EXPLANATORY MEMORANDUM TO:

THE MERCHANT SHIPPING (INLAND WATERWAY AND LIMITED COASTAL OPERATIONS) (BOATMASTERS' QUALIFICATIONS AND HOURS OF WORK) REGULATIONS 2006 (S.I. 2006/3223)

THE MERCHANT SHIPPING (LOCAL PASSENGER VESSELS) (CREW) REGULATIONS 2006 (S.I. 2006/3224)

THE MERCHANT SHIPPING (FEES) (AMENDMENT) REGULATIONS 2006 (S.I. 2006/3225)

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 These instruments revoke and replace the Merchant Shipping (Local Passenger Vessels) (Masters Licences and Hours, Manning and Training) Regulations 1993 (S.I. 1993/1213, "the 1993 Regulations"), and amend the Merchant Shipping (Fees) Regulations 2006 (S.I. 2006/2055).

2.2 S.I. 2006/3223 (i) requires every master of a vessel operating commercially in inland waters of Category A to D (and in some cases on voyages to sea no further than 15 miles from the starting point and within 3 miles of the coast) to hold an appropriate qualification, (ii) specifies the requirements for obtaining both a nationally-valid boatmaster's licence and a boatmaster's certificate valid in the EEA, and (iii) re-enacts from the 1993 Regulations the Working Hours Code for self-employed boatmasters (i.e. those who are not employees falling within the scope of the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003 (S.I. No 2003/3049)).

2.3 S.I. 2006/3224 re-enacts with necessary modifications a further part of the 1993 Regulations by requiring the owner of a passenger vessel operating on inland waterways to ensure that, where necessary, the vessel carries, in addition to the master, a member of the crew who is qualified to act as master.

2.4 S.I. 2006/3225 replaces the schedule of fees payable to the Maritime and Coastguard Agency (MCA) for examinations and the issue of boatmasters' licences and certificates under the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 *Fees*. There are no fee increases, but there are new fees:

(a) of £28 for the upgrading of a boatmaster's licence Level 1 to Level 2;
(b) of £28 for the issue of a boatmaster's licence under the transitional arrangements for the conversion of Thames watermen's licence: regulation 33 of S.I.2006/3223;
(c) of £109 for the assessment of the holder of a Rhine licence for a supplementary licence, for local knowledge in an area for which an endorsement is required under regulation 20(7) of S.I. 2006/3223.

These are based on existing fees for revalidation ((a) and (b)) and for issue of a local knowledge endorsement (c)).

In addition, new fees relating to the boatmasters' certificates, enabling the holder to operate on community waterways outside the UK, are:

(d) of £22 for the issue of a boatmaster's certificate;
(e) of £28 for the revalidation of a boatmaster's certificate;
(f) of £28 for the upgrading of a boatmaster's certificate Grade B to Grade A.

These fees are set at the same level as the fee for comparable processes for boatmasters' licences.

3.2 *Use of powers.* Parts 2 and 4 of the Regulations are made under the powers of sections 47 and 307(1) of the Merchant Shipping Act 1995 and section 2(2) of the European Communities Act 1972. Section 47 powers do not apply to every type of "non-United Kingdom ship", being limited by the provisions of section 46. They have therefore been extended to all such vessels by a direction under section 307(1). Section 2(2) powers are required for the purposes of regulation 21.

3.3 *Breach of 21 day rule* The Regulations have been laid for less than the normal 21 days. They must come into force on 1 January 2007 because on the River Thames, 600 Watermen and Lightermen licences expire on 31 December 2006, and no provision has been made to re-validate them under the current Port of London Authority Byelaws, in the expectation that these Regulations would have been made. The Regulations have been delayed because there have been long and detailed discussions pertaining to the River Thames which have had to be resolved before progress could be made. In seeking to meet the concerns of the Watermen and Lightermen, the requirements have been set at a level which has required the clearance of the Panel for Regulatory Accountability, because it could be considered disproportionate to the risk.

3.4 If the Regulations were to be delayed in order to comply with the rule, there would be a short period after 1 January when masters of most vessels would be unable to operate legally on the River Thames because they would hold no valid qualification and no adequate alternative legal framework is available.

4. Legislative Background

4.1 S.I. 2006/3223 implements Directive 96/50/EC on the harmonisation of the conditions for obtaining national boatmasters' certificates (full details being set out in the Transposition Note annexed to this memorandum). The Directive was considered by the EU Scrutiny Committee on 2 November 1994, when it was considered to give rise to no questions of legal or political importance. (Hansard reference Cols 15614) on the grounds that the UK would not be required to implement a harmonised licence for those operating solely in the United Kingdom. On 8 May 1996 (Eighteenth report from the 1995/96 Session), the Committee raised concerns about the possible requirement to implement for a very small number of boatmasters in Northern Ireland, and recommended a bipartite agreement with the Republic of Ireland to avoid this. There has been no follow-up report.

4.2 The Department has taken advantage of the derogation in article 3(2) of the Directive which permits Member States to exempt boatmasters from the requirement to hold an EU-model boatmaster's certificate where they operate exclusively on waterways not linked to a waterway of another Member State. Since the Republic of Ireland has stated that it has no inland waterways for the purposes of EC Directives, no United Kingdom waterways are so linked.

4.3 S.I. 2006/3224 replaces part of the 1993 Regulations as noted at paragraph 2.3. Other provisions in the 1993 Regulations relating to the crewing of local passenger vessels are omitted because they are now covered by other regulations.

4.4 In respect of S.I. 2006/3225, the MCA (on behalf of the Secretary of State) is empowered by s.302 of the Merchant Shipping Act 1995 to charge fees for carrying out its statutory functions under that Act.

5. Extent

5.1 These instruments apply to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Secretary of State for Transport has made the following statement regarding Human Rights:

In my view the provisions of the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations 2006 are compatible with the Convention rights.

6.2 As the Merchant Shipping (Local Passenger Vessels) (Crew) Regulations 2006 and the Merchant Shipping (Fees) (Amendment) Regulations 2006 are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 The aim of Directive 96/50/EC is to ensure free movement of labour throughout the EC by providing for the harmonisation, and mutual recognition, of qualifications for masters of vessels operating on inland waterways. S.I. 2006/3223 duly provides for the issue of boatmasters' certificates in the UK and for the recognition of certificates issued by other Member States and Rhine navigation licences.

7.2 In addition the instrument both amends and extends to passenger and non-passenger vessels the requirement in the 1993 Regulations that boatmasters on United Kingdom waterways (and on some very short sea voyages) must hold a UK boatmaster's licence.

7.3 While there is little evidence of a poor safety record among the vessels concerned, the Government has decided to accept the recommendation by Lord Justice Clarke, the Chairman of the Thames Safety Inquiry, that the requirements for masters on passenger ships should be extended to other large vessels. Initially this will affect about 300 commercial freight vessels operating on inland waterways, and an estimated 1000 additional skippers. The regulations are however in part responding to a recommendation by the Freight Study Group that a national Boatmaster's qualification should be developed for the inland waterway freight industry, and the licence has broad support from that sector.

7.4 The Regulations in addition give legislative recognition to the recommended qualifications for masters in the Inland Waters Small Passenger Boat Code, as recognised alternatives to the Boatmasters' Licence for small vessels, as it is considered worthwhile introducing at the same time a comprehensive regulatory

regime for inland waterways. The number of smaller vessels to be brought into the regime over the next three years is estimated at 1200, although an estimated 500 will already be operating with a master holding one of the qualifications accepted for smaller vessels under the regulations.

7.5 *Consultation*. The new UK boatmaster's licence regime has been developed since 2003 in consultation with the domestic passenger and freight industries and port and navigation authorities, through formal working groups and other informal contacts. There have also been three public consultation exercises in 2003, 2005 and 2006, for each of which nearly 300 letters have been sent out, including a number to the major associations which represent a large number of boatmasters and/or operators of vessels. There is general support for the principle of a new boatmasters' licence but concerns have been raised about the specific requirements from two quarters, namely:

- some of those in the currently unregulated sector and some operators of smaller passenger vessels in coastal areas (an estimated 200 vessels) who see no need for change, considering that the regime proposed is too onerous;

- on the River Thames, those Watermen and Lightermen (represented primarily by TGWU and RMT) concerned that it will undermine the existing Port of London Authority regime under which they have hitherto worked. About 75 (out of a total of around 500 practising Watermen and Lightermen) responded to the public consultation exercise voicing their opposition.

In responding to both these groups, a two-tier system (national and restricted licences) has been developed, alternative qualifications for small vessels have been recognised (see 7.4 above), a proposal for introducing mandatory training has been dropped, and strict additional local requirements imposed for boatmasters wishing to operate on the River Thames.

7.6 On the Fees regulations, 384 interested organisations were consulted by letter or email sent out on 6 March 2006. Of the 22 responses received, 1 raised objection to the boatmaster licences fees.

7.7 *Guidance.* The MCA is producing Merchant Shipping Notices and Guidance Notes about the new regime, supplemented by simplified guidance on its website. It is also planning to publish articles in relevant magazines and industry publications and is holding a small number of public meetings in key locations for those who wish to attend and ask questions about the new scheme.

8. Impact

8.1 A Regulatory Impact Assessment for S.I. 2006/3223 is annexed. This sets out the training and other costs for the private and voluntary sectors. The assessment of costs for obtaining a licence and for the industry include the impact

of fees No distinction is made in safety standards between vessels which carry passengers for profit and those in the voluntary sector, since all passengers are entitled to expect the same level of safety.

8.2 The impact on the public sector falls into 2 parts. (1) The initial cost to the MCA of implementing the regime to date is estimated at £110k, including £30k for the creation of a database to record information about candidates and licences and certificates issued. This would have been required even if the new regime had not been introduced, but could have been deferred to future years. (2) The additional annual cost is expected to be minimal, since costs for examination and issue of licences are recoverable through fees.

9. Contact

Julie Carlton, Inland Waterways Safety Co-ordinator, at the Maritime and Coastguard Agency, Bay 2/16, Spring Place,105 Commercial Road, Southampton SO15 1EG can answer any queries regarding instruments S.I. 2006/3223 and S.I. 2006/3224. Telephone 023 8032 9228 or e-mail: Julie.Carlton@mcga.gov.uk.

Phil White at the Maritime and Coastguard Agency can answer any queries regarding instrument S.I. 2006/3225. Telephone 023 8032 9274 or e-mail Philip.White@mcga.gov.uk.

TRANSPOSITION NOTE

Council Directive 96/50/EC on the harmonisation of conditions for obtaining national boatmasters' certificates for the carriage of goods and passengers by inland waterway

Responsibility for implementation

The responsibility for implementing the Directive lies with the Secretary of State (acting through the Maritime and Coastguard Agency).

Note on applicability to United Kingdom waterways

The Directive permits Member States to exempt from its principal requirement (that boatmasters should hold certificates conforming to the prescribed model) masters of vessels operating solely on inland waterways not linked to waterways in another Member State. All the commercial waterways in the UK are non-linked. (Whilst it is arguable that the waters of Lough Foyle and Carlingford Lough on the border with the Republic of Ireland may be inland waterways for the purposes of the Directive, the government of the Republic of Ireland takes the view that they are not.)

Over-implementation

These Regulations do more than is necessary to implement the Directive in the following respects:

- The Directive applies to passenger ships carrying more than 12 people and to tugs, side-by-side formations, pusher craft and convoys but only to other goods vessels over 20m in length. These Regulations apply to all commercial passenger and cargo vessels. This approach has been supported by industry, concerned that smaller vessels operated by incompetent masters may cause a significant hazard to large vessels. However, alternatives to the national boatmaster's licence ("BML") are provided for those operating smaller vessels. Many other member states have separate legislation for the qualification of masters of vessels outside the scope of the Directive. The UK has chosen to include all the requirements in a single S.I.

- The Directive requires a holder of a boatmaster's certificate ("BMC") to undergo a medical examination at age 65 and annually thereafter. In the case of holders of certificates issued in the UK the requirement applies from age 45 although only at 5-yearly intervals until age 65. This requirement mirrors the requirement imposed on holders of the national BML. The approach is based on the statistical evidence showing, in persons aged 40-50, a marked increase in the incidence of medical conditions relevant to the ability of boatmasters to discharge their responsibilities safely.

- The Directive permits Member States to impose additional local knowledge requirements upon boatmaster operating in certain areas though not on waterways of a maritime nature. The Government has chosen to take advantage of that option but has also imposed requirements in relation to some waterways of a maritime nature.

Under-implementation

The regulations do not implement the provisions of the Directive in the following respect:

- The Directive requires the BMC to be in the form of a small plastic card. The UK, under national provisions for non-linked waterways, and with the support of industry representatives, proposes a passport sized booklet in line with other maritime qualifications. .

- Although the Regulations are thought to be compliant, by enabling the Secretary of State to suspend a boatmasters' certificate issued in another Member State (prior to contacting the issuing state) where its holder is found to be medically unfit, it may be contended that they do not implement fully the requirement for mutual recognition of certificates in Article 4(2).

- Part 4 of the Regulations provides for transitional periods during which persons with experience in the job but no qualification corresponding to a BML or BMC may act as boatmasters notwithstanding that they are not qualified as comprehended by the Directive. The Directive itself makes no provision for such a transition.

All references in the table are to the Merchant Shipping (Inland Waterway and Limited Coastal Operations) (Boatmaster's Qualifications and Hours of Work) Regulations 2006.

Articles	***Objectives***	***Implementation***
Article 1(1) & (3) and Annex I	Member States to issue certificates in accordance with the Directive	Regulation 15 and Schedule 3, Part 2, make provision for the issue of boatmaster's certificates of various classes (which subject to local requirements and the terms of the Directive, are valid throughout the EEA).
Articles 1(4) & 4(2)	Boatmasters' certificates issued by a Member State to be valid for all waters in the Community and recognised by other Member States	Regulation 8(2)(b) so provides as regards United Kingdom waters (see also the definition of "boatmaster's certificate" in regulation 5(1)).
Article 1(5)	Rhine Navigation	Regulation 8(2)(c) & (3) so provides as regards

	licence to be valid for all inland waterways in the Community	inland waterways in the United Kingdom.
Article 2	Definitions	Regulation 5(4) defines who is a boatmaster for the purposes of Part 2 of the Regulations and regulation 7 specifies the waters and voyages to which Part 2 applies. Other definitions are not transposed as it is unnecessary.
Article 3(1)	Directive applies to passenger vessels carrying more than 12 persons, tugs and goods vessels of all types over 20 metres in length	Regulation 7 provides that the requirement to hold an appropriate qualification applies to all vessels other than pleasure vessels (defined in regulation 5(1)) operating in waters of Categories A to D (effectively, navigable inland waterways in the UK). (The Regulations apply also to vessels not subject to the Directive, including small goods vessels, workboats, non-passenger vessels, vessels carrying no more than 12 passengers, and some vessels on limited coastal operations. Alternative UK qualifications are also accepted for some of these vessels, under regulation 8(5) and Schedule 2.)
Article 3(2)	Member States may after consulting the Commission exempt masters of vessels operating exclusively on non-linked waterways and impose national requirements instead.	Regulations 8(1)(a) permits boatmasters to navigate vessels on United Kingdom waterways if they hold a national BML and regulations 9 to 14, with Schedules 3 and 4, provide for the assessment of candidates' abilities, for the issue of BMLs to suitable persons and for their validity periods.
Article 4(1)	Boatmasters' certificate must state whether the holder has Group A or Group B authorisation	Regulation 15(1) requires certificates to be of a class specified in Schedule 3, Part 2, i.e. either Group A or B.
Article 5	Minimum age	Regulation 17(1), with Schedule 3 Part 2, provides that boatmaster's certificates may not be issued applicants before they have reached the age of 21.
Article 6(1)	Applicants for boatmasters' certificates must be	Regulation 18(1) provides that an applicant for a boatmaster's certificate must be medically fit. In practice this will require the production of a

	medically fit	doctor's certificate.
Article 6(2)	Holders of certificates must undergo a medical examination annually from age 65	Regulation 18 applies. Paragraphs (2) and (3), provide that a boatmaster's certificate issued in the UK and held by a person aged 45 or over is not valid unless the holder also has a medical certificate, renewable every 5 years if the holder is aged 45 to 64 and annually if the holder is 65 or over. Paragraphs (3) and (4) provide that a BMC issued elsewhere in the EEA and held by a person aged 65 or over is not valid unless the holder also has a medical certificate, renewable annually. All certificate holders must notify the Secretary of State if they may be suffering from a medical condition relevant to their ability to perform their duties. UK certificates may be revoke or suspended if the holder is found to be medically unfit. BMCs issued elsewhere may be suspended for use in UK waters but the issuing state must be notified with reasons.
Article 7	Applicants for boatmasters' certificates must have 4 years' professional experience or, if less, have passed a practical examination in sailing the relevant type of vessel	Regulation 17, paragraphs (2) and (3), specify that the minimum period of "qualifying service" (as defined in paragraph (4)) which an applicant for a BMC must demonstrate is 480 days served over 4 years. Regulation 19 requires applicants to satisfy the Secretary of State that they have the requisite practical sailing skills. Regulation 15(2) provides that an applicant must already hold either a national BML or a BMC issued in another Member State and Schedule 4, Part 2 determines the type of practical sailing test (if any) that each applicant must undergo according to his previous experience and qualifications.
Article 8 & Annex II	Applicants to have passed an examination of professional knowledge in specified subjects	Regulation 19 requires applicants to satisfy the Secretary of State that they have the requisite underpinning knowledge as well as practical sailing skills. Regulation 15(2) provides that an applicant must already hold either a national BML or a BMC issued in another Member State (for which they will already have been examined) and Schedule 4, Part 2 determines the level of theoretical assessment that each applicant must undergo according to his previous experience and qualifications.
Article 9	Applicants to pass an examination in knowledge of radar	Regulation 19 and Schedule 4, Part 2 (section 3) specify the practical skills and underpinning knowledge that an applicant must demonstrate for

	navigation where necessary	a BMC authorising radar navigation.
Article 10	Applicants to pass an examination in knowledge of radar navigation passenger operations where necessary	Regulation 19 and Schedule 4, Part 2 (section 3) specify the practical skills and underpinning knowledge that an applicant must demonstrate for a BMC authorising a person to take charge of passenger vessels.
Article 13	Directive to be implemented by 18 months after it comes into force (i.e. April 5, 1998)	The Regulations are to come into force (with the exception of regulation 33 which comes into force earlier) on 1 January 2007.

REGULATORY IMPACT ASSESSMENT

1. TITLE OF PROPOSAL

National Boatmasters' Licence

2. PURPOSE AND INTENDED EFFECT

i) Objective

There are three policy objectives for introducing a new Boatmasters' Licence for the UK.

Implementation of EC Directive 96/50/EC on "Harmonisation of the conditions for obtaining national boatmasters' certificates for the carriage of goods and passengers by inland waterway in the Community"

The United Kingdom did not implement this Directive in the late nineties, because of earlier advice from the European Commission that, because the UK is not linked to the rest of the European inland waterway network, Directives relating to harmonisation of inland waterway standards did not have to be implemented in the UK. However, that advice changed after challenge by a Dutch operator who wished to bring an EC-certificated passenger ship onto the River Thames. The UK required the vessel to meet safety standards equivalent to UK passenger ships, and the operators challenged this as contrary to EC law. The UK argued that it would not be reasonable to accept a vessel with lower safety standards than existing UK passenger ships. This argument was accepted by the Commission on this occasion, but it was made clear that a legal framework was needed in order to comply with EC legal requirements and to provide transparency for those from other member states wishing to operate in the UK.

The Boatmasters' Licence Directive includes a provision for exemption of vessels on inland waterways which are not linked by inland waterway to another member state (effectively, all United Kingdom waterways[1]).

However, the UK still needs to implement a new Boatmasters' licence:

Article 3(2) states:

> "A Member State may, after consulting the Commission, exempt from the application of this Directive boatmasters operating exclusively on national waterways not linked to the navigable network of another Member State and ***issue them with national boatmasters' certificates***, the conditions for obtaining which may differ from those defined in this Directive. The validity of those national certificates shall in that case be limited to those waterways."

[1] The Department of the Marine in Eire has advised that they do not consider any waterways in Eire as inland waterways for the purposes of the EC Directives on technical standards for vessels and boatmasters licences.

While the UK has an existing licence for boatmasters of passenger ships, there is no appropriate licence for boatmasters of freight or other large vessels. The existing UK passenger BML would not be acceptable on other EC rivers under Directive 96/50/EC since there is no specified qualifying service time or written examinations, and the licence itself is geographically limited to a specified area of operation in the UK.

Additionally, it is important to implement the Directive for the following reasons:

(a) in order to provide that boatmasters' certificates (BMCs) issued by other member states are accepted for operations on UK waters – without which we could be subject to infraction proceedings,

(b) in order to provide a framework to determine the type of BMC that is appropriate for various UK waters, including making provision to require local knowledge where necessary for safety reasons.

There is a real risk of challenge, leading to infraction proceedings, in the light of the London Olympics in 2012, for which it is expected that river transport will be a key feature. The opportunities for passenger ships on the Thames may well attract interest from European operators (one French operator has already started to explore siting a river cruise vessel on the Thames this year).

(c) The purpose of this Directive is to improve the facilitation of trade, and movement of labour on inland waterways within, and between, EU Member States, and industry has expressed a preference for a licence which provides access for UK operators to other European waterways.

<u>Safety</u>

In addition to having a regime in place to require appropriately qualified BMC holders, the safety objectives are –

- To provide a suitable qualification for the masters of non-passenger ships which do not go to sea, for whom there is currently no statutory requirement for qualification. This "gap" was identified by Lord Justice Clarke in the Thames Safety Inquiry report in 1999 as needing to be addressed. He recommended that consideration be given to "the imposition of crewing requirements for any vessel in the [Thames Safety Inquiry] area that is capable of causing significant damage either to other vessels or to fixed structures" (recommendation 27.12). The MCA proposes to respond to this recommendation nationally, as although Lord Justice Clarke's report was directed specifically at the River Thames, the same situation pertains nationally. While there is no evidence of a poor safety record in the past, serious accidents do happen, and as traffic on the waterways increases, the risks increase. In the event of a serious accident, the Government would be open to criticism if it had not implemented the Thames Safety Inquiry recommendation, or taken account of the EC Directive, particularly given that the freight industry has asked for a licence to be developed for them.

- To strengthen the existing Boatmasters' Licence regime for passenger operators. Until now we have allowed operators to skipper passenger vessels with up to 250 passengers on board with nothing much more than passing a brief oral and practical exam, on the basis of "sufficient service" (a subjective judgment by the examiner). No formal training or examination is required.

The aim is to underpin safety on inland waterways, with a robust, flexible qualification, at a time when use of the waterways for a wide variety of purposes is increasing.

Environmental Benefits

Finally, the new Boatmasters' Licence (BML) aims to support the carriage of freight on water, as a viable and sustainable alternative to road and rail transport, by providing a professional, national qualification.

The Freight Study Group (FSG) was set up by DETR and reported in 2003 on actions that could be taken to support the shift of freight transport from road to water, in support of the Government's sustainable transport policy. Inland Waterway transport is considerably cleaner than road. In terms of 1 kilogram of fuel oil per kilometre, water-borne transport can move 127 tonnes of freight compared to 97 tonnes by rail, and 50 by road[2].

The FSG report included a recommendation for a national boatmasters' licence for the freight industry, which would (a) remove local barriers between different navigation and port authorities, and (b) (as part of a wider package of measures) improve the image of the industry with insurers, financiers and shippers, so improving the industry's competitiveness.

The aim is for the national Boatmasters' licence to be recognised as a robust qualification, which demonstrates a sufficient level of competency for any typical inland or coastal waters. Legally it overrides local qualifications (the byelaws for the Thames Watermen's and Lightermen's licence are revoked by the national regulations) and it is hoped that it will also enable some port authorities to remove pilotage requirements where these have been imposed in the absence of a suitable national qualification for inland freight vessels.

ii) Background

The current MCA boatmaster' licence regulations (dating from 1993, and introduced following the MARCHIONESS Disaster) apply only to passenger ship operators. They made mandatory what had previously been a voluntary Boatman's licence, in response to one of the recommendations from the Marine Accident Investigation Branch into the incident.

In order to achieve the objectives above, it is proposed under the new regime to require the master of all vessels other than pleasure vessels which operate on inland waterways or

[2] "Sea and Water" Sustainable Transport factsheet.

limited coastal voyages within the UK to hold an appropriate qualification. The new licence will apply to operators of non-passenger inland waterway vessels for whom, up to now, there have been no national operator standards at all. It will not apply to owners/operators of pleasure vessels, or to hire boat users where the vessel is used for pleasure, or to fishing vessels.

There is little evidence of a poor safety record generally on inland waterways, but serious accidents have occurred, including the contact of the RED FALCON with the link-span at Town Quay, Southampton in March 2006, the capsize of the SWAN, an unregulated small passenger vessel (carrying no more than 12 passengers) at Poultney Weir in Bath in October 2004, the contact of the NOTTINGHAM PRINCESS with a bridge on the River Trent in November 2002, the death of a passenger hit by a failed mooring bollard from the STAR CLIPPER in May 2004, and the collision of a London Frog BEATRICE with an aggregate barge BRENDA PRIOR on the Thames in December 2004. Serious accidents are generally considered to be the tip of the iceberg but there is no single system for reporting of minor incidents and near misses for inland waterways, so national statistics on minor incidents are not readily available. The National Water Safety Forum is seeking ways to address this problem, following the setting up of an "Information Advisory Group" last year. However, though frequency of significant incidents may be low, it is clear from the incidents quoted above that the consequences could be severe given the mix of large commercial vessels, tourist traffic and pleasure vessels on some busy waterways. The MARCHIONESS disaster in 1989, in which 52 people died, remains a potent influence on the safety debate on inland waterways.

The new licence will have a two-tier structure. There will be a "Tier 1", national version of the licence that is designed to be equivalent to EC requirements. For non-tidal waterways, there will also be a "Tier 2" version which will be restricted to a particular area, or water category, and type of operation. This will be very similar to the current MCA (passenger) boatmasters' licence.

Tier 1 will be mandatory for those operating in tidal and coastal waters, and optional for those in non-tidal waters.

iii) Rationale for Government intervention

The risks that this initiative addresses are as follows.

- The UK is open to infraction proceedings if the above mentioned Directive 96/50/EC is not implemented, and holders of EC Boatmasters' Certificates are unable to operate in the UK.

- Whilst there are few recorded instances of significant accidents on inland waterways, there is clearly a risk to safety in having no consistent, national operator requirements for the non-passenger sector of the inland waterways industry. That risk may be intensified by the expected increase of traffic on inland waterways.

– The current BML requirements leave a significant amount of discretion to the examiner in determining service time, the level of examination etc, leaving the risk of inconsistencies and consequently inequalities.

– The credibility of the inland waterways freight industry as a transport option may suffer, due to its operators not being subject to any national, recognised competency standards. A national licence for freight operators was recommended by representatives of the industry, in the "Freight on Water" report of the Freight Study Group.

– MCA is the only national body with relevant powers and expertise to set standards, for the whole of the UK, replacing some local licensing schemes.

Non-regulatory options have not been pursued because –

- For safety reasons, we need a robust enforcement option to prevent an inexperienced or incompetent person being able to work as a master (eg by setting up in business themselves) given the serious consequences of an accident;

- All other vocational "drivers" (both in the UK and the rest of Europe) are required to hold a licence administered by government;

- We are extending and improving an existing tried and tested regime;

- Industry is in favour of a licence, which gives them credibility with their customers.

3. CONSULTATION

i) Within Government

Department for Transport (Shipping Policy, Freight Logistics, Better Regulation Unit)
Environment Agency
Department of the Environment, Food and Rural Affairs
Scottish Executive
Welsh Assembly
DTI Small Business Service

ii) Public consultation

The Boatmasters' Licence proposals have been developed over three years with a Working Group comprising experts from industry, unions, navigation authorities and training establishments, the Domestic Passenger Ship Steering Group (the national consultative body for domestic passenger ships in the UK) and an industry Steering

Group. We have also consulted the Government bodies listed in i above. An initial non-statutory public consultation, on the basic aims, scope and framework requirements of a national boatmasters' licence, ran for 12 weeks, from December 2003 until February 2004. There was a further such consultation from July to October 2005 on more specific implementation proposals, including some issues about which it had not been possible to achieve a consensus. MCA has also attended additional meetings with passenger boat operators, and with Watermen and Lightermen on the River Thames to discuss and refine the proposals.

This statutory public consultation on draft regulations ran for 12 weeks from April to July 2006, and was promulgated via the MCA website, correspondence and attendance at meetings as necessary.

The full history and the policy decisions made at each stage are at Annex 1.

Separate, targeted consultations have been conducted at a local level on proposals for local knowledge endorsements in specific areas. The principle of local knowledge endorsements is widely accepted, but we have had little response to local proposals except for the Thames, where there is resistance to the change from a Thames-based licence, and concern that the proposals will reduce safety levels.

There is general support for a national licence, particularly by representatives of the inland waterways freight industry, against the background of the Freight Study Group recommendations, but no consensus nationally on the appropriate level of requirements.

Throughout the development of the licence, there have been two conflicting views to reconcile – those who feel the current BML is adequate (for passenger ships), and that the new proposals are disproportionate, and those who feel that the proposed licence should be more closely based on the Thames Waterman's Licence which is more onerous (though MCA would argue does not provide a greater level of safety) than the national licence which has been developed. The Thames Watermen and Lightermen have built up political momentum through RMT and TGWU and have brought in the Marchioness family groups to support their cause, arguing that the reduction to two years qualifying service, and the removal of compulsory training courses, will reduce safety standards. MCA is confident that the proposals are robust, and that the level of examination will ensure that competency standards are high, and therefore that safety standards are maintained.

Between these two extremes, there is a core of cautious support for the proposed qualification. It is recognised by those involved in the process that the range of conflicting views has led to a more complex system than might be desirable to cater for the wide range of operations covered.

4. OPTIONS

Option 1 - Do Nothing

This is not a viable option because, as an EC Member State, the UK is obliged to take action on the Directive referred to above. Furthermore, UK operators who wished to work in another EC country would be at a disadvantage because there would be no UK qualification valid for operation on EC inland waterways open to them.

In addition, the Government accepted the Thames Safety Inquiry recommendation and Freight Study Group recommendations referred to, and should honour the undertakings made in respect of these.

Option 2 - Adopt the EC Directive standards without variation

The standards laid down in the boatmasters' licence Directive on (96/50/EC) relate to the navigational environments to be found on major European waterways, and the vessels that operate on them. As a harmonisation measure, the Directive does not provide a sufficient level of detail on which to base a licensing regime, and supporting material would need to be developed on syllabus, examination, medical provisions etc.

EC Directive 96/50/EC applies only to passenger ships, tugs and pusher craft and to freight vessels over 20m in length. This size limit reflects the scale of traffic on the major European waters, where inland freight vessels can be over 100m in length. Smaller vessels tend to be regulated at a national level (Germany for example requires BMLs for any vessel over 15m).

Following consultation with the industry Steering Group which supported MCA during the development of the new licence regime, and wider public consultation, it was agreed that a lower size limit for the application of the UK regulations, and a restriction to freight and passenger operations, would be inappropriate in the UK since quite small vessels can pose a risk on the small scale UK inland waterways.

Typical benchmarks for the standards in the European Directive are the rules that have been developed for the Rivers Rhine and Danube. Such waterways are of course very different in size and characteristics to those within the UK. It was not considered appropriate to require all of those applying for boatmasters licences in the UK to be competent in the European navigation rules for inland waterway vessels (not used in the UK) or to be familiar with the European network of waterways outside the UK.

Option 3 - Introduce a new, national licence regime

Under the exemption provision for non-linked waterways, the Working Group with MCA has devised proposals which implement as much of the European Standards as are considered appropriate for the UK industry, but in response to the needs of that industry depart in some significant respects from the EC Directive.

The EC Directive provides for a generic qualification entitling the holder to operate any goods vessel, and, if certain additional criteria are met, any passenger ship. Again, in consultation with industry, it was agreed that for the UK industry, a modular licence allowing candidates to specialise in a particular field of operation, would help to ensure that candidates could be trained within a reasonable timescale, and help to mitigate the effects of the introduction of the licence on a previously unregulated industry. However, it has the safety benefit that they can only qualify for any specialised type of operation when they have completed service (as well as training) on that type of vessel.

In response to the overwhelming view in public consultation, vessels below 20m (the Directive limit) will fall under the new regime. However, under the UK regime, vessels less than 24m in length and carrying no more than 12 passengers (tying in with existing MCA codes for small commercial vessels), alternative qualifications are acceptable. These qualifications are already in use by a large number of reputable operators, and have been recommended for all small passenger boats since 2004. However, take-up has been patchy. These vessels include small passenger boats and workboats (freight vessels in order to be commercial must generally be more than 20m in length).

The alternative qualifications are less time-consuming and therefore cheaper to obtain, and more accessible with training and examination centres being more widely spread than for the boatmaster's licence – the RYA courses for example are used by pleasure as well as commercial boaters. They do however provide a satisfactory level of training for the smaller, less complex vessels.

The EC directive applies only to inland waterways. UK inland waterways are relatively short and most operators on tidal waters will at some time or other need to enter estuarial and coastal waters. The UK syllabus (as for the current passenger BML) therefore includes coastal navigation and chart reading, and the scope of the licence has been expanded to cover vessels operating up to three miles from shore and 15 miles from point of departure.

Provision is made for those meeting the few additional criteria specified for a certificate for operation on other EC inland waterways to obtain one if required. The Merchant Shipping Notice supporting the UK regulations separates out these European elements, which are additional to the normal generic UK syllabus, so that a candidate only needs to be examined on them if he requires a certificate for operation on the waterways of other member states.

For the UK syllabus, examination and licensing regime, the broad framework provided in the Directive has been developed within the regulations to provide a transparent regime.

UK requirements which are in excess of the Directive are –

- Revalidation of the licence: All UK certificates of competency are subject to revalidation, including the existing passenger BML, ensuring that the holder of the certificate or licence has recent practical experience in order to maintain his skills and knowledge. Despite the fact that the Boatmaster's Directive does not

require revalidation we understand that harmonisation of other vocational driver qualifications is moving in the direction of revalidation of licences. We believe revalidation is an important safety feature of the licence, and there is no objective justification for removing this existing requirement.

- Medical assessment every 5 years from age 45: The minimum requirement in the Directive is for a medical assessment at entry and not then until age 65 and annually thereafter. The new UK licence (as the current passenger BML) requires medical assessment at entry, then five-yearly (at revalidation of the licence) from the age of 45, the annually from the age of 65. This is based on medical evidence for increased incidence of relevant conditions (diabetes, deteriorating eyesight, heart conditions). The DfT Chief Medical adviser is confident that this can be objectively justified by medical evidence, but also advises that employment conditions separate from the licensing regime in other member states probably ensure at least an equivalent monitoring of health after the age of 45 in other Member States as is proposed for the UK Licence.

Under the exemption provision in the Directive, anyone holding a Boatmaster's Licence under the 1993 regulations will be able to apply for a new licence when it falls due for revalidation, without any additional requirements. Those working as boatmasters in sectors for which no licence is required under the current regulations will be able to apply for a licence which enables them to continue working in the operation and area where they are currently working, on the basis of experience and testimonials, and on condition that they undergo basic safety training (first aid, fire-fighting and personal survival) within the first two years after obtaining their licence.

If they wish to upgrade to a national licence, they will need to sit the written examinations and meet any other additional criteria for the licence required.

This is the most viable option, and the one supported by industry associates. It will fulfil the Directive requirements in a way that is appropriate and workable for UK inland waterways operators. It will also introduce formal operator standards to the non-passenger sector, for whose operators no national qualification has been required or available up to now.

Option 3 has therefore been adopted.
The Merchant Shipping (Inland Waterways and Limited Coastal Operations) (Boatmasters' Qualifications and Hours of Work) Regulations will implement Directive 96/50/EC in so far as is deemed appropriate for the United Kingdom. The regime covers all commercial vessels, not only those over 20m, although with suitable alternative qualifications acceptable for the smaller vessels, and provides a modular structure to enable trainees to focus on a particular type of operation and so qualify more quickly without reducing safety standards. They provide for Boatmasters' Certificates issued under the Directive and Rhine Certificates to be valid for operation on UK inland waterways, and for the issue of EC Certificates by the UK.

They also carry forward from the 1993 regulations existing working time provisions for the self-employed, which have not been separately assessed, as there are no new requirements.

5. COSTS AND BENEFITS

i) Sectors and groups affected

This measure will affect all commercial boatmasters and skippers on UK inland waterways, and firms who employ them. We estimate that this equates to some 1600[3] existing boatmasters, and all new entrants to the industry. There are an estimated 350 to 400 businesses whose activities involve non-passenger vessels, for which there have been no national operators' standards up to now. There are also an estimated 450 - 500 businesses which only run passenger ship operations. In both cases, the majority would fall into the "small business" category of having fewer than 250 employees, many with 1 to 25.

The new regulations will also affect charitable operations and trusts which run trip boats and workboats, and the operators of vessels run by port and navigation authorities.

The effect on those already working in the industry is however mitigated by preserving "grandfather rights" and making provision for those who have not previously required a qualification to obtain one on the basis of experience. For small vessels, alternative, accessible qualifications are accepted.

ii) Benefits

Option 1: Not an option; see above.

Option 2: This would be the most straightforward option from an administrative viewpoint, and the UK licence would be immediately acceptable to other EC countries. However, that advantage is only relevant where operators have an interest in operating outside the United Kingdom, and would be outweighed by the higher costs of compliance with a cover-all licence (eg four years experience) and unnecessary compliance costs for the "EC" parts of the syllabus, not relevant to UK operations. The UK would continue to need a separate national licence for limited coastal operations, for which there is no harmonised EC equivalent.

Option 3: Up to now, no national accident statistics have been compiled for the inland waterways industry. Therefore it is difficult to quantify the positive effects on safety resulting from this proposal. Nevertheless, MCA is confident that the proposed new Boatmasters' Licence will underpin safety standards for operators, other crew members and other waterways users.

[3] This is a best estimate based on information currently available. Accurate figures are difficult to obtain in this hitherto unregulated and fragmented industry.

The Value of a Prevented Statistical Fatality (VPSF) is £1.4m. Ten injuries equate to one fatality. Over 10 years, the new regime would only need to prevent three fatalities or three injuries per year to have covered its costs. In this industry any serious accident has the potential to result in multiple fatalities – as tragically demonstrated by the MARCHIONESS disaster in 1989 (52 fatalities).

The new regime will also benefit the industry by introducing a transparent, cohesive and consistent system of national training and certification requirements, reflecting the wide range of skills and expertise that are called for in this industry. This includes the skill and experience of existing operators which will be acknowledged within the system.

Furthermore, as mentioned above, it will be possible, by meeting some additional requirements to convert the new "Tier 1" licence to a certificate valid for operations in other parts of the EC.

The modular structure of the UK licence will enable applicants can train more quickly for a qualification that is tailored to their particular type/s of operation, without undermining safety standards.

Meanwhile, the "Tier 2" version will provide a simpler, less expensive option for limited local operations in low risk waterways, and alternative qualifications for small vessels (<24m and no more than 12 passengers) on inland waterways provide appropriate, relatively low cost accessible options to lower risk, less complex vessels.

There is scope for considerable environmental benefits if more freight is carried by inland waterway, in terms of reduced fuel consumption, emissions and road congestion. In terms of 1 kilogram of fuel oil per kilometre, water-borne transport can move 127 tonnes of freight compared to 97 tonnes by rail, and 50 by road[4]. The waterway freight industry believes that the licence will, as part of a wider package of measures, support their efforts to win more work from their road and rail competitors. This in turn supports the Government's sustainable transport policy objectives.

In addition, the syllabus for the boatmasters' licence for all candidates includes environmental, pollution prevention and garbage disposal requirements, ensuring that increasing traffic does not harm the waterways environment which provide important wildlife corridors and are tourist attractions in their own right.

iii) Costs

Option 1

NIL for industry.
NIL for government unless or until the UK faced infraction proceedings for non-implementation of the Directive.

[4] "Sea and Water" Sustainable Transport factsheet.

Option 2

The costs for those operating vessels covered by the Directive would be higher than those for Option 3.

Instead of the current range of qualifying service times (maximum two years), all candidates would be required to meet the EC Directive requirement of four years QST (say £30k per candidate).

They would also be required to complete the Underpinning Knowledge examination for EC-only topics which under Option 3 are optional, and only needed where the candidate applies for a certificate for operational on other EC Waters (estimated cost £100 - £300 per candidate).

However, a large number of small vessels would fall outside the scope of the regulations, since the Directive does not cover non-passenger ships under 20m in length. This lower size limit was rejected by industry in public consultation because small vessels can pose a serious risk to larger vessels if the person operating them is not competent.

The costs for the public sector would be very similar to the costs for Option 3 (£110k set-up costs).

Option 3

Option 3 will impose an unavoidable cost burden on new operators and their employers but there will be a wide variation, depending on whether BML candidates enter for the Tier 1 or Tier 2 versions of the licence, and the extent of any current local requirements which the new BML will replace.

The Tier 1 licence will involve substantially more cost than the current regime because its much greater scope is reflected in:-

- requirements for externally validated underpinning knowledge;
- specified minimum qualifying service times;
- a modular structure with a core, generic module, and endorsement modules for specialist activities and local knowledge.

The costs of training may also vary according to an individual's skills and experience, and also on the number of specialist endorsements required on top of their generic Tier 1 licence. The Company of Watermen and Lightermen, on behalf of the Port of London Authority, already run such a system with over 600 licence holders, and about 60 new entrants per year. That level of intake is expected to continue under the new regime.

As far as MCA fees are concerned, these are set by statutory instrument, and subject to Treasury rules. The Agency is not allowed to make either a profit or a loss, and the fees

have to include administrative costs as well as those for the actual examination/s. MCA is proposing to delegate some local knowledge examinations to examiners approved by MCA from local port and navigation authorities or local industry, who will be able to charge lower fees because of reduced travel costs.

Details of the estimated costs are shown in the Annex 2 to this RIA. In many cases, these costs will be delayed because existing operators will be able to apply for transfer onto the new system on the basis of their existing licence or (if they do not hold one) their experience, which will allow them to continue their current operations. The costs will come into play when new trainees have to be taken on, as they will have to meet the training and assessment requirements of the new system.

For those operating smaller vessels (under 24m and carrying no more than 12 passengers), alternative qualifications are accepted. An estimated 3000 - 5000 could fall into this group over the 27-month transposition period, but a substantial proportion (say 1500 – 3000) will already hold one of these qualifications (eg the National Community Boats Association Certificate in Boat Management, or the British Waterways Helmsman's certificate). These "small boat" courses are generally more accessible and less costly to obtain. RYA courses for example are available from a large number of training establishments, and costs range from around £200 to £400. In addition, MCA is putting in place arrangements to consider for approval existing in house training schemes run by the Waterways Recovery Group, under the auspices of the Inland Waterways Association, which could be accepted as alternatives to the BML for the limited operations for which they are designed.

A general exemption will be issued to exclude the smallest vessels, eg support boats used within an operator's premises, where users are trained for a specific, limited purpose under the employer's workplace safety training.

Administrative costs

Administrative costs to businesses are expected to be in the order of :

	Passenger boat industry	Freight industry
Estimated no. of companies	500	100
Set-up costs	£68k	£41k
On-going costs p.a.	£210k	£25k

Other costs

The impact on the public sector falls into 2 parts.

(1) The initial cost to the MCA of implementing the regime to date is estimated at £110k, including £30k for the creation of a database to record information about candidates and licences and certificates issued. This would have been required even if the new regime had not been introduced, but could have been deferred to future years.

(2) There will be resource costs for the MCA for conducting or overseeing the assessment process, and in respect of implementation and enforcement over a wider sector than the current BML. In practice, the additional annual cost is expected to be minimal, since costs for examination and issue of licences are recoverable through fees. It is likely that the MCA will partly rely on Navigation and Port Authorities for information on activities requiring enforcement action. since these have officers already out on the waterways. There may also be a modest resource cost for certain Navigation and Port Authorities in compiling and maintaining Local Knowledge syllabuses.

The costs to operators may be reflected in what they have to charge for their services or for carrying freight or passengers. This will depend on the proportion of existing and new operators within a firm, and whether the Tier 1 and Tier 2 licence is required for the new operators.

(3) MCA has established a small "Equivalents Committee" to consider local (harbour or navigation) authority proposals for local knowledge requirements, and ensure that the criteria are applied uniformly, objectively and purely on the basis of safety. This committee comprises representation from MCA, operators, port and navigation authorities. There will be modest travel costs for non-MCA members, in attending the meetings of the committee. Three meetings are expected to deal with the initial approval of local knowledge areas, after which the Committee would meet only as required.

6. SMALL FIRMS IMPACT TEST

The smallest firms and charities are predominantly, though by no means exclusively, on Category A and B waters, so can opt for the Tier 2 BML. A number of inland waterways businesses were consulted from the start of developments, as they represented the industry bodies who have sat on the Working Group that was established to develop the new Boatmasters' Licence, and on the Domestic Passenger Ship Steering Group. Qualifications developed for the charitable/volunteer sector are recognised under the new regime for the types of operation for which they are designed.

Substantial support for developing a national licence regime came from the freight sector, for which there have been no national operator requirements, and therefore no associated training or compliance costs, up to now. The modular structure of the licence is intended to minimise the cost of training a new entrant, by enabling them to work in, train and be licensed for a particular sector, so reducing their training time without jeopardising safety standards.

For local operations on Category A and B waters, there will be little change from the current (passenger only) BML scheme. Furthermore, existing operators may experience

little or no immediate impact as they will be able to apply for a new BML, on a "Certificate of Service" basis that enables their current operations to continue. There will of course be some impact in the longer term, as the need arises for these firms to take on and train new operators for the future.

In response to the 2nd non-statutory consultation, some operators who run vessels in tidal areas, where a Tier 1 licence will be required, expressed serious concern about the impact of what they saw as unmanageable costs that would arise if and when they took on new entrants to their industry. They cited not only the direct costs of training, examination and issue of the licence, but also indirect costs of having to retain someone, effectively on a super-numerary basis, while they are training and serving their qualifying service time. A further concern for these operators is that they are sometimes in competition with the operators of vessels certificated under the MCA "Codes[5]" for small commercial vessels. The qualification requirements under that regime are much less onerous than for the boatmaster's licence.

In mitigation, MCA is not making attendance at specified formal training courses mandatory, recognising the associated costs of travel, accommodation etc. The minimum requirement is for examination of underpinning knowledge, the costs for which will be considerably less than for a training course. It is expected that most candidates will however need to undergo some formal training, and operators' associations and training providers are encouraged to put together alternative packages of training, for example making use of existing generic training on navigation, chartwork and health and safety. These changes will lessen the concerns of this sector, and MCA has to balance these concerns against those expressed by the Thames community that the new regime will reduce safety levels on the River, where the Watermen and Lightermen's scheme has been in operation for many years.

However, the decision has been made, despite the consultation responses, to maintain the requirement for all new boatmasters in tidal waters to hold the national licence, with a specified qualifying service period of 2 years, and the requirement to sit exams for underpinning knowledge. This is intended to improve safety standards, and is based on the following reasons:

- Under the existing regulations for BMLs for passenger ships, we require operators to have 'sufficient' experience: a purely subjective judgment from a government surveyor. Those requirements were introduced in 1993 in the aftermath of the MARCHIONESS Disaster and have generally served the industry well, but are overdue for review.

- Under the current regime, a BML allows a vessel to proceed three miles to sea and 15 miles from point of departure carrying up to 250 passengers, on the basis of little more than an oral and practical assessment – providing only a snap-shot of the candidate's competency. The new regime will require a period of

[5] Soon to be superseded by the Small Commercial Vessel and Pilot Boat (SCV) Code.

appropriate service, with evidence of tasks completed and examination of underpinning knowledge as well as the oral and practical assessment.

- Under existing Port of London Authority Byelaws, those working on the River Thames require 10 weeks classroom based training, and a total of five years experience on the River. The EC Directive requires four years training. Against this background it is difficult to justify allowing a boatmaster to go up to three miles to sea with 250 passengers (or within Categorised waters with unlimited numbers) on the basis of a practical and oral test, with no formal training or specified period of experience.

- There would be considerable political risk in allowing restricted licences on tidal waters, as this would include the River Thames, where this would be seen as a significant reduction in safety standard.

- Another catastrophic incident such as the MARCHIONESS on inland waters would undermine public confidence in the safety of our rivers and lakes, and do huge harm to the passenger ship industry which contributes significantly to tourism in the UK.

Cost concerns are less relevant for those operating in non-tidal areas, where the Tier 2 licence is an option.

In exceptional circumstances, MCA has the powers to exempt certain vessels or groups of vessels from the requirement to hold particular qualifications, and this could be used to assist operators where it is impractical to obtain a Tier 1 licence in a reasonable timescale, by allowing them to operate vessels with a Tier 2 licence holder for a limited period.

Based on the figures set out in Annex 2, the costs for a typical small business that wanted to employ and train a new entrant as a Tier 1 (See Document A) boatmaster, with a freight endorsement, able to operate anywhere on UK inland waters (subject to any local knowledge requirement), might be in the region of:-

Externally validated Training for underpinning knowledge

Generic skills	-	£750 - £4000[6]

Safety Training

Personal Survival	-	£100
First Aid	-	£100
Fire Safety	-	£100

[6] The maximum estimate of £4000 is based on estimated 8 weeks training at a formal training establishment. We are encouraging industry to develop proposals for alternative, less expensive methods of obtaining underpinning knowledge.

Medical standards

"ML5" examination and report	-	(say) £60 - 100

Practical & Oral Assessment

Generic licence	-	£141 (at current MCA rate)
Dry cargo endorsement	-	£100

Other

Issue of Licence	-	£22
Total	-	£1373 - 4663

In a small number of areas, there will be an additional cost for a Local Knowledge endorsement. That is likely to be in the region of £100, based on 1 hour at the current MCA rate.

In tidal waters, the Tier 1 BML costs would be spread over a minimum of two years; the proposed qualifying service requirement.

MCA has been supporting the Merchant Navy Training Board in their proposals for a Maritime Skills Certificate, with modules covering a number of maritime/waterway sectors. The aim is to get this approved as part of the National Occupational Skills framework, so that courses would be eligible for funding from DfES. This should reduce the costs referred to above.

For a business who wanted to employ a new Tier 2 boatmaster, restricted to a particular area and operation, the likely costs would be:-

Safety Training

Personal Survival	-	£100
First Aid	-	£100
Fire Safety	-	£100

Medical standards

"ML5" examination and report	-	(say) £60-£100

Practical & Oral Assessment

General assessment	-	£141 (at proposed new MCA rate)

Other

Issue of Licence	-	£22
Total	-	£523 - £563

7. COMPETITION ASSESSMENT

Aside from the principle purpose of underpinning safety, this initiative is also intended to raise the profile of the inland waterways freight industry as a viable alternative to road and rail transport. However, this is an industry that has suffered neglect and decline over a long period of time. Most operators maintain their businesses against considerable economic odds and with a fragile profit margin. Consequently, it is acknowledged that the industry will have difficulty in bearing high compliance costs. Against that, the costs for complying with the Tier 1 boatmasters' licence requirements are comparatively modest by most business standards and it is difficult to see how they could be reduced any further without compromising the quality of this qualification, and its equivalency with EC standards.

Equity and fairness

Under the terms of Directive 96/50/EC, the UK is obliged to accept an incoming boatmaster who holds a boatmaster's certificate issued by another EC member State. The new UK "Tier 1" BML is designed to be equivalent to EC standards (with the exception that EC-only requirements are not covered for the UK licence, but are clearly identified in supporting documentation for those who wish to hold a Boatmaster's Certificate) so will make it easier for any UK boatmaster who wishes to work on inland waterways within another EC Member State. There has been no such UK equivalent up to now.

The national standards of the Tier 1 licence should also help to remove barriers within the UK.

Operators of domestic passenger and freight vessels in tidal waters (required to have Tier 1 licences) have raised a concern about competition from small commercial vessels, for which the qualifications required are less onerous. We accept that there is a mis-match where the two regimes meet, but the opportunities for those with the Tier 1 Boatmaster's Licence are far greater. MCA will monitor this situation when the new licence comes into force and as it becomes more established.

8. ENFORCEMENT, SANCTIONS AND MONITORING

Subject to the requisite statutory procedures, this measure is expected to be made mandatory by regulations at the beginning of 2007. Enforcement will normally be undertaken by the MCA, with the support of Navigation and Port Authorities. MCA conducts annual surveys and intermediate inspections of passenger ships, and audits their

safety management systems, all of which provide opportunities for ensuring that masters are qualified.

There are offences in the regulations for owners of vessels and masters who permit a vessel to operate without a suitably qualified master. There is also a provision to detain a vessel where the master is not properly qualified.

Monitoring will be accomplished via feedback from MCA examiners, Navigation and Port Authorities, any delegated examining bodies, and the industry. MCA will establish an industry consultative Group to facilitate the process.

9. IMPLEMENTATION AND DELIVERY PLAN

The proposed BML regime will become mandatory on 1 January 2007, and existing operators will have a transitional period (ranging from 9 months to 27 months for different types of vessels) to comply. We currently expect final guidance to be issued in October 2006, and the supporting regulations to be made in early November 2006. From that time, existing operators will be able to start to apply for licences under "grandfathering" provisions. .

10. POST-IMPLEMENTATION REVIEW

The new licence regime will be reviewed on an ongoing basis by input from MCA (and MCA-approved) examiners, training providers, port and navigation authorities and vessel operators. It will also be reviewed in the light of future EC requirements.

11. SUMMARY AND RECOMMENDATION

Summary costs and benefits table

Option	Total benefit per annum: economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	(Do Nothing) None	 No direct financial costs UK Boatmasters would be unable to work in other EC member states. Boatmasters from other EC member states would be able to work in the UK. No mechanism in place to ensure that they have appropriate local

		knowledge.
2	(Implement EC directive without variation) Stronger generic knowledge base for boatmasters Automatic right to operate on other EC waterways New BML still needed for coastal operations (current BML less onerous than EC inland BML) Non-passenger vessels under 20m in length would be outside the scope of the regulations.	Excess costs for increased qualifying service time (say £30k per full-time candidate) Excess costs for EC underpinning knowledge (say £100 to £300 per candidate) Other costs as Option 3. Unregulated vessels under 20m would be in direct competition with those required to comply with the Directive.
3	(Implement UK licence with variations to cater for UK-based industry) Stronger generic knowledge base for boatmasters Flexible regime tailored to UK industry, including limited coastal operations. Option to obtain certificate for EC operations The regime extends to smaller vessels, although allowing alternative less costly qualifications.	Range of cost per candidate for a national (Tier 1) licence - £1375 to £4700 Range of cost per candidate for a restricted (Tier 2) licence - £525 - £565 Total estimated additional costs of 600k over two years for the industry. Range of costs per individual - £200 - £400. Total estimated additional cost to industry: £30 000 - £80 000 over 27 months

As explained above, we are obliged to work with Option 3 in order to achieve the aims of this initiative, and this is broadly supported by the major industry bodies. On the figures currently available, the estimated costs arising for the industry as a whole, may be in the region of £255 000 for the first year, and £335 000 for the immediately subsequent years. These figures are broken down at Annex 2. As time goes on, the latter figure will alter as the proportion between new entrant boatmasters, and existing operators changes.

We recommend a mandatory, two-tier BML regime, as outlined above, with a modular structure for the Tier 1 licence which: will underpin safety standards; provide a route to a boatmaster's certificate valid for operation on other EC waters; and, can be recognised as a stepping stone towards other maritime careers.

Declaration and publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed S.J. Ladyman
Minister of state,
Department for Transport

Date 30th November 2006.

Contact point for enquiries and comments: name, address, telephone number and email address.

Annex 1

DEVELOPMENT HISTORY

Date	Stage	Progress made
Jul 2002	Initial workshop with inland freight industry	Established dialogue Announced intention to develop standard (EC drivers etc)
Feb 2003	Freight Standards Steering Group and BML working Group established	
Nov 2003	Submission to Minister	Agreed to public consultation on principles of BML regime
Dec 03 - Feb 04	First public consultation (non-statutory)	Established broad support for: National licence Modular structure, with links to sea-going operations Outline syllabus Split responses on degree of requirements (especially qualifying service times (QST) and minimum ages)
Jul 2005	Submission to Minister	Agreement to public consultation on outline of regime (two tier structure and basic requirements)
Jul – Oct 05	Public consultation on outline of regime	General support on syllabus and use of TRB Split responses as above eg on QST and need for formal training
Nov 2005	Submission to Minister post-consultation	Agreement to Tier 1 in all tidal waters QST levels
Apr 2006	Submission to Minister	Agreement to consultation on draft regulations
Apr – Jul 06	Statutory public consultation on draft regulations	Split responses as above.
May – Jul 06	Ministerial meetings with RMT, TGWU, Julian Brazier (Shadow Transport Spokesman)	All wanting stricter requirements for the Tier 1 licence, especially for the Thames Minister gave a commitment to no reduction in safety standards on River Thames
Sep 2006	Submission to Minister post – consultation	Confirmed QST and minimum age Agreed no mandatory formal training Requested further information on Thames local knowledge requirements

Oct 2006	Submission to Minister on Thames issues	Agreed regular reassessment of local knowledge for Thames

Annex 2

Range of costs to obtain a BML

Item	Duration	Cost	Reference
Tier 2 BML			
		MCA fees	
Combined practical/oral assessment	1.5 hours	£141	Based on MCA hourly rate of £94
Practical alone	1 hour	£94	"
Oral alone	1 hour	£94	"
Change of area	-	£62	"
Issue of Licence	-	£22	"
Safety Training			
		non-MCA fees	
Personal Survival	1 day	£100	Estimates based on courses currently available
First Aid	1 day	£100	"
Fire Safety	1 day	£100	"
Medical Standards (ML5)	-	£60 to £100	At discretion of GP
Tier 1 BML			
Practical/oral assessments			
		MCA fees	
Generic A/B	1.5 hours	£141	Based on MCA hourly rate of £94
Generic C/D	1.5 hours	£141	"
Endorsements:-			
Towing/Pushing	1 hour	£100	"
General Cargo	1 hour	£100	"
Oil Cargo	1 hour	£100	"
Dredging	1 hour	£100	"

General Passenger operations	1 hour	£100	"
Large Passenger Vessels			
Local Knowledge	1 hour	£100	"
Ancillary Safety Training			
		Non-MCA fees	
Personal Survival	1 day	£100	Estimates based on courses currently available
First Aid	1 day	£100	"
Fire Safety	1 day	£100	"
Medical Standards (ML5)	-	£60 to £100	At discretion of GP
Underpinning Knowledge – Externally validated training			
		Non-MCA fees	
Generic licence A/B	4 weeks/20 days	£500 - £2000	Based on £100 per man-day for formal classroom training. Range covers home study/distance learning options as well as formal training.
Generic licence C/D	8 weeks/40 days	£750 - 4000	"
Endorsements:-			
Passenger Operations – Crowd Management Course	1 day	£100	"
Dangerous Goods	1 day	£100	"

Annex 3

Breakdown of first and subsequent years' estimated costs at RIA section 5iii

Description	**Estimated Numbers**	**Cost per candidate/ existing operator**	**Total costs per Sector**	**Round Totals**
First year				

New Entrants				
Tier 1	30[7]	£1373 -£4656[8]	£41190 - £139 680	
Tier 2	25	£523 - £563	£13 075 - £14 075	
Existing operators				
Thames PLA/Waterman & Lighterman Licence holders – transfer to Tier 1 BML.	600	£28	£16 800	
Non-licence holders – licence issue	400	£28	£11 200	
Non-licence holders – safety training (based on ¾ of total)	300	£250	£75 000	
Total			£157265 - £256 655	Say **£157 000 - £255 000**
Second year				
New entrants				
Tier 1	50	£1373 - £4656	£68 650 - £232 800	
Tier 2	50	£523 - £563	£26 150 - £28 150	
Existing operators				
Non-licence holders – licence issue	350	£28	£9 800	
Non-licence holders – safety training (based on ¾ of total)	263	£250	£65 750	
Total			£170 350 - £336 500	**£170 000 - £335 000**
Small vessels (from Sep 2008 – Mar 2009)				
Already holding appropriate qualification	1500 – 3000	0	0	**0**
Requiring appropriate	1500 –	£200 - £400	£30 000 to	**£30 000 –**

[7] It is expected that about half of these will be passenger boatmasters.
[8] In practice, in most cases, it will be possible for these costs to be spread over two years as that is the proposed minimum Qualifying Service Time for a Boatmasters' Licence in Category C & D waters.

qualification	3500		£140 000	**£140 000**
1st 10 years				
Revalidations – freight exc. Watermen	400	£56 (under 64) £280 (over 64)	£50 000	
Revalidations – passenger exc. Watermen	750	0	0	**0**
Revalidations – Watermen	600	-£30 rev fee 2 instead of three revalidations	-£35 000	
Medical examinations	400	£60 - £100	£84 000 - £140 000	
New entrants - Tier 1	2500	£1373 - £4656	£2.5m - £8.1m	
- Tier 2	500		£276 000	
Watermen – reduced cost of training	2500 out of 5000	-£3 000	-£750 000	
BML – new area saving	100	-£100	-£10 000	
Small vessels	2200	£200	£440 000	
Administrative costs		£2m	£2m	**£4 555 000 - £10 211 000**