

## 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 are on board the ship on the business of the ship<sup>1</sup>.

“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. On Special Purpose Ships these may be “Special Personnel.” More information on the Special Personnel definition can be found in MGN 674. For special purpose ships, the MCA will, on application from the shipowner, consider issuing a statement stating that Special Personnel on board are not considered as seafarers and therefore are not subject to the MLC. Further information on this can be found in MGN 674.

“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.

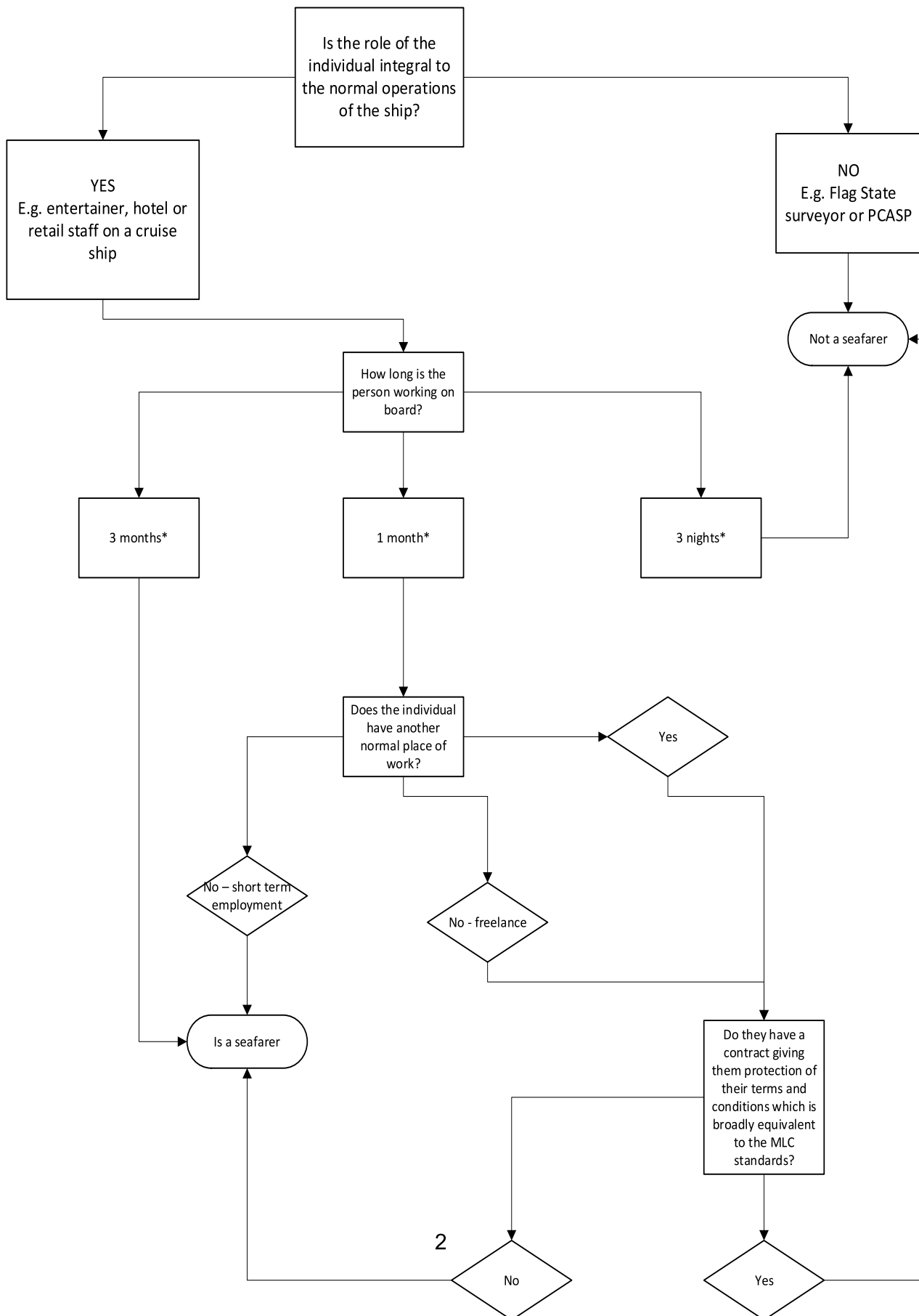
The decision tree on the following page, based on the ILO Resolution on Occupational Group, is intended to help shipowners to determine whether seafarers working on their ships should be considered as “seafarers” for the purposes of the MLC. However, the final decision on whether particular occupational 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.

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<sup>1</sup> A key element of the definition is that the individual works on the ship. An offshore worker 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.

As PCASPs may be essential to the safe operation of ships in High Risk Areas, it has been agreed that they may apply for a British Seamen's Card to facilitate transit. They are not eligible for a discharge book.

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 of 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
- 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 him
- 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.

## 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 International Maritime Organization 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 seabed 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 Customer Service Manager 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 a “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 a “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 the UK MLC standards; and

b. For those doing offshore work with no “seafarer” responsibilities, the MCA will recognise the UK Oil and Gas (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 voyages.

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 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.

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 domestic ships 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.