

# MARITIME FUTURES: JOBS & TRAINING FOR UK RATINGS

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## **Executive Summary**

### **Context**

2013 saw the third consecutive decrease in the number of UK seafarers with ratings declining at a faster rate than officers.

This pattern is repeated across Europe and is grounds for serious concern.

### **Method**

Consideration is given to potential strategies for the protection of seafarer employment in the UK via a consideration of the measures that have been taken in a variety of European and non-European states.

Information was gathered in the course of visits to trade union officials and other stakeholders in the UK, France, Bulgaria, Greece, Denmark, and Australia. This was supplemented with reviews of literature relating to the USA, UK, Canada, and Norway.

### **Findings**

While numbers of ratings are relatively small, these jobs are of considerable social value and also carry the potential to benefit the UK in relation to national security. Further declines in the numbers of ratings are therefore undesirable.

The UK has adopted a 'free seas' approach to domestic shipping and is currently choosing not to take advantage of opportunities to protect domestic island cabotage (passenger vessels and cargo vessels under 650gt) in line with current EU provisions.

At the current time, where they are available, ratings apprenticeships are proving popular with employers and trainees in the UK.

The adoption of the *in personam* approach to minimum wage enforcement has not proven successful.

In Europe various different approaches to shipping and the employment of seafarers have been adopted.

Like the UK, Norway has pursued a free seas approach relating to cabotage. In recent years new immigration provisions (in the form of requirements for residence permits) have been introduced to protect the wages and conditions of seafarers. Further to this, Norway has introduced two forms of state subsidy for shipping which companies suggest allows them to continue to employ Norwegian seafarers.

In Denmark, the Danish fleet is subject to requirements relating to Danish collective bargaining agreements and also relating to the proportions of EU Masters (in practice Danish) employed across the fleet. Tax concessions and training obligations associated with Danish Tonnage Tax are also in place. Training obligations are in place for ratings as well as officers. There is a 'skilled' (fast track) route available for those seeking to become ratings if they have a background in a relevant trade such as metalworking.

In Bulgaria, a free market strategy has been vigorously pursued by the State. Numbers of seafarers have plummeted alongside the number of registered Bulgarian vessels. This has resulted in a situation where training institutions are producing ratings and cadets who never have the opportunity to go to sea.

Island cabotage is practiced in Greece resulting in the protection of both officer and rating positions. Greek-flagged vessels carry nationality requirements in relation to crewing. These offer some protection to EU/Greek seafarers (generally officers rather than ratings). Tax incentives were also provided.

In France it is a requirement for all French vessels registered on the 1<sup>st</sup> register to carry all French crews. The French 1<sup>st</sup> register is in rapid decline with only 42 vessels registered in summer 2014. On French 2<sup>nd</sup> register vessels there is a requirement for 25% of the crew to be EU nationals. There are also language and knowledge requirements but these have recently been deemed as not allowable under EU guidance. Seafarers residing outside France who are not EEA nationals receive some low-level minimum wage protection. There are tax concessions in place for both employers of seafarers and seafarers themselves.

The USA has taken a highly protectionist stance in relation to shipping and the employment of seafarers. In principle this means that all cabotage activities are undertaken by US-owned ships crewed with all US citizens. The US minimum wage provisions extend to all seafarers employed on US vessels.

Australia has enjoyed some success in introducing a licencing system in relation to cabotage trades. Licensed vessels are subject to laws governing workplace pay, conditions, immigration and taxation. All the provisions introduced under the 2012 legislative package relating to this system are now under review and are likely to be subject to change.

The employment of UK seafarers has significance from an economic, social, and security, perspective. The UK government has been reluctant to protect cabotage trades and has vigorously advocated a free seas approach within Europe. In relation to training, the government has worked with employers to support training initiatives such as apprenticeships for ratings. There is limited wage protection offered to some UK and non-UK seafarers working on UK/EEA registered vessels and/or in UK waters.

## Recommendations

- 1) That protection is introduced for island cabotage<sup>1</sup> reserving such trade to UK-flagged vessels.
- 2) That nationality requirements are introduced for seafarers employed by UK vessels operating island cabotage.
- 3) That trainee ratings positions are linked to the tonnage tax on a mandatory basis.
- 4) That support is provided for accommodation and travel costs for ratings' shore-based training.
- 5) That National Insurance concessions for UK ratings in island cabotage is continued.
- 6) That an *in rem* approach is adopted in relation to national minimum wage enforcement. This is something that might usefully be re-visited by the relevant parties.
- 7) That consideration is given to whether there is a case for examining what impact implementing the recommendations of the Carter review would have on maritime employment and training in the UK.

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<sup>1</sup> Passenger vessels and cargo vessels under 650gt are currently permitted such protection under EU legislation but should the position be altered such that **all** cargo vessels in island cabotage are permitted protection then this protection should be included for **all** vessels.

## Introduction

In the UK, 2013 saw the third consecutive annual decrease (averaging 5% per annum) in the number of active seafarers. This brought the total number of active seafarers to 22,830 (Department for Transport 2014). After a gradual increase in numbers in the period 2007-2011, numbers of ratings are declining at a faster annual rate than officers (at an average of 8% per annum over two consecutive years) bringing the total number of actively serving ratings (including those serving in hotel and catering functions) down to 8,590 (Department for Transport 2014). The picture with regard to deck and engine ratings (non hotel/catering staff) is even more serious. The total number of deck ratings was reported to have declined by 7%, to 3,210, in 2013. Engine ratings showed a steeper decline of 18% leaving a mere 760 UK engine ratings in employment (Department for Transport 2014)<sup>2</sup>. This decline represents a lost opportunity for many young men in the UK (deck and engine ratings are almost universally male) who do not aspire to an academic career, or service-based employment, but who are suited to more practical work involving skills and training. In some regions the employment of ratings makes an important contribution to the local economy and plays a critical role in social cohesion. The nature and location of these opportunities in the context of the decline of traditional heavy industries, nationally, makes their loss particularly significant.

The decline has also had significance for UK national security. The importance of a 'reserve' of British seafarers to the UK defence strategy was outlined clearly at the turn of the century in documents such as the 1998 DETR paper '*British shipping: Charting a new course*' where it clearly states that:

The MOD consider that the current availability of British seafarers is sufficient to meet present operational requirements. However, the trends are adverse, not only in terms of the continuing fall in numbers (in particular of ratings), but in the increasing average age of British seafarers. Such trends take a long time to reverse and, unless they are reversed, a point will be reached where military operations in defence of our vital interests may be put at risk. (accessed 6/10/2014

<http://webarchive.nationalarchives.gov.uk/20100513020716/http://www.dft.gov.uk/about/strategy/whitepapers/previous/britishshippingchartinganewc5696?page=4>)

Within the European Union (EU) there is a high degree of concern about the future of the European seafarer, in general, and European ratings in particular. Whilst many employers see the benefits of employing European seafarers (quality of training, proficiency in European languages, transferability into shore-side functions, deployment flexibility for local trades), competitive pressures appear to be driving them to outsource labour supply to third countries. This is producing a downward trend in seafarer employment across many European states. Despite EU and Norwegian registered tonnage having increased by 70% (NB as distinct from number of vessels which grew at a slower rate) between 2005 and 2014, it is estimated the EU-based seafarers only hold 40% (188,000) of the estimated 470,000 jobs on these vessels (Oxford Economics 2014).

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<sup>2</sup> It is worth noting that of £100,000 earmarked, annually, in the period 2010-14, from the Support for Maritime Training (SMarT) budget for ratings' training, take-up has been extremely low. In the period 2012/13 of the £100,000 which was available only £7,991 was spent and in 23/14 the figure declined further to £6,594.

This paper outlines some of the current strategies utilised in support of seafarer employment/training within selected European and non-European nations. It discusses these in relation to existing measures in the UK and further considers new potential strategies that could be adopted by future governments.

## Method

The paper broadly considers the employment and training of ratings internationally and the steps that have been taken, by different states, to protect local employment opportunities. It offers an overview of the situation in the UK and a further five states based upon intelligence gathered in the course of dedicated visits to these countries. In this, the paper draws upon up to date information provided by trade union officials and employers<sup>3</sup> in the UK, Australia, France, Bulgaria, Greece, and Denmark<sup>4</sup>. In addition, literature reviews were conducted pertaining to the EU context<sup>5</sup>, the UK and US contexts<sup>6</sup>, and the Canadian, Norwegian and Australian contexts.

## The European Context

### The legal framework – cabotage

Within the EU, the protection of cabotage has been a contentious issue (Greaves 2011). As a nation operating with liberalised cabotage ('open seas') the UK has historically been a strong advocate for the opening up of all cabotage to member states and indeed to international competition. In contrast, countries such as Greece have argued against such liberalisation and have traditionally reserved cabotage for carriers operating under national flags<sup>7</sup>. This difference in perspective across the EU produced a delay in the liberalisation of cabotage under EU law. However by 1999, cabotage was largely liberalised<sup>8</sup> with provision for the gradual introduction of competition for some southern European states (France, Italy, Spain, Portugal and Greece) and, in the case of Greece, permission to defer the introduction until 2004<sup>9</sup>. Related derogations applied to some mainland services and all

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<sup>3</sup> In the case of the UK only.

<sup>4</sup> Thanks are due to Professor David Walters for assistance with information gathering in Australia, Bulgaria, France and Greece.

<sup>5</sup> My thanks to Dr Jasmine Coppens for assistance.

<sup>6</sup> My thanks to Ms Desai Shan for assistance.

<sup>7</sup> In 1985, cabotage restrictions were reported to have been in force in France, Germany, Greece, Italy, Portugal Spain and to a limited degree (for trade with the Faroes) Denmark (Petrova 1997).

<sup>8</sup> Under Regulation 3577/92/EC adopted on 7 December 1992.

<sup>9</sup> A later amendment when Croatia joined the EU in 2012 applied derogations for Croatian cabotage such that: 'until 31 December 2014, cruise services carried out between Croatian ports by ships smaller than 650 gross tonnes shall be reserved to ships registered in, and flying the flag of, Croatia, which are operated by shipping companies, established in accordance with Croatian law, and whose principal place of business is situated, and effective control exercised, in Croatia' (1992R3577 — EN — 01.07.2013 — 001.001 — 5).

island trades (Butcher 2010). Further to such liberalisation was provision that flag states (rather than 'host states' would govern the conditions for manning cargo vessels over 650 gt engaged in island services **involving a voyage to/from another state** (regardless of loading/ballast condition). However, manning conditions for island cabotage were otherwise **regulated by the 'host' state**.

At the time of these changes, the example of countries with liberalised cabotage (open seas), such as the UK, suggested that the liberalisation of cabotage would impact very little on services relating to the carriage of passengers. Its impact was considered to be likely to be greater in relation to the transport of cargo (Petrova 1997).

Today the position in relation to responsibility for 'manning' on services carrying out cabotage within the EU is as follows:

1. For vessels carrying out **mainland cabotage** and for cruise liners, all matters relating to manning shall be the responsibility of the State in which the vessel is registered (**flag state**), except for ships smaller than 650 gt, where host State conditions may be applied<sup>10</sup>.
2. For vessels carrying out **island cabotage**, all matters relating to manning shall be the responsibility of the State in which the vessel is performing a maritime transport service (**host State**).
3. However, from 1 January 1999, **for cargo vessels over 650 gt carrying out island cabotage**, when the voyage concerned **follows or precedes a voyage to or from another State**, all matters relating to manning shall be the responsibility of the State in which the vessel is registered (**flag State**).  
(1992R3577 — EN — 01.07.2013 — 001.001 — 5)

In further communication the EC has clarified that:

The Commission considers that host States are, among others, competent to specify the required proportion of Union nationals on board ships carrying out island cabotage (and ships smaller than 650 gt). A Member State may therefore require the crews of such ships to be composed entirely of Union nationals. Member States may also require the seafarers on board to have social insurance cover in the European Union. In terms of working conditions, they may impose the minimum wage rules in force in the country. As regards the rules on safety and training (including the languages spoken on board), the Commission considers that Member States may do no more than require compliance with the Union or international rules in force (STCW and SOLAS Conventions), without disproportionately restricting the freedom to provide services. **COMMUNICATION FROM THE COMMISSION on the interpretation of Council Regulation (EEC) No 3577/92 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) /\* COM/2014/0232 final \*/ (<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1403104357200&uri=CELEX:52014DC0232>) accessed June 15<sup>th</sup> 2014**

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<sup>10</sup> Including minimum wage requirements (Kvinge, T., Ødegård, M. 2010).

## The legal framework – state aid

In 1996, the Commission proposed a variety of developments to maritime policy in its document *'Towards a new Maritime Strategy'*. An element of this set of proposals was concerned with the promotion of the employment and training of EU seafarers (under strict State Aid Guidelines) in response to increased flagging out and declining employment. Specifically, the paper included discussion of the absorption of training costs by member states, financial support to companies taking cadets on board, the adoption of modular qualifications and the promotion of seafaring as a career. The UK government<sup>11</sup> was broadly in favour of steps to support training but not in favour of measures designed to support the employment of EU seafarers. The opposition<sup>12</sup>, in contrast, regarded fiscal measures to support the employment of EU seafarers (such as waiving employer NI contributions) as entirely appropriate. Graham Allen (the opposition Transport Spokesperson at the time) is reported as stating that 'it is better to assist people to remain in the seafaring business than for them to be thrown on to the dole queue and make no contribution to the nation's income tax and VAT revenues' (Butcher 2010:15).

In 2004, the current State Aid Guidelines (SAG) for shipping were adopted. These were subject to review in 2011, and following this process the EC concluded, in 2013, that the 2004 guidelines should stand. Under these provisions various forms of tonnage tax<sup>13</sup> have been approved. Some of these are linked to flag<sup>14</sup>, crewing<sup>15</sup>, and training requirements<sup>16</sup>. Others carry tax concessions of a different kind such as deductions relating to personal income tax liability for seafarers (as in Denmark).

Community SAG also permit States to allow for reduced rates of contributions towards the social protection of community seafarers employed on board member state-registered vessels, as well as reduced rates of income tax. Other permitted measures, such as aid for crew relief (which may take the form of assistance with the costs of repatriation of Community seafarers working on board ships entered on the registers of member states), have rarely been used<sup>17</sup>.

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<sup>11</sup> A conservative government was in power in 1996.

<sup>12</sup> In 1996 the main opposition party was Labour.

<sup>13</sup> Tonnage tax was introduced in Greece in 1975, Netherlands 1996, Germany 1999, United Kingdom 2000, Denmark 2001, Spain 2001, Finland 2002, Ireland 2002, France 2002, Belgium 2003, Italy 2004, Lithuania 2005, Poland 2007, Slovenia 2007, Cyprus 2010, Malta 2012.

<sup>14</sup> The Dutch and Norwegian models require vessels to be EU-flagged and the Greek model (Greece and Malta) require that vessels are flagged nationally (i.e. in Greece and Malta respectively).

<sup>15</sup> The Greek tonnage tax regime requires that eligible vessels employ Greek nationals as officers, The Dutch system requires that Masters are EU/EEA citizens.

<sup>16</sup> The UK tonnage tax regime carries with it a minimum training obligation of one cadet place per 15 officers employed.

<sup>17</sup> Finland introduced State aid for crew travel and relief costs up to 50% and a 2009 Commission decision raised no objection.

## Current practice: the cases of: Denmark, Greece, France, Bulgaria, and Norway

### Denmark

In Denmark<sup>18</sup> there are very similar numbers of deck and engine ratings (combined) to those found in the UK (around 4,000). Most ratings work in domestic trades on ferries and in the offshore sector<sup>19</sup>. The first register in Denmark holds only a small number of vessels (around 100) and the DIS (second register) holds approximately 649 vessels. All Danish-flagged ships are required to be covered by a Danish collective bargaining agreement (CBA) and there are nationality stipulations which are managed by local agreement with the Danish Shipowners Association (DSA). Essentially these require that 60% of Danish-flagged vessels must carry EU Masters (in practice Danish citizens as Danish terms and conditions are enforced so there is no competitive advantage for EU seafarers). Furthermore, all Masters have to pass an examination in Danish law and language<sup>20</sup>. Presently only 22% Of DIS flagged vessels carry non-EU Masters (below the permissible level).

Further to these protections there are other (financial) provisions for Danish seafarers. Seafarers working aboard 1<sup>st</sup> register vessels have a higher personal allowance of around 116,000 kroner (before taxation) than land-based workers for whom it is around 40,000 kroner. On DIS registered vessels, no taxation is applied so long as being at sea is deemed to be the seafarer's 'main job'. Danish-flagged ships provide insurance cover to all seafarers working on board for accident/injury compensation. This costs companies about £50 per seafarer regardless of seafarer nationality.

There are training obligations associated with the Danish tonnage tax which are again managed by local agreement by the Danish Shipowners' Association. These require the DSA to organise the intake, across all members (all Danish shipowners are members of DSA), of 200 officer cadets and 85 trainee ratings per year. Of the cadets, local estimates suggest that 50% are still working at sea after five years. Of the ratings the estimate is closer to 30%. This is thought to reflect the labour market situation in which there are readily available opportunities for Ordinary Seamen (OS) and relatively few job vacancies for Able Bodied Seafarers (ABs).

In addition to the traditional route to becoming a rating, in Denmark there is also a 'skilled route'. Following a twelve-week conversion course, that includes the requisite qualifications, skilled metalworkers such as welders/blacksmiths/fitters are permitted to go to sea. These ratings cost employers a little more than those available via the more traditional training route (involving five months of courses) but they are popular as they offer employers considerable versatility allowing them to conduct more repair and maintenance work at sea.

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<sup>18</sup> The Danish population stands at a total of approximately 5.6 million compared with a UK population of around 64.1 million.

<sup>19</sup> Less than 100 were reported to work in deep sea trades.

<sup>20</sup> NB Language requirements may be deemed to be in contravention of EU policy as indicated in Commission guidance (see COMMUNICATION FROM THE COMMISSION on the interpretation of Council Regulation (EEC) No 3577/92 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) /\* COM/2014/0232 final \*/ (<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1403104357200&uri=CELEX:52014DC0232>) accessed June 15<sup>th</sup> 2014).

## Greece

Of the four European case study countries visited, Greece has by far the most tonnage registered under the Greek flag. Ratings currently in employment were estimated locally to number 5,000 (although in 2013, unemployment rates for ratings were said to be as high as 50%).

In Greece, island cabotage is protected and it was reported that all inter-island ferries must be Greek-flagged and crewed 'top to bottom' with Greek seafarers. Ships flagged with other EU countries may be permitted but these are required to abide by Greek law vis a vis terms and conditions as well as crewing requirements.

For Greek-flagged deep-sea vessels over 4,500 dwt there are also nationality requirements in relation to crewing<sup>21</sup> and although these are determined on a ship by ship basis, on average, around six seafarers are required to be Greek/EU nationals on each Greek-flagged vessel. Locally, two examples were provided of recent agreements and requirements:

- Under an agreement made on 5/3/14 a UMS 27,422gt vessel had a required complement of 14 seafarers of whom five had to be Greek/EU nationals .
- Under an agreement reached in February 2014 a non-UMS vessel of 5,000gt was deemed to require 15 crew amongst whom there had to be four Greek/EU nationals .

The Master on all Greek-flagged vessels was reported to be required to be Greek (or EU national on equivalent terms).

The nationality requirements, as specified under Greek law, tend to favour Greek officers rather than Greek ratings as employers can choose their own distribution of the nationals they are required to employ across all ranks. Given that companies are **required** to have Greek Masters on board there is a logic to them employing Greek officers (to be trained up to become Captains). In addition, companies were said to value officers because of their potential to become future shore-side employees undertaking management functions.

Some tax incentives were provided for seafarers and these were not linked to the period of time that the seafarers were at sea. Currently (following the austerity package associated with the economic crisis) Greek officers are required to pay 15% income tax and ratings pay 10%. This was said to compare with higher rate tax payer rates of 42% for land-based workers. National insurance payments were also reported to be lower for seafarers.

## France

In 2014, of approximately 13,000 employed French seafarers, 8,000 were reported to be ratings. These ratings work upon ferries (cabotage) tugs and harbour vessels. All French-owned ferries were reported to be French-flagged and crewed with French nationals from 'top to bottom'. It was reported that it is a requirement for all French 1<sup>st</sup> register vessels to carry 100% French crew. The French 1<sup>st</sup> register fleet is in rapid decline. Eleven vessels have recently left the register from a total of just 42.

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<sup>21</sup> Local information suggests that this is governed by a law established in 1953.

The French second register (RIF) includes approximately 200 vessels. The Master and second in command do not need to be French/EU nationals but they are required to be conversant in French law and fluent in the French language<sup>22</sup>. Twenty-five percent of the crew are required to be community nationals<sup>23</sup>. Required crewing levels are generally set at higher levels for the French flag than for similar registers such as UK and Singapore. Seafarers residing outside France who are not EEA nationals receive some minimal wage protection<sup>24</sup>.

There are tax concessions for both seafarers and the employers of French seafarers. Employer NI contributions are set at 2-3% as opposed to the 20% set for land-based workers although seafarers do not receive any NI concession and pay the same rates as land-based workers. Seafarers who work more than 186 days at sea (outside French waters) do not have to pay any income tax.

## Bulgaria

The Bulgarian-flagged fleet is in rapid decline. There are no more than 20 vessels reported to fly the Bulgarian flag and, of these, many are not genuinely ocean going vessels. Most Bulgarian seafarers who are in employment serve on river-going vessels or on foreign-flagged ships. The government employs very few strategies to support seafaring jobs in Bulgaria aside from a relatively modest concession with regard to tax. Whilst cadets and ratings remain in training in Bulgarian colleges, and training institutions, many do not ultimately qualify as seafarers having failed to acquire the requisite sea-time (due to lack of opportunities with employers). There is an operational 'ratings conversion scheme' allowing ratings to gradually move into officer positions. However, this came in for some criticism, locally, on the grounds that it undermines the more rigorous cadet programme and boosts officer numbers at a time when positions for Bulgarian officers are in decline.

## The case of Norway: a non-EU member state within the European Free Trade Association

Norway, like the UK, has long-since practiced free international access to maritime cabotage in domestic seas (Kvinge, T., Ødegård, M. 2010). With the exception of the Norwegian second register, ships of any flag are therefore free to engage in domestic trade between Norwegian ports. In 2010, new immigration provisions were introduced in Norway which established that foreign-flagged ships (excluding those flagged with EEA states) engaged in domestic trade between two Norwegian ports would be required to obtain residence permits for foreign seafarers employed on board. This creates the same immigration status for foreign seafarers employed on board Norwegian registered

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<sup>22</sup> NB Language requirements may be deemed to be in contravention of EU policy as indicated in Commission guidance (see COMMUNICATION FROM THE COMMISSION on the interpretation of Council Regulation (EEC) No 3577/92 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) /\* COM/2014/0232 final \*/ (<http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1403104357200&uri=CELEX:52014DC0232>) accessed June 15<sup>th</sup> 2014).

<sup>23</sup> <http://www.rif.mer.developpement-durable.gouv.fr/en/services-for-professionals-r65.html> accessed 26/6/14.

<sup>24</sup> The minimum wage for a qualified seafarer residing outside France and working on an RIF registered vessel is currently set at USD 620.05 for 208 working hours per month (<http://www.rif.mer.developpement-durable.gouv.fr/en/services-for-professionals-r65.html> accessed 26/6/14).

vessels<sup>25</sup> and for those employed on foreign-flagged vessels (excluding the EEA) when the vessels concerned are engaged in intra Norway trade. Neither citizens of the EEA, nor citizens of third party states, need residence permits to work aboard EEA vessels engaged in Norwegian domestic trade. In order to be eligible for a residence permit in Norway, pay and working conditions must comply with the relevant collective agreement/wage scale for the industry (Kvinge, T., Ødegård, M. 2010).

In addition to this requirement, Norway has also introduced two forms of state subsidy for shipping. The first refunds a percentage share (12% for cargo vessels) of a shipping company's wage costs for eligible seafarers<sup>26</sup> working on NIS or NOR registered vessels. The second involves what is termed a 'net wage' scheme whereby refunds are made to shipping companies of income tax, social security contributions, and employer contributions for eligible crew members (employed on NOR vessels engaged in particular trades/operations). The refunds made under these respective schemes must fall within the limits set by the EU for state subsidies. The schemes receive considerable support from the Norwegian Association of Cargo Freighters who maintain that it allows them to continue to employ Norwegian seafarers whilst remaining internationally competitive (Kvinge, T., Ødegård, M. 2010).

## The Broader International Context

Protectionist measures aimed at cabotage are not unusual internationally and include the cases of the USA, Australia, Brazil, Canada, Chile, China, Japan, Mexico, New Zealand, South Korea (see Hodgson and Brooks 2004). The best known policy is that practised in the USA and known as *The Jones Act*. In Australia, recent controversial changes remain under discussion and may be subject to reversal.

### The USA

In principle, no cargo shall be transported between domestic ports in the US other than by a vessel built in the USA, documented under the laws of the USA, and owned by American citizens. Under US law (46 USC 8103) only citizens of the USA may serve as officers (licensed seamen) aboard such vessels. Ratings (unlicensed seamen) must be either US citizens, or aliens (but only if they are awaiting permanent residence)<sup>27</sup> or foreign nationals enrolled in a US maritime academy. The US minimum wage provisions extend to all seamen employed on American vessels (27 FR 8309).

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<sup>25</sup> Foreign seafarers may be employed on vessels registered with the 1<sup>st</sup> Norwegian register (NOR) and the second register (NIS).

<sup>26</sup> Eligible seafarers are those who are Norwegian or EEA citizens liable for tax/social security payments in Norway.

<sup>27</sup> These may not exceed 25% of the unlicensed seamen on board.

## Australia

Under Australian law, coastal trading has traditionally operated under a licensing system. Increasingly in the period from the mid-1990s this system allowed for the encroachment of foreign-flagged vessels into domestic freight trades. In 1996, the recently introduced tax rebate for seafarers PAYE was abolished leaving little government aid for shipping in place. By 2012 the Australian fleet had declined to just 22 vessels. Furthermore both the vessels and the Australian seafarers employed on them were rapidly ageing with vessels an average of 20 years old and half of seafarers aged over 45. This situation spurred the government to introduce a new package of legislation designed to 'revitalise' the shipping industry. As part of the package of legislation the 'Coastal Trading (Revitalising Australian Shipping) Act 2012' was introduced (<http://www.comlaw.gov.au/Details/C2012A00055> accessed 30th June 2014). This Act was designed to maximise the use of vessels registered in the Australian General Shipping Registers in serving domestic trades. It provided that vessels issued a general licence had unrestricted access to Australian waters whilst others were issued with either a temporary licence (limited in time and pertaining to specific voyages) or an 'emergency licence' pertaining only to the related 'emergency' in question. The system was designed to allow Australian ships to have the opportunity to make a case that they were in a position to carry cargoes that foreign-flagged vessels were applying to carry under licence. In 2014, there were 45 Australian-flagged ships with general licences for coastal trade and 16 foreign-flagged vessels holding transitional general licences<sup>28</sup> with the same operating rights (Australian Government 2014). Licensed vessels are subject to laws governing workplace pay and conditions, immigration, and taxation.

The 2012 regulatory package, renamed the existing Australian register of ships the 'Australian General Register' (AGR) and introduced a new register - the 'Australian International Shipping Register' (AISR). Ships registered on the AGR are eligible for general licences providing them access to domestic coastal shipping<sup>29</sup>. Ships on the AISR are required to be mainly used for international trades and to apply for temporary licences to cover any 'incidental' coastal passages. Ships registered to the AGR are subject to the *Fair Work Act 2009* and are required to employ all Australian crews with Australian workplace rights. Vessels registered on the AISR are required to fill the top four positions on board (master, chief mate, chief engineer and 1<sup>st</sup> engineer) with Australian nationals or residents.

Two Acts (the Shipping Reform (Tax Incentives) Act 2012 and the Tax Laws Amendment (Shipping Reform) Act 2012)) have been introduced to provide tax exemptions to ship operators. Tax exemptions include income tax exclusions, accelerated depreciation, and seafarer tax 'offsets'. Under this latter tax, rebate taxes can be offset against payments for salaries and allowances paid to Australian seafarers employed to undertake overseas voyages on certified vessels (under certain conditions).

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<sup>28</sup> These are intended to allow foreign-flagged vessels trading under the previous laws time to re-register under the Australian flag. Licences are issued for five years and may be renewed once. The licence affords vessels the same rights as those issued with a general licence.

<sup>29</sup> Each seafarer working on a vessel with a general licence is required to be an Australian national or permanent resident or to hold a visa with appropriate work rights.

Currently the Fair Work Act 2009 applies to coastal vessels operating under *general, transitional general, or emergency* licences or operating under a temporary licence having made at least two other voyages under temporary licence in the previous 12 months. The Fair Work Act provisions include the 'ten National Employment Standards', national minimum wage, termination of employment protections and right of entry requirements. Further to this, the *Seagoing Industry Award 2010* also establishes minimum conditions of employment for those operating under all license types (however provision varies by licence type in some cases).

The Fair Work Act does not cover ships on the AISR whilst operating in international trades nor does it apply to foreign-flagged ships passing through Australian coastal waters.

All the provisions of the 2012 legislative package are now under review and may be subject to change (see

[https://www.infrastructure.gov.au/maritime/business/coastal\\_trading/review/files/Options\\_Paper\\_Approaches\\_to\\_regulating\\_coastal\\_shipping\\_in\\_Australia.pdf](https://www.infrastructure.gov.au/maritime/business/coastal_trading/review/files/Options_Paper_Approaches_to_regulating_coastal_shipping_in_Australia.pdf) accessed 30th June 2014).

## The UK case for ratings

At the current time, there appears to be a healthy demand for, and **potential**<sup>30</sup> supply of, ratings from the UK to supply services in island cabotage and between UK and EU ports. However estimates suggest that further government intervention is required to avert a situation where ratings fall into short supply in the medium term. A recent review panel<sup>31</sup> has accepted evidence from a report from consultants at Deloitte and Oxford Economics that there could be a deficit of 800 ratings by the year 2021. After several decades of low recruitment and training for ratings, the age profile of existing employees is increasing and many companies expect to lose a significant proportion of their British ratings (to retirement) in the next five years. UK Department for Transport Statistics indicate that, in 2013, 76% of deck ratings, 75% of engine ratings, and 77% of the very small number of existing General Purpose ratings were aged 40+ (DfT 2013).<sup>32</sup>

A number of service providers have, therefore, welcomed the new apprenticeship programmes that were introduced in June 2011 for maritime ratings. Furthermore, some have reported extraordinary numbers of applications for advertised apprentice places (in one case 1000 applicants for ten places and in another location where very limited advertising took place 40 applications for six places).

As jobs in traditionally male dominated, heavy, industries have declined in the UK, there remain few semi-skilled employment opportunities offering career advancement and decent wages. As one recently published study comments:

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<sup>30</sup> The term 'potential' is used here to indicate that the evidence suggests that UK residents are willing to train as ratings and accept ratings positions at sea where these are available

<sup>31</sup> See [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/3697/independent-review-on-maritime-training.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/3697/independent-review-on-maritime-training.pdf) accessed January 14 2015

<sup>32</sup> The age profile for catering and other ratings indicates that 43% were aged 40+ in 2013 (DfT 2013)

The manufacturing sector as a whole has had to become more cost- and quality-conscious [...] In the process the number of manufacturing jobs has fallen from 8.7 million in 1952 to 2.5 million at present, the share of manufacturing jobs in total employment falling from over a third to 8%. (Philpott 2012: 2)

Such jobs remain attractive to young men (in particular) and their absence presents particular social, as well as economic, challenges (Turok and Edge 1999). These may have a particularly deleterious effect on specific parts of the UK (for example Scotland, Wales, and the North East of England). The continuation of employment opportunities in sectors such as fishing and shipping is therefore of particular importance from a socio-economic perspective as well as from the more commonly discussed standpoint of the role of the maritime sector in strategic defence capability.

Furthermore, not only do local young men appreciate employment opportunities with local ship operators but such ship operators also value the opportunity to employ local workers. Having served on board in senior positions, officers may go on to take up roles within ship management and/or in the broader maritime cluster. Less obviously however, employers also recognise the value of employing local ratings and have highlighted in particular:

- The value of recruiting employees who live relatively locally and can provide service cover at short notice.
- The reputational benefits of establishing a local profile as a 'good' employer.
- Low employee travel costs to and from vessels.
- Employee motivation to provide a good service to their own community from which passengers are frequently drawn.

## **Opportunities to stimulate the employment, and training, of ratings**

### **Continuing with apprenticeships**

The success of the, currently available, ratings apprenticeship<sup>33</sup> programme is being built on through the current Government's Trailblazer Apprenticeship policy which sees maritime unions, employers and colleges working to develop standards for apprenticeships for ratings in deck, engine, electro-technical, catering and on-board services. Apprenticeships are currently popular with employers and with young people with limited academic qualifications (some employers recruit trainees with the lowest entry level qualifications of a grade 'C' GCSE in maths and one equivalent in English). Ratings apprenticeships also enjoy the support of trade unions. In this context it would seem prudent to heed the calls for further support for such apprenticeships in the form of training subsidies (e.g. provision of accommodation and travel costs for trainees), more widespread provision of college-based courses, and a requirement for trainee ratings as part of the obligations associated with the UK-tonnage tax regime.

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<sup>33</sup> The first new set of standards for Able Seafarer (deck) has been established as part of the maritime apprenticeship trailblazer programme (<http://www.maritimetrailblazer.com/>)

The RMT reports that work is underway between the Department for Transport, maritime unions and the Chamber of Shipping to amend secondary legislation to permit the inclusion of UK ratings in qualifying companies' core training commitments (CTCs) to the Tonnage Tax scheme. This would permit a ratio of 3 trainee ratings for one officer on a vessel. It is expected that qualifying companies will be able to exercise this option in the CTCs they are required to submit to Government by October 2015.

## Fiscal measures

It would appear to be prudent to continue with the limited fiscal measures that are currently in place in support of ratings' employment: Notably the waiver for employer national insurance contributions which is currently in place for seafarers employed in island cabotage.

## Protecting island cabotage

In the context of widespread international action to protect domestic trade (cabotage), it remains unclear how it is in the national interest for the UK to maintain a 'free seas' approach to island cabotage. EU law permits member states to limit provision of island cabotage (passenger vessels and cargo vessels under 650gt) to national-flagged vessels and further allows for stipulations to be made in relation to crewing and to labour conditions (including imposition of minimum wage). To date, island cabotage has not been threatened by foreign-flagged operators in the UK, however, it might be prudent to take such steps as are necessary to protect UK-island cabotage prior to such threats becoming manifest<sup>34</sup>.

## Requiring an element of specialist knowledge

In some EU states there is a requirement for an element of specialist local knowledge amongst crews (e.g. pertaining to national language or local law). However it appears, given recent guidance from the EU, that this is interpreted as in contravention of EU law. It therefore seems **not** to be an option that is open to the UK.

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<sup>34</sup> This might involve the introduction of a national UK register (1<sup>st</sup> register) with restrictions on seafarer nationality and controlled terms and conditions and an international UK register (as the current UK register).

## The 2010 Equality Act

The UK Equality Act provisions apply Part 5 (work) of the Act to

- all seafarers, irrespective of nationality, who work on-board a UK registered ship which operates wholly or partly in GB or adjacent waters; and
- EEA/designated state seafarers where the legal relationship of their employment is located in (or closely linked to) GB, working on-board an EEA registered ship/hovercraft operating wholly or partly in GB or adjacent waters (except in relation to the protected characteristic of marriage and civil partnership); and
- EEA/designated state seafarers where the legal relationship of their employment is located in (or closely linked to) GB, working on-board a UK registered ship/hovercraft operating wholly outside of GB and/or adjacent waters.

([http://www.legislation.gov.uk/uksi/2011/1771/pdfs/uksiem\\_20111771\\_en.pdf](http://www.legislation.gov.uk/uksi/2011/1771/pdfs/uksiem_20111771_en.pdf))

In these instances it is not permissible to pay differential rates to seafarers on the basis of nationality.

Despite the recommendations of the Carter Review (commissioned by the last Labour Government), in May 2010, that all forms of nationality-based pay discrimination be outlawed, Part 5 of the Equality Act further provides that **subject to these limitations** it remains **lawful** for employers to pay different rates to seafarers from countries that are neither within the EEA nor designated states ([http://www.legislation.gov.uk/uksi/2011/1771/pdfs/uksiem\\_20111771\\_en.pdf](http://www.legislation.gov.uk/uksi/2011/1771/pdfs/uksiem_20111771_en.pdf)).

### minimum wage enforcement on UK-flagged ships

It is permissible for the UK government to enforce minimum wage levels on board UK-flagged ships trading between UK ports and/or where seafarers spend significant time in the UK (for example on a regular run between a UK port and a European port). Currently the UK government advocates an *in personam* approach (Department for Business Innovation and Skills 2014) to enforcement of minimum wages on board such vessels<sup>35</sup>.

This approach, however, is likely to continue to be unproductive as it relies upon a seafarer from outside the UK, on less than minimum wage, to go to an employment tribunal with a case against his/her employer. Such an approach would render the seafarer concerned no longer competitive in the labour market and it would thus be against his/her personal interests. In the case of a seafarer from a country such as the Philippines, it is also likely that s/he would be unable to remain in the UK to pursue such an action and may additionally be prevented from ever securing employment again via seafarer crewing agents in the Philippines (s/he would be likely to be 'blacklisted').

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<sup>35</sup> A review of the application of the national minimum wage to seafarers is currently underway (<http://www.ukchamberofshipping.com/news/2014/09/01/policy-update-uk-chamber-september-2014/>)

In order to enforce national minimum wages on board UK-flagged vessels where such terms should (under current interpretations of the law) apply it therefore seems that an *in rem*<sup>36</sup> approach is the only viable option. There is currently one UK-flagged vessel reported to be operating between a UK port (Harwich) and a Dutch port (Hook of Holland) where it appears that national minimum wage rates should be applied but where it is reported that Filipino seafarers are being paid at significantly under minimum wage level. In this instance it would appear that there is an issue of lack of enforcement which the current approach to minimum wage regulation is unable to address. This case sets a dangerous precedent and, should the approach to enforcement remain unchanged, it is likely that other operators of UK-flagged ships may follow this example and avoid compliance with UK minimum wage legislation. For example, the RMT have reported that in January 2014 Stena Line Irish Sea indicated to UK and Irish maritime unions that in order to compete with low-cost operators the company was *considering* introducing rates of pay for new ratings that would be below the minimum wage in both Ireland and the UK.

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<sup>36</sup> An *in rem* approach is one whereby legislation applies to the vessel. This can only be applied to UK and or EU/EEA-flagged vessels. By contrast an *in personam* approach is one where legislation applies to the seafarer. In principle, the *in personam* approach can be applied aboard a vessel of any flag so long as the seafarer is deemed to have established sufficient link to the UK.

## Recommendations

- 1) The immediate review of current measures relating to island cabotage and the introduction of a requirement for all vessels engaged in such trade to be UK-flagged and subject to UK law<sup>37</sup>.
- 2) The adoption of measures to protect employment of UK nationals aboard UK-flagged vessels engaged in island cabotage such that seafarers working aboard such vessels are required to be UK citizens or alternatively EU citizens employed on the same minimum terms and conditions.
- 3) The incorporation of trainee ratings as part of the employer mandatory obligations associated with the UK-tonnage tax regime.
- 4) Support for the cost of accommodation and travel associated with the shore-based elements of ratings apprenticeships.
- 5) Continuation of the waiver for employer National Insurance contributions for UK ratings working in island cabotage.
- 6) The adoption on an *in rem* approach to the enforcement of national minimum wages aboard UK-flagged ships that are engaged in trades between UK ports or involving significant proportions of time in UK waters.
- 7) That consideration is given to whether there is a case for examining what impact implementing the recommendations of the Carter review would have on maritime employment and training in the UK

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<sup>37</sup> Passenger vessels and cargo vessels under 650gt are currently permitted such protection under EU legislation but should the position be altered, such that **all** cargo vessels in island cabotage are permitted protection, then this protection should be included for **all** vessels.

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