

# Guidance Note on Norway's implementation of the Maritime Labour Convention, 2006

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## 1. The way forward

### 1.1 Applications for DMLC Part I

The Norwegian Maritime Authority (NMA) started drawing up the Declarations of Maritime Labour Compliance Part I (DMLC Part I) for individual ships on 1 March 2013. The NMA draws up this document on the basis of applications received from shipowners. Recognized Organizations (ROs) issue Maritime Labour Certificates for classed ships.

The application form shall contain the particulars required by the DMLC Part I, as well as information regarding exemptions granted by the NMA to the particular ship with regard to Title 3 in the MLC, 2006 (MLC). The latter requirement is primarily to enable a more expeditious handling of the applications.

The Norwegian DMLC Part I and Part II are available on the NMA's website.

New regulations and amendments to regulations, implementing the MLC, entered into force at the same time as the Convention itself. This concerns the following regulations of the MLC:

- Regulation 1.4 - Recruitment and placement: Regulations of 19 August 2013 No. 999 concerning the use of recruitment and placement services (New regulations);
- Regulation 2.1 – Seafarers' employment agreements: Regulations of 19 August 2013 No. 1000 concerning seafarers' employment agreements and Pay Statements;
- Regulation 5.1.5 - On-board complaint procedures: Regulations of 19 August 2013 No. 998 concerning on-board complaint procedures (New regulation);
- Regulation 3.1 – Accommodation: (Amended regulations), and the MLC Regulation 3.2 - Food and catering (Amended regulations): Regulations of 15 September 1992 No. 707 concerning accommodation and food and catering ;
- Title 5 Compliance and enforcement Regulations of 22 December 2014 No. 1893 on surveys and certificates for Norwegian ships and mobile offshore units and Regulations of 24 November 2014 No. 1458 on port state control (New regulations).

DMLCs Part I issued prior to the entry into force of the MLC will still be valid. However, they will at some point need to be replaced by a new DMLC Part I containing references to the Norwegian regulations that had not been adopted prior to the entry into force of the MLC. Shipowners need not reapply – the NMA will send them out in due course.

## **1.2 Ships built before the entry into force of the MLC**

It should be noted that Norwegian ships built prior to the entry into force of the MLC have either no documentation or, if any, various documentation of their compliance with ILO Convention No. 92 and 133. For example, for ships that are not classed, the requisite survey is carried out in the context of issuing a Trading Certificate (in Norwegian “Fartssertifikat”), and for ships trading internationally in the context of the Ship Safety Construction Certificate. However, neither of the ILO Conventions has such a requirement.

Norway ratified ILO Convention No. 92 in 1950 and Convention No. 133 in 1975. Thus Norwegian ships have been required to comply with these ILO standards for more than 60 years. Port State Control has been carried out in the context of ILO Convention No. 147, so that the level of compliance of Norwegian ships should be well known to port state control authorities.

Ships that have been registered in another flag state and which are to be registered under a Norwegian ship register must demonstrate compliance, inter alia, with Norwegian accommodation requirements. This is done by an inspection carried out on behalf of the NMA. Thus no additional documentation is required.

## **2. Norwegian interpretations of important definitions**

### **2.1 General Application of the MLC in Norway**

The MLC applies to all ships, irrespective of tonnage, whether publicly or privately owned, which are ordinarily engaged in commercial activity.

A ship is defined by the SOLAS Convention and carries the relevant certificates required by that Convention. Thus, mobile offshore units are not included because they are not certified as ships.

The MLC, 2006 is mainly implemented in Act of 16 February 2007 No. 9 relating to Ship Safety and Security (The Ship Safety and Security Act) and Act of 21 June 2013 No. 102 relating to employment protection etc. for employees on board ships (The Ship Labour Act). The Ship Labour Act replaced the Seamen’s Act on 20 August 2013.

Norway considers “commercial activity” to be any endeavour undertaken for the primary purpose of generating revenue including, but not limited to, activities such as commerce/trade, chartering, towing, salvage, offshore supply/support, exploration/exploitation/processing of sea-bed mineral resources, entertainment, marketing, research, accommodation, transit, etc.

Norway does not extend the application of the MLC to registered ships engaged in fishing or in similar pursuits, or ships which navigate exclusively in inland waters, waters within or closely adjacent to sheltered waters, or areas where port regulations apply. In Norway, “inland waters, waters within or closely adjacent to sheltered waters or areas where port regulations apply”, is interpreted to mean trading areas 1 and 2 in accordance with Regulations of 4 November 1981 No. 3793 concerning Trade Areas.

All ships to which the MLC applies of 500 gross tons<sup>1</sup> or over, engaged in international voyages or operating from a port or between ports in another country, must be certified for compliance with 14 areas of the MLC which are subject to mandatory inspection.

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<sup>1</sup> Please note that ships with approved national gross tonnage under 500, as entered in the remark column in the International Tonnage Certificate (1969), are not required to be certified.

All ships to which the MLC applies, but which are not required to be certified (under 500 gross tons, not engaged in international voyages, or not operating from a port or between ports in another country), shall still be subject to a full inspection against the same regulations as for certified ships, as appropriate.

## **2.2 Shipowner**

The ISM Company is the shipowner for the purposes of the MLC. Furthermore, Norway makes use of the possibility provided by Guideline B5.1.3, paragraph 2 to use the framework of the ISM Code to implement the MLC. This follows on from a decision in 1999 in connection with the ratification of ILO Convention No. 178 on Labour Inspection (Seafarers), 1996.

This decision has certain ramifications. It implies that the responsibilities of the ISM Company become somewhat expanded in scope. The definition of the term “shipowner” is found in section 4 of the Ship Safety and Security Act, the text of which is reproduced below.

### ***Section 4 of the Ship Safety and Security Act***

*“Company” means any company stated as the managing company in the Safety Management Certificate.*

*If the requirement for a Safety Management Certificate, as mentioned in the first paragraph, is not applicable to the ship, or the Safety Management Certificate has ceased to be valid or has been withdrawn, the owner of the ship is considered to be the company. If the ship is registered, the registered owner is considered to be the owner of the ship. If the ship’s owner in the case referred to in the first sentence has submitted documentation in accordance with section 5 with the consent of the operational manager or the responsible builder, this person is considered to be the company pursuant to this Act.*

*The second paragraph applies correspondingly if the person or company who is reported to be the managing company in the ship’s Safety Management Certificate, does not exist.”*

## **2.3 Seafarer**

The MLC, because of Title 5, requires more precision as to which categories of personnel the requirements of the Convention apply.

The MLC recognizes in Article II, paragraph 3, that there may be doubts whether a particular category or categories of persons who may perform work on board a ship covered by the MLC should be regarded as seafarers for the purposes of the MLC. If there are categories of personnel for which doubt may exist, then the question shall be determined by the competent authority of each Member after consultation with the relevant seafarer and shipowner organizations.

The Ship Labour Act does not have a definition of the term “seafarer”. The Act covers in principle all workers on board Norwegian ships. However, not all provisions apply to all workers. Crucially, only “seafarers” in the MLC sense are covered by section 2-4, paragraph 3, text of which is reproduced below.

### ***Section 2-4, paragraph 3 of the Ship Labour Act***

*“The company is jointly and severally liable together with the employer for the payment of salary, holiday pay and any financial claims that employees working on board the ship are entitled to pursuant to the provisions set out in chapter 4 of this Act or in regulations issued pursuant to this chapter”.*

Shipowners must consult the Regulations of 19 August 2013 No. 990 concerning the scope of application of the Ship Labour Act along with Circular RSV 04-2013 “The scope of application of the Ship Labour Act” to determine whether a person working on board a Norwegian ship is a seafarer.

Personnel who were neither residents in Norway nor Norwegian nationals and who are hired by a foreign employer to serve passengers on board a cruise ship were until the advent of the MLC exempted from various provisions of the now repealed Seamen’s Act, but such personnel is not exempted from the Ship Labour Act.

It is not possible to apply for any exemption from neither the Ship Labour Act nor the Ship Safety and Security Act pertaining to any personnel on board.

## **2.4 Recognized Organizations (ROs)**

Norway has delegated, under separate, but otherwise similar and equal written agreements, inspection and certification functions under the MLC to the following Recognized Organizations (ROs):

- American Bureau of Shipping
- Bureau Veritas
- DNV GL
- Lloyd’s Register
- RINA
- ClassNK

The RO chosen by the shipowner to conduct ISM audits will carry out the inspections required for the issuance of the Maritime Labour Certificate.

The RO must comply with Standard A5.1.2 and Guideline B5.1.2 of the MLC. Documentation of such compliance shall be provided to the NMA.

## **3. The ISM Code**

The ISM Code and the Safety Management System forms the basis for the implementation of the MLC on board Norwegian ships. In this respect, Norway implements Guideline B5.1.3, paragraph 2 of the MLC. The measures adopted to ensure ongoing compliance, cf. Standard A5.1.3, paragraph 10 (b) of the MLC, should therefore be part of the ship’s Safety Management System. The reason for this being that Norway defines the term “shipowner” as the ISM company. It also avoids duplication of effort. This is a continuation of the approach adopted when Norway ratified ILO Convention No. 178.

When the shipowner is drawing up the Declaration of Maritime Labour Compliance Part II (DMLC Part II), reference to the relevant procedures of the Safety Management System should be made.

## **4. Financial security**

*Please note that this section of the Guidance Note may be incomplete and is not to be regarded as an official interpretation of the national legislation by Norwegian authorities.*

Several provisions in the MLC have requirements for financial security. It should be noted that whereas the MLC uses the term “financial security”, cf. Regulation 2.5.2, Standard A4.2, paragraph 1 (b) of the MLC, the Norwegian legislation on the other hand uses the term “guarantee”.

For ships registered in the Norwegian International Ship Register (NIS), there is a special scheme which requires a guarantee to be posted upon registration of the ship.

## **4.1 Guarantee for wages and homeward journey (“repatriation”)**

This requirement is applicable if there are seafarers on board that are not covered by Norwegian or EEA social security schemes. The purpose is to protect the employees in case of the employer's bankruptcy.

### ***Approved guarantors***

Re. Regulations concerning guaranteed remuneration and repatriation of employees aboard ships registered in the NIS No. 146 of 18 February 2005. The Regulations are regarded as sufficient to cover the requirement in MLC Regulation 2.5 paragraph 2. No additional documentation is required from shipowners.

### ***Amount***

- NOK 500 000,-
- Lower rates are applicable if the total number of crew members does not exceed 10. Agreement has to be reached between the trade unions and employers' organizations involved:
  - a) Between 1 and 5 employees: NOK 250 000,-
  - b) Between 6 and 10 employees: NOK 350 000,-
- For cruise ships (ship type 5B) and combined passenger- and general cargo ships (ship type 5F) the guarantee must amount to at least NOK 2 000 000,- per ship.

### ***Guarantors***

The guarantee shall be provided by an insurance company which has obtained a license to conduct such activities in Norway. For a list of approved companies, kindly contact [The Financial Supervisory Authority of Norway \(Finanstilsynet\)](#).

[The Ministry of Trade, Industry and Fisheries](#), Section for Maritime Safety and Regulations may, on application, accept that others provide the guarantee, in full or in part. Guarantors must be approved by The Ministry of Trade, Industry and Fisheries. As of today, the following have received such an approval:

- Bank of Ireland
- BNBank ASA (tidl. Glitnir Bank)
- Chase Manhattan Bank Plc., London
- Den Danske Bank
- DNB NOR Bank ASA
- Eik Banki Føroya P/F
- Finansbanken ASA
- Fokus Bank ASA
- Fraktesfartøyenes Rederiforening
- Föreningsbanken AB, Sverige
- Føroya Banki, Færøyene
- Føroya Sparikassi, Færøyene
- Gjensidige Bank AS
- Narvik Sparebank

- Nedship Bank (Nordic)
- Nettet Sparebank
- Nordbanken, Göteborg
- Nordea Bank Finland Plc
- Nordea Bank Norge ASA
- Nordea Bank Sverige AB
- Norges Rederiforbund
- Royal Bank of Scotland
- Skandinaviske Enskilda Banken, Sverige
- Skipskredittforeningen
- Skudenes & Aakra Sparebank
- Sparebank 1 Nord-Norge
- Sparebank 1 SMN
- Sparebank 1 SR-Bank
- Sparebanken Møre
- Sparebanken NOR
- Sparebanken Pluss
- Sparebanken Rana
- Sparebanken Sogn og Fjordane
- Sparebanken Sør, Arendal
- Sparebanken Sør, Tvedestrand
- Sparebanken Vest
- Svenska Handelsbanken
- Swedbank
- The Fuji Bank Ltd., Japan
- Totens Sparebank
- Uni Storebrand

## **4.2 Guarantees for social security entitlements on Norwegian ships**

Norway has adopted legislation protecting seafarers who are not covered by the ordinary National Insurance Scheme (“Folketrygden”). Regulations of 18 February 2005 No. 145 concerning guarantees for social security entitlements for employees on Norwegian ships Chapter 2 apply to employees who are not covered by Norwegian social security scheme. They are employed either on board ships registered in the Norwegian International Ship Register or in the service of foreign employers who carry out business activities on board ships in foreign trade that are registered in the Norwegian Ordinary Register. The Chapter covers compensation in the event of disability resulting from occupational injury and compensation to the surviving spouse and children.

Chapter 3 of the Regulations concerns guarantees for social security entitlements for European Economic Area (EEA) nationals employed in hotel and restaurant services on board tourist ships registered in the Norwegian International Ship Register. The Chapter requires the company’s obligation to furnish a guarantee for nursing care, wages during illness, compensation for occupational injuries and disability and old-age pensions.

## 4.3 Maritime Liens

The relevant provisions are found in the Norwegian Maritime Code of 24 June 1994 No. 39 (The Norwegian Maritime Code), the text of which have been reproduced below. To summarize, seafarers, and indeed other persons employed on board, have a first priority claim with regard to wages and other sums due.

### **Section 51 of the Norwegian Maritime Code – Claims secured by Maritime Liens**

*Claims against the ship's managing owner shall be secured by maritime liens against the ship, in so far as they relate to:*

- 1) wages and other sums due to the master and other persons employed on board in respect of their employment on the vessel;*
- 2) port, canal and other waterway dues and pilotage dues;*
- 3) damages in respect of loss of life or personal injury occurring in direct connection with the operation of the ship;*
- 4) damages in respect of loss of or damage to property, occurring in direct connection with the operation of the ship, provided the claim is not capable of being based on contract;*
- 5) salvage reward, compensation for wreck removal, and general average contribution.*

*A maritime lien shall arise also if the claim is against the owner, charterer, manager or any person to whom the managing owner has delegated his or her functions.*

*A claim as set out in subparagraphs 3 and 4 of the first paragraph does not establish a maritime lien if the damage results from the hazardous properties of nuclear fuel or of radioactive products or waste.*

*Claims as set out in subparagraphs 3 and 4 of the first paragraph do not establish maritime liens if the damage results from pollution occurring while a ship of the type mentioned in the first paragraph of Section 4 is being used for exploration for or exploitation of offshore resources.*

### **Section 52 of the Norwegian Maritime Code – Priority**

*Maritime liens shall take priority over all other encumbrances on a ship.*

*Maritime liens are secured in the order in which they are listed in Section 51, and those with the same number rank equally as between themselves. Maritime liens arising under number 5 shall however take priority over all other maritime liens which have attached to the ship earlier in time, and as between maritime liens arising under number 5, priority shall be accorded to those arising most recently.*

## 4.4 Arrest of ships

Norway has ratified the International convention relating to the arrest of seagoing ships, 1952. These rules have been implemented in the Norwegian Maritime Code, 1994, chapter 4. Relevant in this regard is section 92, which enables seafarers to seek the arrest of a ship in order to secure a maritime claim in respect of wages and other remuneration which is due to the master and other employees on board in respect of their service on the ship.

## 5. MLC, 2006 Guidelines, Part B of the Code

In general Norway will apply Part B of the Code. However, there are some ***exceptions*** which are specified in the table below.

Guideline	Explanation
B2.2.3	There is no minimum wage in Norway
B2.2.4	There is no minimum wage in Norway
B2.3.1.1 (b) (c)	Not suitable for regulation
B2.4.2.3	Not suitable for regulation
B2.4.3.1	Not a task for the competent authority in Norway
B2.4.4.1	Not a practice in Norway
B2.5.1.3 (d)	Norway will not apply this because the standard adopted by airlines is 20 kg.
B2.8.1 (b)	Norway does not use registers for the promotion of employment
B2.8.2	Norway does not use registers or lists to govern the employment of seafarers.
B3.1.11.4 (a) (c) (i)	These will not be required on Norwegian ships
B4.1.4.1	Norway will consider international cooperation on a case by case basis.
B4.2.3	Not appropriate for Norway.
B4.4.2.6 and 7	Not tasks undertaken by Norwegian authorities.
B4.4.5.3	Not tasks undertaken by Norwegian authorities.
B4.5.5	Norway will not apply this guideline because it does not accord with the main principle of Standard A4.5 para. 3.
B4.5.7	Norway will not apply this guideline because it implies a duty for the flag state to ensure that contributions concerning social security are met, which does not accord with the principle of Standard A4.5 para. 3

## 6. How to obtain the Maritime Labour Certificate and DMLC

### 6.1 Description of the process

Maritime Labour Certificates can only be issued after an inspection on board. See the description of the steps involved in the Maritime Labour Certification of Norwegian ships below.

1. The shipowner applies to the NMA for a DMLC Part I for the ship concerned.  
*Shipowners have to apply to the NMA for the DMLC Part I to be drawn up. As part of the application, the shipowner has to document any exemptions with regard to Title 3 of the MLC granted by the NMA.*
2. The shipowner draws up the DMLC part II to ensure on-going compliance with the requirements in DMLC Part I.  
*The shipowner shall draw up the DMLC Part II in order for the RO to be able to review the measures. This may be done at the offices of the shipowner, in order to ensure that appropriate measures for on-going compliance are in place before the inspection on board. Procedures to be included in the DMLC Part II should relate to the regulations listed in DMLC Part I. The procedures should be part of the existing ISM system.*
3. The RO reviews the DMLC Part II prior to the on board inspection.  
*The RO should verify that the measures outlined in part II are relevant to the regulations listed in DMLC Part I, and that they lead to ongoing compliance. This review may be carried out on shore.*
4. The shipowner requests the RO for an on board inspection.  
*The shipowner and the RO should schedule a mutually convenient time for the on board inspection.*
5. Upon successful completion of the inspection, the RO shall
  - i. issue an inspection report
  - ii. sign the DMLC part II
  - iii. issue the DMLC
  - iv. issue the Maritime Labour Certificate

### 6.2 Further guidance on the inspection process

The “Guidelines for Flag State Inspections” published by the International Labour Office should be consulted by inspectors as well as shipowners. This publication provides the basic framework for MLC inspections on board Norwegian flagged vessels, and indicates which regulations and standards form part of inspections in accordance with MLC.

This section must be read in conjunction with the DMLC Part I for Norwegian ships, which lists the legislation that implements the relevant regulations and standards of the MLC. Inspections shall establish compliance with the national legislation implementing the MLC.

Inspections should be carried out in accordance with the ILO publication “Guidelines for Flag State Inspections”. The matters listed are reproduced from the section “How to check the basic requirements” in the ILO publication.

The MLC inspectors shall carry out inspections on board of all the areas listed in this Guidance Note. The inspectors have the discretion to determine the scope of the inspection within each area in accordance with their professional judgment.

*The list provided below each area is merely indicative of the scope of an inspection; it will rarely be necessary to go through all the items listed. Inspections should not go beyond the matters listed without clearance from the NMA.*

## 6.2.1 Minimum age

### Inspection

- *Check crew list, or passports or other official documents confirming seafarers' birth dates.*
- *Check work schedule with respect to seafarers under the age of 18 to determine hours and nature of work.*
- *Check to see that types of work on board that are likely to jeopardize the safety of seafarers under the age of 18 have been identified.*
- *Check recent accident reports and safety committee reports to determine whether seafarers under the age of 18 were involved.*
- *Confirm information through interviews, in private, with a representative number of seafarers.*

### Guidance for DMLC Part II

No person below the age of 16 is employed on board

Alternative 1: No seafarer on board is below the age of 18.

Alternative 2: All seafarers below the age of 18 years are covered by the particular safety procedure provided in the ship's ISM system unless exemptions are allowed in the relevant legal framework.

Check the ship's ISM procedures.

## 6.2.2 Medical certificate

### Inspection

- *Check the crew list.*
- *Check for valid medical certificates stating that seafarers are medically fit to perform their duties.<sup>2</sup>*
- *Check (by reviewing work schedules and interviews, in private) that medical restrictions on work for individual seafarers are being respected and that seafarers are not assigned to or carrying out work contrary to these restrictions.*
- *In urgent cases where the NMA has permitted a seafarer to work without a valid or with an expired certificate, the authorization or permit should be checked to ensure it is still valid. A new medical certificate shall be presented at the ship's next port of call where the medical examination can be performed, but not later than six weeks after the seafarer's commencement of service.*
- *In cases where a medical certificate has expired while at sea, the certificate must be obtained within a maximum of three months.*
- *Check that the medical certificates of seafarers on ships ordinarily engaged in international voyages are in English.*
- *Check that the medical certificate has been issued by a duly qualified medical practitioner.*

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<sup>2</sup> Please note that a separate colour vision certificate is not required on Norwegian ships.

### **Guidance for DMLC Part II**

Procedures to ensure that medical examinations are undertaken and certification is provided, is addressed in the ship's ISM system. Check the ship's ISM procedures.

All seafarers on board the ship shall have a valid health certificate for the whole period of time they are requested to serve on board. The health certificate is issued by a doctor authorised by the NMA for issuance of such certificates. The official Norwegian health certificate has a unique number to prevent fraudulent issuance. A medical certificate issued in accordance with the medical certificate requirements of any EEA member state is accepted on Norwegian ships when the medical certificate is issued in the seafarer's home country or most recent country of residence.

## **6.2.3 Qualifications of seafarers**

### **Inspection**

- *Check the minimum safe manning document (SMD) to verify the required qualifications of the seafarers.*
- *Check certificates and endorsements for STCW personnel confirming seafarers' competency with respect to their duties (check crew list to determine duties).*
  - *Norwegian seafarers have to be in possession of a valid Norwegian STCW certificate.*
  - *Foreign seafarers have to be in possession either of a Norwegian STCW endorsement or a Certificate of Receipt of Application (CRA). The CRA is no longer valid if more than three months have passed since the date of issue.*
- *Check documentary evidence (from a shipowner or, if relevant to the position concerned, a national authority or otherwise) confirming that seafarers have any qualifications that may be required under national law for those performing other duties on board ship.*
- *Check for evidence confirming that all seafarers have successfully completed training for personal safety on board ship.*
- *Check a copy of the appropriate training material that is available to the crew.*
- *Confirm training through interviews, in private, with a representative number of seafarers.*

### **Guidance for DMLC Part II**

A system for verification and inspection of the seafarers' qualifications is provided by the ship's ISM system; see the ship's ISM procedures. It should be noted that Norway will not require any qualifications beyond those in the MLC and the STCW, thus being in line with MLC Regulation 1.3 paragraph 3.

## **6.2.4 Seafarers' employment agreements (SEA)**

### **Inspection**

The current SEA approved by the NMA need not be replaced until employment relationships are renewed. It should be noted that the SEA may be signed by the employer. This is a substantial equivalency in accordance with MLC article VI, paragraph 3. See NMA's Circular RSR 6-2013, paragraph 3 or the DMLC I, Substantial equivalencies for a more detailed explanation.

### **Guidance for DMLC Part II**

A system for the establishment of SEAs may be provided by the ship's ISM system. Check the ship's ISM procedures.

The following procedure should be observed, unless other or similar procedures are already approved by the flag state or the RO under the ISM system:

- All seafarers on the ship have a SEA on the form established by the NMA or another similar form approved by the NMA, also in English. This form contains boxes for all the information that is requested by Norwegian legislation. The seafarers have before signing the SEA, been given the option to examine the agreement and seek advice on its content. The master may be supplied with copies of the SEAs from the employer's office on shore upon request.
- The relevant collective bargaining agreements (CBAs) for seafarers who are employed on the ship are available on board, also in English. Excerpts of relevant Norwegian legislation, prepared by the NMA, can be made available on request and may be available by a copy of last English version of the NMA's book with excerpts. Compliance with social security legislation will under Norwegian law be controlled by the taxation offices, the tax collectors and the administrator of The Pension Insurance for Seamen.<sup>3</sup> Documentation of private insurance schemes included a certificate of entry from the P & I club will be available on shore at the ISM company's or employer's office.
- All seafarers will upon their request be supplied with a record of service on Norwegian ships from the NMA, a Norwegian Labour and Welfare Service (NAV) office or a Norwegian foreign station.
- The employment relationship will terminate when the agreement period expires, or when a written notice has been given by the seafarer or the employer in accordance with provisions of the Ship Labour Act or the relevant CBA.

### 6.2.5 Use of any licensed or certified or regulated private recruitment and placement service

Employers using recruitment and placement services operating in a country which has ratified neither the MLC nor ILO Convention No. 179, shall ensure that they have documentation demonstrating that the recruitment and placement services' procedures show that those services are in compliance with MLC Regulation 1.4.

The requirement of the first paragraph is considered satisfied when the employer has documentary evidence that the following recruitment and placement service is used:

- a) recruitment and placement service operating in Norway; or
- b) recruitment and placement service operating in a country which has ratified the MLC or ILO Convention No. 179.

The inspector, if satisfied that there is compliance with either regulation 1.4 of the MLC or the ILO Convention No. 179, should indicate this in the inspection report. No further inspection is required when the shipowner applies for the Maritime Labour Certificate to be issued.

#### **Inspection**

• Check documentation or other information to allow the inspector to ascertain the following:

##### *1. Direct engagement*

*Seafarers were recruited and engaged by the shipowner. If this is the case, this fact should be noted and no further action is necessary.*

##### *2. Recruited through a public service (i.e. the Norwegian Labour and Welfare Service – NAV)*

*Seafarers were engaged through a public seafarer recruitment and placement service in either the flag State or in another State to which the MLC or ILO Convention No. 179 applies. If this is the case, this should be noted and no further action is necessary.*

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<sup>3</sup> Please find information concerning The Pension Insurance for Seamen in the following link:  
<http://www.pts.no/index.php?lang=en&lid=1>.

3. *Recruited through a private service (or a service operated by a seafarers' organization) in a country that has ratified the MLC or ILO Convention No. 179:*

*A. If the seafarers were engaged through a private seafarer recruitment and placement service in Norway, check for documentary evidence confirming that the service concerned is operating in accordance with the national laws or regulations or other measures implementing the MLC.*

*B. If the seafarers were engaged through a private seafarer recruitment and placement service in another State that has ratified the MLC or ILO Convention No. 179, no action need be taken unless the inspector has received a clear indication that basic rights have been violated (such as charging seafarers for use of services).*

4. *If the seafarers were engaged through a seafarer recruitment and placement service based in a country that has ratified neither the MLC nor ILO Convention No. 179, check documentation showing that the shipowner has, as far as practicable, verified through a proper system that the service is operated consistently with the MLC. This system may, for example, take account of information collected by the flag State, as well as any audits or certifications concerning the quality of services operating in countries that have not ratified the MLC. Other evidence which shipowners could provide might be checklists against the MLC requirements or an RO audit of a recruitment and placement service based in a country that has not ratified the MLC.<sup>4</sup>*

*• Check, through interviews, in private, with a representative number of seafarers, that they have not paid a fee or other charge to a recruitment or placement service and have been informed of their rights and duties.*

### **Guidance for DMLC Part II**

When recruitment and placement has been performed either by the employer or on behalf of the employer, the ISM company is responsible for seeing to that these activities are being exercised in compliance with Norwegian legislation, and documentation for compliance will be available at the ISM-company's office on board.

When recruitment and placement activities are carried out in a country that has ratified neither the MLC nor ILO Convention No. 179, they will need to operate in conformity with a standardized system of certification that can be submitted for inspection on board at short notice.

The representatives and agents are aware that no seafarer shall be requested to pay a fee or similar to cover employment service given by the employer's representatives or agents.

The ISM company has assured itself that a financial security is in place to secure the seafarers a compensation against any monetary loss they may incur as a failure of a recruitment or placement service or under the employment contract. See the Ship Labour Act, the Norwegian requirements for registration in the NIS ship register, and Act 14 December 1973 no. 61 relating to Wage Guarantees.

## **6.2.6 Hours of work or rest**

### **Inspection**

- Check that there is an approved standardized table of shipboard working arrangements setting out the national requirements for the minimum hours of rest and the schedule for service at sea and in port, posted in an easily accessible place on the ship.*
- Check the working arrangement listed in the table.*
- Check documents (the SEA or the relevant CBA and other documents, such as the bridge and engine room logbooks) to confirm compliance with the basic requirements concerning minimum hours of rest.*
- Check for a table of working arrangements or schedule.*

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<sup>4</sup> A certificate issued to recruitment and placement services by one of the six ROs listed above will be deemed as acceptable documentation for the purposes of the Maritime Labour Certificate.

- Check that there are up to date records of work or rest, as required under Norwegian law, for each seafarer serving on the ship.
- Check for seafarer fatigue, possibly indicated by hours of work that are consistently at the upper limits and by other contributory factors, such as disrupted rest periods. If there are seafarers that show symptoms such as lack of concentration, irrelevant and inconsistent replies to questions, yawning and slow reaction times further investigation may be considered.

### **Guidance for DMLC Part II**

A system for registration and verification of the seafarers' hours of rest is provided by the ship's ISM system. Check the ship's ISM procedures.

Compliance with these provisions will be secured by the ship's ISM system and forms for registration of work and rest hours and for shipboard working arrangements. The forms or systems will also be kept in English.

## **6.2.7 Manning levels for the ship**

### **Inspection**

- Check safe manning document (SMD) or applicable equivalent.
- Check crew list for number, category (such as cooks and those responsible for food preparation and those who are responsible for medical care) and qualifications of seafarers working on board.
- Check on-board table of working arrangements to confirm that safe manning requirements are being implemented.
- Interview, in private, a representative number of seafarers to confirm that requirements are met.

### **Guidance for DMLC Part II**

A minimum safety manning document is issued for the ship by the NMA. This document is available on board the ship.

## **6.2.8 Accommodation**

### **Inspection**

- Check the construction plan of the ship that shows dimensions and identifying the use to be made of each room or other area.
- Check the crew list compared to the number of sleeping rooms and berths.
- Carry out a visual observation of seafarers' on-board accommodation and recreational facilities with particular attention paid to the following requirements in the MLC, 2006:
  - general requirements (Standard A3.1, paragraph 6);
  - the size of rooms and other accommodation spaces (Standard A3.1, paragraphs 9 and 10);
  - heating and ventilation (Standard A3.1, paragraph 7);
  - noise and vibration and other ambient factors (Standard A3.1, paragraph 6(h));
  - sanitary and related facilities (Standard A3.1, paragraphs 11 and 13);
  - lighting (Standard A3.1, paragraph 8);
  - hospital accommodation (Standard A3.1, paragraph 12);
  - recreational facilities (Standard A3.1, paragraphs 14 and 17);
  - occupational safety and health and accident prevention requirements on ships, in light of the specific needs of seafarers who both live and work on ships (Standard A3.1, paragraphs 2(a) and 6(h)).
- Check the on-board records to confirm that frequent inspections are carried out by, or under the authority of, the ship's master, as well as other inspections or actions provided for in the shipowner's approved measures found in the DMLC part II.
- Check that measures are being taken on the ship to monitor noise and vibration levels in seafarers' working and living areas.

### **Guidance for DMLC Part II**

A ship that has been built in accordance with Norwegian legislation and class rules of an RO and has received a Statement of Compliance from the RO will in principle be in compliance with Norwegian legislation for ship accommodation. Compliance for unclassified vessels is attested by a Trading Certificate (in Norwegian “Fartssertifikat”).

A classed ship that has received Safety Certificates from the RO will in principle be in compliance with Norwegian legislation for ship accommodation.

The focus of inspections should primarily be on the standard of seafarer accommodation, i.e. whether, in the professional judgment of the inspector, seafarer accommodation on a particular ship is of a decent standard with regard to cleanliness, tidiness, that sanitary facilities function as intended and so forth. A visual observation is therefore of the utmost importance.

### **6.2.9 On-board recreational facilities**

#### **Inspections are covered in the Guidance Note under paragraph 6.2.8 – Accommodation.**

A classed ship that has received Statement of Compliance from an RO, will have in place the on board recreational facilities required by Norwegian legislation. Currently the requirements are in line with Article 7 of ILO Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133). These requirements have continued to remain in force after the entry into force of the MLC. Shipowners shall consider Guideline B3.1.11 with regard to recreational facilities, but these guidelines are not a requirement.

Relevant documents that confirm that the inspection has been undertaken by the NMA or the RO shall be available on board the ship. See the MLC Standard A5.1.4, paragraph 12. Reference is also made to the ISM procedure in place for the ship.

### **6.2.10 Food and catering**

#### **Inspection**

- *Check documents (see Regulation 1.1 on minimum age) to confirm that the ship’s cooks are 18 years old or older and that the ship’s cooks are trained, qualified and competent for their positions in accordance with national requirements. In cases where a fully qualified cook is not required, check that seafarers processing food in the galley are trained or instructed in food and personal hygiene and handling and storage of food on board ships.*
- *Check on-board records to confirm that frequent and documented inspections are made of*
  - *supplies of food and drinking water;*
  - *spaces used for handling and storage of food;*
  - *galleys and other equipment used in the preparation and service of meals.*
- *Visual observation of catering facilities, including galleys and store rooms, to check that they are hygienic and fit for purpose.*
- *Check that food and drinking water are of an appropriate quality (for example, not out of date) and quantity and nutritional value by*
  - *checking drinking water quality and ascertaining how the quality is monitored;*
  - *reviewing menu plans together with visual observation of food supplies and storage areas to ensure that the food supplied is varied in nature.*
- *Check, by interviewing, in private, a representative number of seafarers, that they are not charged for food and are provided with drinking water and that food and drinking water are of appropriate quality and quantity.*

### **Guidance for DMLC Part II**

The following should be included:

- Details concerning the loading, storage and treating drinking water.
- Procedures for storing, preparing and serving food.
- Seafarers are not charged for their food.
- The shipowner ensures that food is suitable in quantity, nutritional value, quality and variety for the number of crew and operation of the ship.
- How religious and cultural practices of seafarers are catered for.
- The qualifications and training of the cook and any other catering staff.
- Details of who carries out the inspections of the galley, food handling and storage areas, and how these inspections are recorded.

## **6.2.11 Health and safety protection and accident prevention**

Shipowners shall ensure that for ships required to have a Safety Management System, the requirements in the Norwegian regulations regarding the working environment and safety and health are complied with through the Safety Management System. Thus this area should already be adequately covered during ISM audits.

Depending on the scope and depth of previous ISM audits, the inspector may make additional inspections. The list provided below is merely indicative of the scope of an inspection; it will rarely be necessary to go through all the items listed in the “Guidelines for Flag State Inspections”.

### **Inspection**

- *Check relevant documents, such as the on-board occupational accident reports, and the reports of risk evaluations undertaken for the management of occupational safety and health on the ship.*
- *Check for documents evidencing membership and meetings of the safety committee (e.g. records and minutes of the meetings, etc.) if the ship has eight seafarers or more.<sup>5</sup>*
- *Check documents related to the ship’s on-board ongoing occupational safety and health policy and programme, to confirm that it*
  - *is available to seafarers;*
  - *is consistent with national provisions;*
  - *includes risk evaluation, training and instruction for seafarers;*
  - *pays special attention to the health and safety of young seafarers;*
  - *is adequate preventive measures are being taken;*
  - *is appropriate personal protective equipment is being used and maintained correctly.*
- *Check that relevant occupational safety and health and accident prevention notices and official instructions with respect to particular hazards on the ships are posted on the ship in a location that will bring it to the attention of seafarers (Standard A4.3, paragraph 7).*
- *Check that appropriate protective equipment is available for seafarers to use.*
- *Check that a reporting procedure for occupational accidents is in place.*
- *Interview, in private, a representative number of seafarers to confirm on-board occupational safety and health programmes and practices.*
- *Check that, with respect to health and safety protection and accident prevention, special consideration is given to any national requirements covering:*
  - *the structural features of the ship, including means of access and asbestos-related risks;*
  - *machinery;*
  - *the effects of the extremely low or high temperature of any surfaces with which seafarers may be in contact;*

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<sup>5</sup> There are substantial equivalent regulations for Norwegian ships implying that there is a requirement for a safety committee only when there are eight seafarers or more working on board the ship. See the DMLC Part I, Substantial equivalencies.

- *the effects of noise in the workplace and in shipboard accommodation;*
- *the effects of vibration in the workplace and in shipboard accommodation;*
- *the effects of ambient factors (other than noise and vibration) in the workplace and in shipboard accommodation, including tobacco smoke;*
- *special safety measures on and below deck;*
- *loading and unloading equipment;*
- *fire prevention and fire-fighting;*
- *anchors, chains and lines;*
- *dangerous cargo and ballast;*
- *personal protective equipment for seafarers;*
- *work in enclosed spaces;*
- *physical and mental effects of fatigue;*
- *the effects of drug and alcohol dependency;*
- *HIV/AIDS protection and prevention and emergency and accident response.*

### **Guidance for DMLC Part II**

A ship that has received a Safety Management Certificate will have in place a health and safety system and an accident prevention system in compliance with Norwegian legislation.

Relevant documents that confirm that the inspection and control have been performed by the flag state or the RO will be available both at the ISM company's office on shore and on board the ship, cf. MLC Standard A5.1.4, paragraph 12. Reference is also made to the ISM procedures in place for the ship. Check the ship's ISM procedures.

## **6.2.12 On-board medical care**

### **Inspection**

- *Check documents (such as the SEA) to confirm that, to the extent consistent with national law and practice, medical care and health protection services while seafarers are on board ship or landed in a foreign port, are provided free of charge (see Standard A4.1, paragraph 1(d)).*
- *Check documents (such as the SEA) to confirm that seafarers are given the right to visit a qualified medical doctor or dentist, without delay, when calling at a port, where practicable (see Standard A4.1, paragraph 1(c)).*
- *Check records and equipment to confirm that general provisions on occupational health protection and medical care are being observed (Standard A4.1, paragraph 1(a)).*
- *Undertake visual observation to confirm that the ship is equipped with sufficient medical supplies including a medicine chest and equipment, including either the most recent edition of the International Medical Guide for Ships or other suitable medical guide.*
- *Check documents (such as the safe manning document (SMD) and crew list) to confirm that a qualified medical doctor is working on board ships that carry 100 or more persons working on board and that are ordinarily engaged in voyages of more than three days' duration.*
- *Check that, where ships are not required to carry a medical doctor, they have at least one seafarer on board (who is trained and qualified to the requirements of STCW) to be in charge of medical care or is competent to provide medical first aid as part of their regular duties.*
- *Check that medical report forms are carried on board the ship.*
- *Interview, in private, a representative number of seafarers to confirm that seafarers have access to medical care on board without charge and are given leave to obtain medical and dental care services when calling in a port, where practicable.*
- *Check that procedures are in place for radio or satellite communications for medical assistance.*

### **Guidance for DMLC Part II**

Relevant documents confirming that the inspection has been carried out by the flag state or an RO will be available both at the ISM-company's office on shore and on board the ship. Reference is also made to the ISM procedure in place for the ship. Check the ship's ISM procedures.

The ship's officers have the certificates needed to be in charge of these responsibilities and for securing that the ship has the mandatory medical supply and that this supply is stored as requested.

## **6.2.13 On-board complaint procedures**

### **Inspection**

- *Check the document outlining the on-board complaint procedures to confirm that the procedures are functioning on the ship, paying particular attention to the right of representation and to the required safeguards against victimization.*
- *Check that seafarers are provided with a copy of the on-board complaint procedures in the working language of the ship.*
- *Check a document outlining the on-board complaint procedures to confirm that seafarers are able to complain directly to the ship's master or an external authority.*
- *Interview, in private, a representative number of seafarers to confirm that seafarers are given a copy of the procedures and that they are able to complain directly to the ship's master or an external authority and that there is no victimization.*

### **Guidance for DMLC Part II**

The ISM company has appointed a person on board who will be handling complaints from seafarers. The seafarers will be informed of who the complaint handler is, how to contact this person and how to submit a complaint. The Regulations concerning complaint handling laid down in the Ship Labour Act and the Norwegian Ship Safety and Security Act will be followed. The appointed complaint handler shall try to secure that solutions are found on the lowest possible ship level, but the seafarers will be entitled to lodge a complaint with the ISM company on shore as well as the NMA.

## **6.2.14 Payment of wages**

### **Inspection**

- *Check the SEA and documentation, such as the payroll records to confirm wages are being paid at intervals no greater than one month as specified in their SEA or relevant CBAs.*
- *Check relevant documents showing service charges and exchange rates applied to any remittances made to the seafarers' families or dependants or legal beneficiaries at their request.*
- *Check relevant documents to confirm the payment of wages including the requirement that a monthly account (such as a wage slip) is provided to the seafarers. Copies of individual accounts should be available to inspectors at their request.*
- *Interview, in private, a representative number of seafarers to confirm compliance with requirements on the payment of wages.*

### **Guidance for DMLC Part II**

The seafarer will be entitled to payment of wages in accordance with Norwegian legislation and additional provisions laid down in the employment agreement or the relevant CBA. The seafarer will receive monthly payment of wages with a settlement of wage form indicating how the payment has been calculated and the deductions made. The payment will be made to a bank account specified by the seafarer. A copy of the settlement of wage form will be available on request by the flag state and port state at the company's office. On board the vessel a copy of the SEA and the relevant CBA shall be available, and the settlement of wage form may be available at least on short notice depending upon the options supplied by the ship's electronic data system.

## 6.3 Other areas to be inspected

The following areas are not part of the certification of ships, but are part of on board inspections. The relevant legislation has therefore been highlighted. It should be noted that in general, if the SEA refers to a CBA, it should be assumed that the ship is in compliance with the MLC, unless there is evidence to the contrary. Evidence of the latter may for instance be obtained by interviewing seafarers.

### 6.3.1 MLC Regulation 2.4 Entitlement to leave

#### Norwegian legislation

- Act of 29 April 1988 No. 21 relating to holidays.
- Regulations of 22 December 1989 No. 1285 concerning entitlement to leave for seafarers.

The inspection is limited to checking the SEA. No separate documentation is required of the shipowner. If a reference is made to a CBA in the SEA, the inspector should consult the relevant clauses in that CBA to satisfy himself that conditions on board comply with the CBA.

#### Inspection

- Check the SEA and the relevant CBA to confirm that seafarers are provided with the annual leave with pay entitlement required.
- Check that SEAs and wage records confirm that this requirement is met.
- Interview, in private, a representative number of seafarers to confirm that they receive paid annual leave and are allowed an appropriate level of shore leave by the shipowner.

#### Guidance for DMLC Part II

The SEA will have a reference to Norwegian legislation and the relevant CBA providing for entitlement to leave.

### 6.3.2 MLC Regulation 2.5 Repatriation

#### Norwegian legislation

- The Ship Labour Act section 4-6
- Regulations of 18 February 2005 No. 146 concerning guarantee of remuneration for work and passage home for employees on ships registered in the Norwegian International Ship Register

This legislation provides basic rights and relevant CBAs provide additional rights.

The inspection is limited to checking the SEA. If a reference is made to a CBA in the SEA, then the inspector should consult the relevant CBA. No separate or additional documentation is required of the shipowner.

#### Inspection

- Check relevant documents confirming that the shipowner has provided financial security.<sup>6</sup>
- Check that a copy of the national provisions or SEA or relevant CBA regarding repatriation is available (in an appropriate language) to seafarers.
- Check for compliance with national provisions stating that seafarers under the age of 18 are to be repatriated after a prescribed period if it is apparent that they are unsuited to a career at sea (Guideline B2.5.2, paragraph 3).

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<sup>6</sup> Please note that no separate documentation is required for Norwegian ships, cf. The Ship Labour Act section 4-6 and Regulations of 18 February 2005 No. 146 concerning guarantee of remuneration for work and passage home for employees on ships registered in the Norwegian International Ship Register.

### **Guidance for DMLC Part II**

The SEA will have a reference to Norwegian legislation and the relevant CBA providing for entitlement to repatriation.

## **6.3.3 MLC Regulation 4.2 Shipowner's liability**

### **Norwegian legislation**

- The Ship Labour Act section 4-7
- Regulations of 18 February 2005 No. 145 concerning guarantees for social security entitlements for employees on Norwegian ships
- Regulations of 18 February 2005 No. 146 concerning guarantee of remuneration for work and of passage home for employees on ships registered in the Norwegian International Ship Register

### **Inspection**

- Check the SEA and the relevant CBA to verify that seafarers have the coverage required by national legislation implementing the MLC.
- Check documents confirming that the shipowner has provided financial security to assure compensation as required.
- Check for on-board procedures with respect to property that is left on board by sick, injured or deceased seafarers.

It should be noted that for NIS registered ships applicable CBAs require P&I coverage for shipowners for various types of claims by seafarers such as compensation for death and disability. The inspector should check whether the requirements stemming from Norwegian legislation and applicable CBAs are adhered to on board. The shipowner should for instance provide proof of membership (“Certificate of Entry”) of a P&I club and that seafarers on board the vessel are covered by that insurance policy. It should be noted that such documentation is *prima facie* indication of compliance. No separate or additional documentation is required of the shipowner.

### **Guidance for DMLC Part II**

The SEA will have a reference to Norwegian legislation and the relevant CBA providing for entitlement to health and social security protection benefits.

## **6.3.4 MLC Regulation 4.5 Social security**

Although listed in the ILO guidelines for flag state inspections as part of matters to be inspected by the flag State, in Norway this regulation is not part of the MLC inspections. The responsibility for checking compliance with this regulation lies with the Norwegian Tax Administration and the Norwegian Labour and Welfare Administration (NAV).

## **6.3.5 MLC Standard A5.1.1. General principles**

### **Inspection**

- Check to confirm that there is a copy of the MLC on board.