authorized officer, having come on board to carry out an inspection and requested, where applicable, the maritime labour certificate and the declaration of maritime labour compliance, finds that:	
A5.2.1.1 (a)	the required documents are not produced or maintained or are falsely maintained or that the documents produced do not contain the information required by this Convention or are otherwise invalid; or	

A5.2.1.1 (b)	there are clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of this Convention; or	
A5.2.1.1 (c)	there are reasonable grounds to believe that the ship has changed flag for the purpose of avoiding compliance with this Convention; or	
A5.2.1.1 (d)	there is a complaint alleging that specific working and living conditions on the ship do not conform to the requirements of this Convention;	
	a more detailed inspection may be carried out to ascertain the working and living conditions on board the ship. Such inspection shall in any case be carried out where the working and living conditions believed or alleged to be defective could constitute a clear hazard to the safety, health or security of seafarers or where the authorized officer has grounds to believe that any deficiencies constitute a serious breach of the requirements of this Convention (including seafarers' rights).	
A5.2.1.2	Where a more detailed inspection is carried out on a foreign ship in the port of a Member by authorized officers in the circumstances set out in subparagraph (a), (b) or (c) of paragraph 1 of this Standard, it shall in principle cover the matters listed in Appendix A5-III.	
A5.2.1.3	In the case of a complaint under paragraph 1(d) of this Standard, the inspection shall generally be limited to matters within the scope of the complaint, although a complaint, or its investigation, may provide clear grounds for a detailed inspection in accordance with paragraph 1(b) of this Standard. For the purpose of paragraph 1(d) of this Standard, "complaint" means information submitted by a seafarer, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the ship, including an interest in safety or health hazards to seafarers on board.	
A5.2.1.4	Where, following a more detailed inspection, the working and living conditions on the ship are found not to conform to the requirements of this Convention, the authorized officer shall forthwith bring the deficiencies to the attention of the master of the ship, with required deadlines for their rectification. In the event that such deficiencies are considered by the authorized officer to be significant, or if they relate to a complaint made in accordance with paragraph 3 of this Standard, the authorized officer shall bring the deficiencies to the attention of the appropriate seafarers' and	

	shipowners' organizations in the Member in which the inspection is carried out, and may:	
A5.2.1.4 (a)	notify a representative of the flag State;	
A5.2.1.4 (b)	provide the competent authorities of the next port of call with the relevant information.	
A5.2.1.5	The Member in which the inspection is carried out shall have the right to transmit a copy of the officer's report, which must be accompanied by any reply received from the competent authorities of the flag State within the prescribed deadline, to the Director-General of the International Labour Office with a view to such action as may be considered appropriate and expedient in order to ensure that a record is kept of such information and that it is brought to the attention of parties which might be interested in availing themselves of relevant recourse procedures.	
A5.2.1.6	Where, following a more detailed inspection by an authorized officer, the ship is found not to conform to the requirements of this Convention and:	
A5.2.1.6 (a)	the conditions on board are clearly hazardous to the safety, health or security of seafarers; or	
A5.2.1.6 (b)	the non-conformity constitutes a serious or repeated breach of the requirements of this Convention (including seafarers' rights);	
	the authorized officer shall take steps to ensure that the ship shall not proceed to sea until any non-conformities that fall within the scope of subparagraph (a) or (b) of this paragraph have been rectified, or until the authorized officer has accepted a plan of action to rectify such non-conformities and is satisfied that the plan will be implemented in an expeditious manner. If the ship is prevented from sailing, the authorized officer shall forthwith notify the flag State accordingly and invite a representative of the flag State to be present, if possible, requesting the flag State to reply within a prescribed deadline. The authorized officer shall also inform forthwith the appropriate shipowners' and seafarers' organizations in the port State in which the inspection was carried out.	
A5.2.1.7	Each Member shall ensure that its authorized officers are given guidance, of the kind indicated in Part B of the Code, as to the kinds of circumstances justifying detention of a ship under paragraph 6 of this Standard.	
A5.2.1.8	When implementing their responsibilities under this Standard, each Member shall make all possible efforts to avoid a ship being unduly detained or delayed. If a ship is found to be	

	unduly detained or delayed, compensation shall be paid for any loss or damage suffered. The burden of proof in each case shall be on the complainant.	
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**Regulation 5.2.2– Onshore seafarer complaint-handling procedures**

R5.2.2.1	Each Member shall ensure that seafarers on ships calling at a port in the Member’s territory who allege a breach of the requirements of this Convention (including seafarers’ rights) have the right to report such a complaint in order to facilitate a prompt and practical means of redress.	
A5.2.2.1	A complaint by a seafarer alleging a breach of the requirements of this Convention (including seafarers’ rights) may be reported to an authorized officer in the port at which the seafarer’s ship has called. In such cases, the authorized officer shall undertake an initial investigation.	
A5.2.2.2	Where appropriate, given the nature of the complaint, the initial investigation shall include consideration of whether the on-board complaint procedures provided under Regulation 5.1.5 have been explored. The authorized officer may also conduct a more detailed inspection in accordance with Standard A5.2.1.	
A5.2.2.3	The authorized officer shall, where appropriate, seek to promote a resolution of the complaint at the ship-board level.	
A5.2.2.4	In the event that the investigation or the inspection provided under this Standard reveals a non-conformity that falls within the scope of paragraph 6 of Standard A5.2.1, the provisions of that paragraph shall be applied.	
A5.2.2.5	Where the provisions of paragraph 4 of this Standard do not apply, and the complaint has not been resolved at the ship-board level, the authorized officer shall forthwith notify the flag State, seeking, within a prescribed deadline, advice and a corrective plan of action.	
A5.2.2.6	Where the complaint has not been resolved following action taken in accordance with paragraph 5 of this Standard, the port State shall transmit a copy of the authorized officer’s report to the Director-General. The report must be accompanied by any reply received within the prescribed deadline from the competent authority of the flag State. The appropriate shipowners’ and seafarers’ organizations in the port State shall be similarly informed. In addition, statistics and information regarding complaints that have been resolved shall be regularly submitted by the port State to the	

	Director-General. Both such submissions are provided in order that, on the basis of such action as may be considered appropriate and expedient, a record is kept of such information and is brought to the attention of parties, including shipowners' and seafarers' organizations, which might be interested in availing themselves of relevant recourse procedures.	
A5.2.2.7	Appropriate steps shall be taken to safeguard the confidentiality of complaints made by seafarers.	

### Regulation 5.3 – Labour supplying responsibilities

R5.3.1	Without prejudice to the principle of each Member's responsibility for the working and living conditions of seafarers on ships that fly its flag, the Member also has a responsibility to ensure the implementation of the requirements of this Convention regarding the recruitment and placement of seafarers as well as the social security protection of seafarers that are its nationals or are resident or are otherwise domiciled in its territory, to the extent that such responsibility is provided for in this Convention.	
R5.3.2	Detailed requirements for the implementation of paragraph 1 of this Regulation are found in the Code.	
R5.3.3	Each Member shall establish an effective inspection and monitoring system for enforcing its labour-supplying responsibilities under this Convention.	
R5.3.4	Information about the system referred to in paragraph 3 of this Regulation, including the method used for assessing its effectiveness, shall be included in the Member's reports pursuant to article 22 of the Constitution.	
A5.3.1	Each Member shall enforce the requirements of this Convention applicable to the operation and practice of seafarer recruitment and placement services established on its territory through a system of inspection and monitoring and legal proceedings for breaches of licensing and other operational requirements provided for in Standard A1.4.	The inspection and monitoring of seafarer recruitment and placement agencies on the Isle of Man will be in the Title 1 consultation paper.

## **Annex 1**

### **Recommended content for an On Board Complaints Procedure**

Any ship to which MLC applies must have an on-board procedure for the fair and effective handling of seafarer complaints alleging breaches of the requirements of MLC (including the seafarers' rights). This procedure shall be without prejudice to any wider scope that may be given in Isle of Man laws or regulations or any collective agreements.

If any seafarer on a ship registered in the Isle of Man to which MLC applies considers that they have a grievance that they believe is a breach of the requirements of MLC then they should have access to a procedure on board described in their SEA, or in the company procedures, that allows them to take the grievance to either the Head of Department or to the Master.

All seafarers shall be provided with a copy of the on-board complaint procedures applicable on the ship. This shall include contact information of the Isle of Man Ship Registry, and the name of a person or persons on board the ship who can, on a confidential basis, provide seafarers with impartial advice on their complaint and otherwise assist them in following the complaint procedures available to them on board the ship.

The on-board complaint procedures shall include the right of the seafarer to be accompanied or represented during the complaints procedure, as well as safeguards against the possibility of victimization of seafarers for filing complaints. The term "victimization" covers any adverse action taken by any person with respect to a seafarer for lodging a complaint which is not manifestly vexatious or maliciously made.

As a minimum the onboard complaints procedure should include the following;

- Complaints should be addressed to the head of the seafarers' department or to their superior officer.
- The head of department or superior officer should attempt to resolve the matter within a prescribed time limit.
- If the complaint cannot be resolved by either the head of department or the superior officer then the seafarer may refer the matter to the master who should personally handle the complaint.
- Seafarers should have the right at all times to be accompanied and to be represented by another seafarer of their choice.
- All complaints and associated discussions should be recorded and a copy provided to the seafarer.
- If a complaint cannot be resolved on board, the matter should be referred ashore to the shipowner who should be given an appropriate time limit for resolving the matter. If necessary consultation should be undertaken with the seafarer(s) concerned or their appointed representative.

- In all cases seafarers should have the right to lodge complaints directly with the master and/or the shipowner.

The seafarer must have the right to take the complaint directly to the Isle of Man Ship Registry. This can be done by letter, fax, or by email. All such complaints will be treated by the Ship Registry in confidence and will be given serious consideration by the Ship Registry. If appropriate a Surveyor will visit the ship to investigate the complaint. It is however essential that the person making any complaint is identified to the Ship Registry. The Ship Registry will not reveal the source of its information when investigating but will not deal with any anonymous complaints.