

## MLC 2006: Status & Implementation

The Faroese government has ratified the MLC 2006 Convention, and the Faroese Maritime Authority (FMA) is ready to issue the certification documents under the convention prior to the requirements coming into force in August 2013.

### 1 Implementation Period

#### 1.1 Present status

On 4<sup>th</sup> April the Faroese authorities communicated to the Danish authorities that the Danish reservation with respect to the obligation of the Faroe Islands under the Convention shall be withdrawn.

Hence, the MLC requirements will be enforced in its right time, and the applicable Faroese Notices and Executive Orders that implement the convention into the Faroese regulation are in their process of promulgation.

Please note, however, your safety management system (SMS) should make references *to the various paragraphs of the MLC Convention*. Hence, in order for you to finalise the preparations for an audit of the SMS for verification of compliance with the MLC requirements, it is immaterial for the companies to have the number to each of Faroese Executive Order and Notices from FMA in order to proceed with their preparations and the subsequent application for the DMLC1.

#### 1.2 Applications

The FMA will draw DMLC1 upon the basis of applications received from shipowners. The applications from companies with ships flying the Faroese flag are now accepted by the Faroese Maritime Authority.

#### 1.3 DMLC – Part I and Part II

The DMLC consists of two parts:

**DMLC I** is the statement, drawn up by the FMA, describing the national laws, regulations or provisions with respect to the 14 mandatory inspection items required for certification. The DMLC1 will also record any flexibility, substantial equivalencies or exemptions which may have been applied to the relevant ship. In our web pages you find our finalised version of the DMLC1.

- **DMLC II** is the statement, drawn up by the shipowner/management company and identifies the measures adopted to ensure on-going compliance with the national requirements detailed in DMLC I as well as the measures taken to enable continuous improvement between inspections. The measures in DMLC II should indicate:
  - a. When on-going compliance will be verified
  - b. The persons responsible for verification
  - c. The procedures to be followed when non-compliance is noted.

### 2. Interpretations of important definitions

#### 2.1 General Application of the MLC, 2006 in the Faroe Islands

The MLC, 2006 applies to all ships, whether publicly or privately owned, which are ordinarily engaged in commercial activity. Further reference is made to Convention, Article II, 1. (i):

*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;*

Thus, the application of the MLC, 2006 does not extend to registered ships engaged in fishing or in similar pursuits or old wooden vessels (e.g. the Faroese smacks) and military ships. The MLC applies to all types of passenger ships, but ferries in inter-islands transportation are not required to be certified.

All ships to which the MLC, 2006 applies of 500 gross tons or over, engaged in international voyages (incl. ships covered by Item 5.1.3 (b)), must be certified for compliance with 14 areas of the MLC, 2006 which are subject to mandatory inspection.

## 2.2 Seafarer

The Parliamentary Act “Løgtingslóg nr. 4 frá 15. januar 1988 um starvsviðurskifti v.m. hjá sjófólki” (with later amendments), herein after and usually referred to as “Seaman’s Act”) defines the seafarer by §1:

*“Sjófólk” merkir í hesi lóg øll tey, uttan skiparin, sum eru sett, hava fingið hýru ella arbeiða umborð á einum føroyskum skipi, og sum ikki bara arbeiða umborð, meðan skipið liggur í havn. Fyri skiparan er § 47 galdandi.*

*(In this Act “Seafarer” means those, with the exception of the master, who have received wages from or work on board a Faroese ship, and who do not work on board while the ship is in port only. For the master §47 prevails.)*

This is in compliance with the MLC Convention, Article II, item 1(f), which defines seafarer as follows:

*Seafarer means any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies;*

## 2.3 Shipowner

By the Faroese law the definition of ‘shipowner’ is congruent with the definition in the Convention, and recited below (ref. to the MLC Convention, Article II(1) (j)):

*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 fulfil certain of the duties or responsibilities on behalf of the shipowner..*

## 2.4 Recognized Organizations (ROs)

Parliamentary Act No. 165 on Safety at Sea from 21<sup>st</sup> December, 2001, §22 authorises the delegation of inspection and certification functions to Recognized Organizations (RO). Under this paragraph the FMA has delegated inspection responsibilities in terms of the MLC, 2006 to a limited number of RO’s.

In addition to the mentioned standard agreement with FMA, RO’s must comply with MLC, 2006 Standard A5.1.2 and Guideline B5.1.2. FMA will require documentation of such compliance.

The agreements between the FMA and the RO’s are in their hearing process with a deadline set to 24<sup>th</sup> June, after which they will be amended as applicable and signed.

## 3. The ISM Code

Reference is made to MLC Guideline B5.1.3.2. For ships under the SOLAS Convention, the ISM Code and the company SMS may form the basis for the implementation of the MLC on board ships above 500 GT.

The measures adopted to ensure on-going compliance are therefore recommended to be part of the company’s SMS and its inbuilt requirements to continuous improvement; cf. Standard 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 (our underlining).*

## 4. Financial Security

Several provisions in the MLC 2006 have requirements for financial security. It should be noted that where the MLC 2006 uses the term “financial security”, the Faroese legislation implements same by § 71 of Seaman’s Act,

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which obliges the shipowner “to ensure financial security” (“at veita fíggarliga trygd”) for sailing personnel. Cf. Regulation 2.5.2, Standard A4.2. 1(b):

*shipowners shall provide financial security to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard, as set out in national law, the seafarers’ employment agreement or collective agreement.*

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

This requirement is applicable if there are seafarers onboard that are not covered by Faroese social security schemes. The purpose is to protect the employees in case of employer's bankruptcy. Faroese regulation in this respect is forthcoming and will be in congruence with the MLC requirements.

**4.2 Guarantees for social security entitlements on Faroese ships**

Non national on board FAS-ships residing outside the Faroe Islands have the same rights as Faroese nationals in terms of the MLC regulation. Other than that Faroese law prevails.

**Note:**

For DMLC1 and DMLC2, reference is made to the MLC news room in the home pages.