



Maritime Labour Convention, 2006: Definitions

Notice to all Shipowners, Masters, Seafarers, Recruitment and Placement Services,

This notice should be read with the UK regulations implementing the provisions of the Maritime Labour Convention ...

Summary

- The purpose of this Marine Guidance Notice is to explain the UK's understanding of key terms used in the Maritime Labour Convention, 2006 (MLC).
- The UK intends to implement the MLC fully and without departing from the intention of those who drafted the Convention.
- The terms covered are "seafarer", "ship" and "shipowner".

1. Introduction

1.1 In transposing the Maritime Labour Convention, 2006 (MLC) into UK law, it has been necessary to make some changes to the exact words used in the Convention text, in order to achieve the results intended by the Convention. This includes the wording used for some of the definitions – quoted from the Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013.

1.2 This has caused some confusion, with some readers believing that because the words have changed, the UK legislation must mean something different from the MLC. This is not the case. The MLC text had to be in a form that was agreeable to representatives from many countries and so was not written with the UK legal system in mind. It is therefore not always as clear or precise as UK law demands.

1.3 Any changes made to the wording of definitions from the MLC have been made in order to ensure that the UK legislation can be enforced as the drafters of the MLC intended.

2. "Seafarer"

2.1 The MLC says



"seafarer" means any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies. (Article II.1.(f))

"Except as expressly provided otherwise, this Convention applies to all seafarers." (Article II.2)

"In the event of doubt as to whether any categories of persons are to be regarded as seafarers for the purpose of this Convention, the question shall be determined by the competent authority in each Member after consultation with the shipowners' and seafarers' organizations concerned with this question." (Article II.3)

2.2 Resolution VII of the International Labour Conference at its 94th (Maritime) session in Geneva in February 2006, containing information on occupational groups, sets out the criteria which can be used to determine whether a particular individual on board a ship is a seafarer.

2.3 In the UK implementing legislation, the definition of seafarer is given as:
"seafarer" means any person, including a master, who is employed or engaged or works in any capacity on board a ship and whose normal place of work is on a ship.

There are three differences between this and the MLC definition:

(a) the words "including a master" are added for the avoidance of doubt. It might be considered, for example, that because the master is the representative of the shipowner, and the shipowner has primary responsibility for ensuring seafarers' rights under the Convention, the master does not need the protection of the Convention. However, it is clear that the master's own terms and conditions of work should be protected by the MLC, the same as any other person working on board the ship.

(b) the application provisions in each implementing instrument set out which ships the regulations apply to, so this does not normally need to be included in the definition of "seafarer".

(c) the words "whose normal place of work is on a ship" are added because this is a key determining criteria (taken from Resolution VII). It ensures that surveyors, pilots and visiting technical consultants are not caught by the definition, and also (to take an extreme case) that a passenger who happens to answer some business e-mails while on holiday on board (i.e. "works on a ship") cannot claim to be a seafarer.

2.4 Further explanation of the UK interpretation of "seafarer", including examples, is attached at Annex 1.

3. "ship"

3.1 The MLC says:

"ship" means a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply. (Article II.1(i))

"Except as expressly provided otherwise, this Convention applies to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities other than ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks. This Convention does not apply to warships and naval auxiliaries." (Article II.4)



“In the event of doubt as to whether this Convention applies to a ship or particular category of ships, the question shall be determined by the competent authority in each Member after consultation with the shipowners and seafarers organizations concerned.” (*Article II.5*)

3.2 In the UK implementing legislation,

“United Kingdom ship” means a ship which is

- (a) a United Kingdom ship within the meaning of section 85(2) of the Act [*this covers (broadly) all registered ships, and unregistered ships owned by a company based in the UK*]
- (b) a Government ship within the meaning of section 308(4) of the Act which is ordinarily engaged in commercial maritime operations, or
- (c) a hovercraft registered under the Hovercraft Act 1968”

3.3 In addition, the application provisions of each implementing instrument ensure that the Regulations do not apply to –

- (i) pleasure vessels (*which must not be used for any commercial purposes, which includes operating under charter – see the full definition in the Regulations*);
- (ii) fishing vessels (*there is a separate ILO Convention providing global standards for living and working conditions for fishermen*);
- (iii) ships of traditional build (*this means built using traditional construction techniques that were common when that style of vessel was first built. It does not mean a traditional style ship built using modern construction techniques. The purpose of this clause in the MLC is to preserve traditional ship building techniques*);
- (iv) warships or naval auxiliaries; and
- (v) vessels which are not ordinarily engaged in commercial activities.

3.4 Since many earlier regulations on seafarer living and working conditions applied to all sea-going ships, the UK is not disapplying most of the MLC standards to ships operating in “waters within, or closely adjacent to, sheltered waters or areas where port regulations apply”. However, the survey and inspection provisions of the MLC are not applied to such vessels and certain other standards, where inappropriate are not applied. See individual statutory instruments for detail of their application.

3.5 The UK interpretation of “ships operating exclusively in... waters within, or closely adjacent to, sheltered waters or areas where port regulations apply” is “ships operating from a UK port on domestic voyages no more than 60 miles from a safe haven in the UK”.

3.6 It has been possible to apply this generous interpretation largely because most of the MLC standards protecting seafarers on such vessels are already in place in UK legislation.

3.7 MODUs are generally considered to be “ships” for the purposes of the MLC. However, MCA will recognise HSE Offshore standards and the application of the UK employment law as equivalent to MLC standards. For the time being, MODUs without their own means of propulsion will not be subject to inspection or survey by the MCA. This will be reviewed in two years time. Further discussion of the MCA’s view on application of the MLC to MODUs, vessels without their own means of propulsion, and vessels which normally operate within the 60 mile limit when visiting a foreign port for refit or repair is at Annex 3.

4. “shipowner”

4.1 The MLC says:

“*shipowner*” means the owner of the ship or another organization 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 this



Convention, regardless of whether any other organization or persons fulfill certain of the duties or responsibilities on behalf of the shipowner. (*Article II(j)*)

4.2 The UK definition says:

“shipowner” means –

(a) in relation to a ship which has a valid Maritime Labour Certificate, the person identified as the shipowner on that Certificate;

(b) in relation to any other ship, the owner of the ship or, if different, any other organisation or person such as the manager, or the bareboat charterer, that has assumed the responsibility for the operation of the ship from the owner.

4.3 The word “agent” is omitted from the proposed UK definition. The term “agent” in the MLC definition does not mean “agent” in its usual English legal sense. It is not best legal drafting practice to use a term which is inconsistent with its natural or usual meaning. If it were the shipowner’s “agent” in the sense of a person acting on the shipowner’s behalf, it is difficult to see the circumstances in which the agent would accept personal liability for the shipowner’s responsibilities.

4.4 Under the MLC definition, in order for another person (X) to be the shipowner rather than the actual shipowner, the MLC definition requires (a) that X has assumed the responsibility for the operation of the ship; (b) that X has entered into an agreement to take over MLC duties and responsibilities under the MLC. This potentially leaves the person named on the certificate the scope to dispute the existence of these elements as a means of resisting enforcement of MLC obligations, which would, as a minimum, delay the seafarer receiving their entitlements while the issue is resolved, and could leave the MCA only able to take action against the shipowner instead, which may be inappropriate in the circumstances. So the UK definition omits the final part of the MLC definition.

4.5 MCA believes that there should be no scope for argument that the person named on the certificate has liabilities towards seafarers on their vessels. Whoever is named as shipowner on the Maritime Labour Certificate and SEA has, by definition, accepted the responsibilities and liabilities set out in the MLC.



More Information

Seafarer Safety and Health Branch
Maritime and Coastguard Agency
Bay 1/29
Spring Place
105 Commercial Road
Southampton
SO15 1EG

Tel : +44 (0) 23 8032 9216
Fax : +44 (0) 23 8032 9251
e-mail: mlc@mcga.gov.uk

General Inquiries: infoline@mcga.gov.uk

MCA Website Address: www.dft.gov.uk/mca

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Annex 1

UK Interpretation of “seafarer” for MLC purposes

As well as the master and crew of a seagoing ship, this includes persons such as shopkeepers, resident entertainers and hairdressers who are employed by a franchise company to work on board. It may also include self-employed persons who work on board the ship on the business of the ship ⁽¹⁾.

“Seafarer” **does not apply** to those persons whose work is not part of the routine business of the ship and whose principal place of work is ashore, for example, marine professionals such as harbour pilots, inspectors, or superintendents; scientists researchers, divers, specialist offshore technicians.

“Seafarer” **does not include** those who are working on a seagoing ship on an occasional and short-term basis, for example, fitters, guest lecturers and entertainers, repair technicians, surveyors or port workers.

Cadets are seafarers. A training agreement with a recognised training provider which meets the standards set out in MGN 485(M) is considered equivalent to an SEA for a cadet.

A social partners agreement which sets out circumstances in which it is acceptable to accommodate cadets in 2-berth cabins, is available as a substantial equivalent on the MCA website.

Privately Contracted Armed Security Personnel, when on board ships, are not considered to be seafarers for the purposes of the MLC – see Annex 2 for a policy statement on this issue.

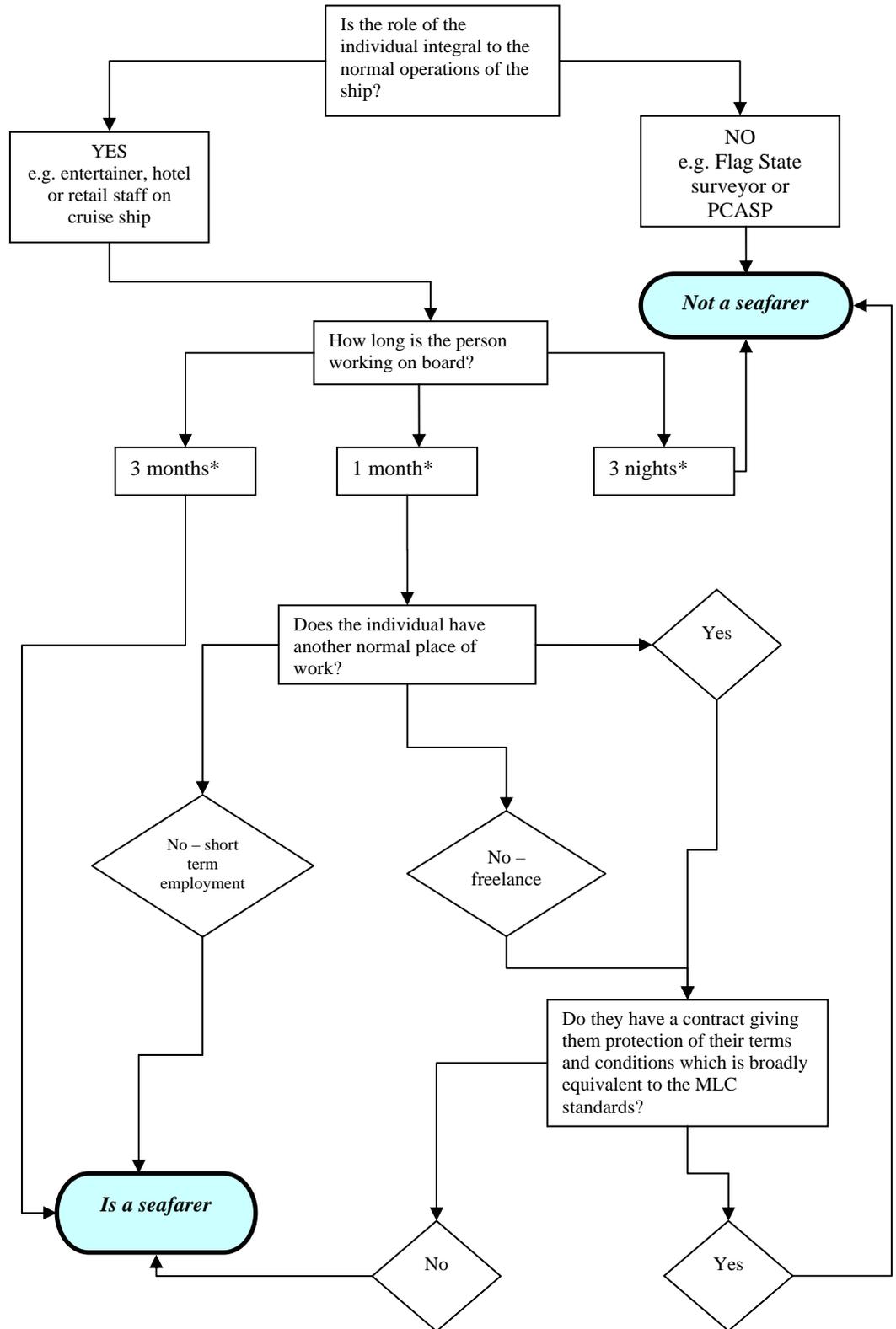
The decision tree on the following page, based on the ILO Resolution on Occupational Groups, is intended to help shipowners to determine whether seafarers working on their ships should be considered as “seafarers” for the purposes of the MLC. However, the final decision on whether particular occupational groups are “seafarers” rests with the MCA, in consultation with seafarer and shipowner representative organisations, through the MLC Tripartite Working Group.

Any determination regarding the status of personnel for the purposes of the MLC is without prejudice to published definitions for the purposes of safety regulations.

(1) A key element of the definition is that the individual works on the ship. An offshore worker or technician who only eats and sleeps on the ship may be treated as a passenger – for example, windfarm technicians accommodated on a flotel. A ship carrying more than 12 passengers is a passenger ship.



DECISION TREE – FOR GUIDANCE ONLY



*Indicative periods, not in themselves decisive



APPLICATION OF THE MARITIME LABOUR CONVENTION, 2006 : THE STATUS OF PRIVATELY CONTRACTED ARMED SECURITY PERSONNEL ON UK SHIPS

The Maritime and Coastguard Agency, using the criteria in Resolution VII adopted by the International Labour Conference which adopted the MLC, on information on occupational groups, has concluded that Privately Contracted Armed Security Personnel (PCASPs) are not seafarers.

However, in order to ensure that PCASPs are not thereby left without protection of their living and working conditions equivalent to that available to seafarers under the MLC, it is agreed that, under their general duty of care, and in addition to the current DfT Guidelines for use of Armed Guards on UK ships, shipowners should assure themselves that any Private Maritime Security Company (PMSC) they engage for the provision of PCASPs –

- is authorised to operate on UK vessels, which includes;
 - o holding a valid s.5 authority issued by the Home Office on behalf of the Secretary of State; and
 - o holding any requisite Trade and Export licences issued by the Export Control Organisation
- holds independent third party certification to ISO 28000 incorporating the requirements of ISO PAS 28007:2012 once this is available¹
- is engaged under GUARDCON or equivalent contractual arrangement providing protection for PCASPs as regards provision of food and water, medical care, insurance in the event of illness or injury or loss of the ship
- employs or contracts PCASPs under contracts which are enforceable in the individual's State of domicile or another State appropriate to the individual and agreed with him²
- ensures that PCASPs are medically fit for their duties on board ship.

Shipowners should also be satisfied that PCASPs are provided with suitable accommodation while they are on board ship.

This policy statement will be reviewed in May 2015.

¹ ISO PAS 28007 is currently going through the pilot stage. The first PMSCs expect to be certified in around late autumn 2013.

² EU Regulation 1215/2012. Within the EU/EEA, an employer can enforce an employment contract only in the State in which the employees is domiciled.



A. Application of the MLC to Mobile Offshore Drilling Units (MODUs)

The Maritime Labour Conference, which agreed the Maritime Labour Convention, 2006, was unable to agree a position on the application of the MLC to MODUs and other similar vessels. It has been left to individual member states to determine whether these vessels under their flag are “ships” under the MLC.

“**MODU**”, as well the definition given in SOLAS Chapter IX Regulation 1.7 and in the IMO MODU Code, is used to cover a range of vessels for the purposes of this notice. The MCA uses the term to cover mobile offshore drilling units, or other vessels that the marine Administration has agreed is to be regulated in accordance with the MODU Code or other ships that the MCA agrees are similar because they operate with large numbers of offshore workers or contractors on board (e.g. Special Purpose Ships, FPSOs, FSUs). By definition, **a MODU is a ship**, but the circumstances under which they operate are recognised to raise particular issues as regards the application of the MLC.

MODUs may operate as ships, moving themselves by their own propulsion to different sites to carry out their drilling functions, or well-servicing and stimulating functions. Alternatively, they may be moved to the drilling site with the help of other vessels, and then remain fixed to the sea bed for several years.

In the latter circumstances, some marine requirements are held to be in suspension, and the number of “marine crew” on board, as opposed to those who may consider themselves to be offshore workers or contractors, may vary considerably from vessel to vessel. MCA will not therefore make a hard and fast ruling on how the MLC will be applied to the category of “MODU”. Each case should be discussed with the CSM and agreement reached on its status.

However, as a general principle:

1. If the MODU has seafarers on board (see Annex 1), and is engaged in navigation, it will normally be treated as “ship” for the purposes of the MLC.
2. If the MODU has seafarers on board (see Annex 1), and has its own means of propulsion such that it can move itself from site to site, it will normally be treated as “ship” for the purposes of the MLC.
3. If it is operating on the UK continental shelf,
 - a. MCA will accept terms and conditions complying with the UK Employment Rights Act for workers in the UK, and HSE standards for offshore accommodation, recreational facilities, food and catering, medical care on board as substantially equivalent to UK MLC standards; and
 - b. For those doing offshore work with no “seafarer” responsibilities, the MCA will recognise the UKOG medical fitness certificate;
 - c. MCA will not inspect the ship while it is on station, unless requested to do so, since HSE’s Offshore Safety Division carries out checks of living and working conditions. No MLC certificate is required, since the vessel is not engaged on international voyage.
4. If the vessel is operating overseas, coastal State rules on living and working conditions may be applicable. If these are equivalent to or better than UK standards referred to in



3(a) above, the UK will accept these as equivalent to the MLC for the purposes of MLC inspection/certification.

5. If the coastal State does not apply standards for living and working conditions in the offshore sector, and the shipowner can demonstrate that UK offshore standards will continue to be applied, the UK will accept these as a substantial equivalence.
(N.B. This excludes the UKOG medical, which UKOG advises is designed only for use on the UK Continental Shelf)
6. See below on vessels without their own means of propulsion.

B. Application of the MLC to vessels which are not self-propelled

Under UK legislation, vessels which are not self-propelled may nevertheless be ships – they are at least subject to Load Line legislation - for example because the vessel is engaged in a positioning voyage under tow.

None of the existing UK legislation on seafarer living and working conditions is disapplied to vessels which are not self-propelled. Again, the application of the legislation to individual vessels may need to be considered case by case. However, as an administrative arrangement for the time being, the MCA does not intend to include vessels which are not self-propelled in the inspection or survey and certification regime for the MLC. But as the legislation will apply, if an individual on such a vessel made a complaint about their living and working conditions, MCA would investigate under MLC provisions. The situation will be reviewed in two years time.

If the vessel is operating overseas, the shipowner may wish to obtain MLC certification from the UK as its flag state. If this is the case, the same principles as under A will be applied.

C. Overseas refit/repair voyages for ships ordinarily operating within the 60 mile limit on domestic voyages

On a journey to or from refit, it is considered that a ship is “not ordinarily engaged in commercial activities” provided that the crew undertake the round trip without any cargo or passengers on board. This comes within the spirit, if not the exact letter, of the provisions in Article II.1(i) and (4) regarding the application of the Convention.

One condition for applying this determination would be that the ship's commercial activities are wholly domestic, so on an international voyage it would clearly not be in the realm of its usual activities. This would ensure a clear distinction between a domestic ship making a one-off non-trade voyage, and an international ship without cargo/passengers on board.

This approach has been agreed with the Paris MOU on Port State Control.

