

Annex III Race Equality Impact Assessment

STEP 1. LIST OF KEY ACTIVITIES WITHIN YOUR DIVISION/FUNCTION:

DIRECTORATE/AGENCY NAME

LMTD

EXECUTIVE LEAD

Peter Gant

Name and briefly describe all services, planning processes, current and proposed policies carried out by the organisation, which may be relevant to the General Duty. Use the guidance notes to assist you.

The Race Relations Act 1976 (RRA) makes it unlawful to discriminate against a person on racial grounds in certain areas. "Racial grounds" means the grounds of colour, race, nationality or ethnic or national origins.

Section 9 of the RRA originally contained an exception for racial discrimination in the field of employment for seamen recruited abroad. It was amended in 2003 to eliminate the ability to discriminate on the grounds of race, racial or ethnic origin or colour. The revision meant that nationality was the only ground on which to justify paying people differently, including their retirement and death benefits.

Section 9 was amended rather than repealed as it is common practice in the shipping industry for ships to be flagged in the UK, but to have their voyages outside of UK waters. In these situations individuals are frequently recruited locally and paid rates of remuneration that are comparable to rates in their home country. This practice does not discriminate against individuals on the grounds of their race but treats individuals differently based on the comparative cost of living that they will incur in the country where they are habitually resident.

The European Commission wrote to the UK Government in August 2006 stating that it has received complaints that the UK was not complying with EC law. The complaint was made in relation to wage discrimination practiced on UK vessels against certain foreign seafarers. Seafarers who qualify as EU migrant workers are entitled to equal treatment under EC law in employment related matters. No discrimination against such seafarers on the ground of nationality is therefore allowed and this applies in particular to wages and working conditions.

The options open to the Government are therefore to:

1. Do nothing, making no change to the legislation. This option has a strong probability that infraction proceedings will be commenced against the UK; or
2. Amend section 9 to bring UK domestic law into line with European Community law. The amendment will reduce the scope of the exemption currently available in section 9 so discrimination will not be lawful in respect of seafarers from EEA states or those from countries with relevant association or accession agreement with the EC; or
3. Repeal section 9 so no seafarers will be able to be discriminated against in regards to pay.

This REIA, therefore, assesses the impact that the change in policy will have upon racial equality in the payment of wages to foreign seafarers.

Date:09/01/07

Completed by: Victoria Bouwer

STEP 2. REVIEW FOR EQUALITY

DIRECTORATE/AGENCY NAME

LMTD

EXECUTIVE LEAD

Peter Grant

This template should be used to evaluate the activity's relevance to the General Duty in respect of:

- promoting equality of opportunity for all, especially those within the equality groups of race, gender, disability, religion/belief, sexual orientation and age
- eliminating discrimination that is unlawful under the equality legislation
- demonstrating that you treat everyone fairly
- taking active steps to promote equality by consulting stakeholders and setting equality goals

EVALUATION CRITERIA KEY POINTS FOR EVALUATION

Section 9 currently permits discrimination in respect of seafarers who "applied or were engaged" for employment abroad, on the grounds of nationality in relation to pay. Discrimination in relation to social conditions is not permitted. We judge that this may not be in line with EC law.

To become compliant with EC Law (the legal rationale is in the main body of the RIA), section 9 needs to be amended so that it does not apply to EEA seafarers or seafarers from a State with which the EC has a relevant association agreement.

Under option 2 any seafarer that is resident in either the EEA or in a State which the EC had a relevant association or accession agreement with could not be discriminated against in relation to pay under the Act.

Option 3 is to go further and remove all discrimination by repealing section 9, eliminating the exception for all foreign seafarers.

The proposed changes will affect nationals of various states (see RIA annex I) but no individual racial groups. The practice does not discriminate against individuals on the grounds of their race but treats individuals differently based on the comparative cost of living that they will incur in the country where they are habitually resident, just as UK seafarers' salaries reflect the cost of living in the UK. The rates of third party nationals are in fact generous in comparison to average earnings in their home countries; officers may be in the same wage bracket as professionals.

Shipping is a highly competitive industry and any changes to crewing that are not adopted internationally would put shipowners at a commercial disadvantage. Initial indications suggest that shipowners are most likely to flag out of the UK rather than face any additional costs due to staffing. Flagging out would mean that the shipowner would not be bound by the RRA and could continue to pay all its crew at variable rates. The growth of the flag is a ministerial priority for the DfT. These potential impacts are assessed in the main body of the RIA.

There is a higher chance that more shipowners would flag out if the section was repealed. It would mean that all seafarers working on ships registered in the UK with a port of choice in Great Britain could not be lawfully discriminated against under the RRA, but at the cost to the British seafarer and industry.

Disability

The UK flag has an excellent reputation for health and safety standards. If shipping companies flag out of the UK, it will not be possible to ensure such high standards on these vessels. This may have an impact for seafarers with disabilities.

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STEP 3. SUMMARY OF EVIDENCE

DIRECTORATE/AGENCY NAME

LMTD

EXECUTIVE LEAD

Peter Grant

ACTIVITY [as named in Step 1.]

Amending section 9 of RRA

This template should be used to identify the main sources and types of evidence to support your evaluation of relevance in Step 2. Note which evaluation criteria it covers and include brief details of the source and date of origin (if known). Use the guidance notes on the reverse of this form to assist you.

Use the enter key to start a new line

DESCRIPTION OF EVIDENCE

Seafarer wages are monitored by the maritime unions to ensure that seafarers are paid according to the International Labour Organization's (ILO's) minimum wages for seafarers. For those States that do not use the ILO's structure the wage structure is agreed upon at the International Bargaining Forum established by the International Trade Federation, International Maritime Employers Committee (IMEC) and several national shipowner associations.

Any seafarer on a UK flagged ship is entitled to at least the minimum wage requirements under the UK national minimum wage legislation whilst the ship is in the UK.

The International Shipping Federation conducts a yearly wages and conditions survey of seafarers and produces the average monthly salary for seafarers of different nationalities.

This evidence is factual so the qualitative and quantitative questions for this step do not apply.

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STEP 4. INITIAL IMPACT ASSESSMENT

DIRECTORATE/AGENCY NAME

LMTD

EXECUTIVE LEAD

Peter Grant

ACTIVITY [as named in Step 1.]

Amending section 9 of RRA

This template should be used to make an initial assessment of the impact of the above activity. Impact should be stated as "HIGH", "MEDIUM" or "LOW".

Note that if there is insufficient information to determine whether or how much the activity affects equality, then it should always be treated as potentially relevant. Use the guidance notes on the reverse of this form to assist you.

EVALUATION SUMMARY

RESULT

As nationality is a dimension of race, then the impact on racial quality is rated as 'high'.

Option 1 is not considered to be viable as the UK is perceived as being non-compliant with EC law. If the changes are not made then it is highly likely that infraction proceedings will be commenced.

Option 2 would have an impact as it would exclude EEA seafarers or those seafarers from countries which have a relevant association or accession agreement with the EC from the exemption. Under the amendment, shipowners would not be in breach of the Act if they employed third national seafarers at different rates. This could mean that EEA seafarers and seafarers from countries in which there is a relevant association or accession agreement with the EC being overlooked for employment when their contracts expire in favour of third national seafarers, or having to renegotiate their pay when signing a new contract. Some ship owners may also choose to reflag to avoid having to comply.

Option 3 would have a greater impact. It could cause shipowners to consider whether it was commercially viable to remain on the UK flag as the wage cost could be significantly higher than their competitors on non-UK flag ships. A reduction in the tonnage of the UK flag could have a knock on effect in other areas of the UK marine industry and cluster areas.

INITIAL IMPACT ASSESSMENT

High

Medium

Low

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