



Operational Working Agreement

Between the Health and Safety Executive, the Maritime and Coastguard Agency and the Marine Accident Investigation Branch for health and safety associated with enforcement activities and accident investigation

1. INTRODUCTION

- 1.1 The purpose of this operational working agreement (OWA) is to provide clarity and consistency where the jurisdiction of the Health and Safety Executive (HSE), the Maritime and Coastguard Agency (MCA) and/or the Marine Accident Investigation Branch (MAIB) overlap, by outlining the key and supporting principles to be adopted when selecting the lead organisation for health and safety enforcement and accident investigation. The OWA embraces the effective and collaborative working approach outlined in the Memorandum of Understanding (MoU) between the HSE, MCA and MAIB.
- 1.2 To demonstrate the application of the key and supporting principles, the OWA contains tables and flow diagrams that outline which organisation takes the lead for a given activity. The OWA also highlights the communication channels officials should use to enter into discussions on such issues. It is important that officials entering into discussions note that common terms like 'vessel' and 'contractor' may have different meanings within the relevant HSE, MCA and MAIB legislative regimes. Officials involved in making decisions on who should take the lead for a given activity need to bear in mind any possible different meanings when discussing issues covered by the OWA.
- 1.3 Once HSE, MCA or MAIB have been assigned as the lead for a given activity, this does not mean that the other organisations have no regulatory and / or investigative role to play. It will be for the lead organisation to engage with the other organisations and clarify their role and responsibilities in relation to the activity being considered.
- 1.4 MAIB accident investigations (for the purposes of safety) will be independent of and may proceed in parallel with HSE/MCA enforcement investigations.
- 1.5 The public interest requires that safety considerations are of paramount importance and this may mean that the interests of an MAIB safety investigation take precedence over a criminal investigation. Any need to agree precedence

or to de-conflict investigations will be agreed using the principles in this OWA.

2. ROLES AND RESPONSIBILITIES

- 2.1 The purpose of the MoU between HSE, MCA and MAIB is to ensure effective collaborative working between each other where their duties for health and safety enforcement and accident investigation overlap at the water margin, offshore and on inland waterways in and around the United Kingdom.
- 2.2 HSE is a non-departmental body sponsored by the Department for Work and Pensions (DWP), who are responsible for the inspection and regulation of occupational health and safety, and major accident hazards, associated with work activities. This includes offshore oil and gas exploration, production and storage, offshore renewable energy structures and docks. For offshore oil and gas exploration and production, HSE is working in partnership with the Department for Business, Energy and Industrial Strategy (BEIS) as part of the Offshore Safety Directive Regulator (OSDR).
- 2.3 MCA is an Executive Agency of the Department for Transport (DfT). Its main functions are to develop, promote and enforce high standards of marine safety, to minimise loss of life amongst seafarers and coastal users, and to minimise pollution from ships of the sea and coastline. MCA is responsible for enforcing all merchant shipping regulations in respect of occupational health and safety, the safety of vessels, safe navigation and operation (including manning levels and crew competency). The Agency is the competent authority for enforcement of international conventions relating to the standards for construction and operation of UK ships anywhere in the world and non-UK ships in UK ports and UK waters. Merchant shipping health and safety regulations extend to all those working on the ship, and any work activities undertaken on board.
- 2.4 MAIB is responsible for investigating accidents related to ships and crew in the territorial sea and involving UK registered vessels worldwide, to determine their circumstances and causes with the sole objective of preventing similar accidents in the future. It is not the purpose of an MAIB investigation to determine liability nor, except so far as is necessary to achieve its objective, to apportion blame.

3. POWERS AND LEGISLATION

- 3.1 Details of HSE's, MCA's and MAIB's powers and legislation, inspection, investigation and enforcement policies are outlined on their websites.

HSE:- www.hse.gov.uk/offshore/law.htm and www.hse.gov.uk/enforce/index.htm

MCA:-www.gov.uk/government/organisations/maritime-and-coastguard-agency

MAIB:-www.gov.uk/government/organisations/marine-accident-investigation-branch

3.2 In general, HSE, MCA, and MAIB have jurisdiction over the following areas:

SCOPE OF JURISDICTION		
HSE	MCA	MAIB
Work activities covered by the Health and Safety at Work etc. Act 1974 (HSWA) and its relevant statutory provisions (e.g. docks, jetties, loading / cargo operations, ship repair, offshore installations, energy structures, wells and pipelines, aquaculture).	UK ships and those working on them anywhere in the world. Foreign flag ships and those working on them in UK waters (inc. inland areas such as ports). Search and rescue co-ordination in UK SAR area.	All marine incidents / accidents in the territorial sea and on inland waterways. Incidents / accidents involving UK ships anywhere in the world. Investigate a foreign vessel outside the territorial sea when no UK flagged vessel is involved if directed to do so by the Secretary of State.

4. IDENTIFYING THE REGULATORY LEAD

4.1 When deciding on whether HSE, MCA or MAIB should take the lead for a given activity within the internal waters or territorial sea of Great Britain or the UK continental shelf (UKCS), the following high level principles must be considered together with any relevant activity or incident-specific intelligence. It should also be noted when determining the regulatory lead (and in day to day decision making) that certain terms or phrases used by one organisation may have a different meaning for the other within their relevant legislative regimes.

Overarching Principle

4.2 **If the activity involved is either**
 - under the control of the Master of the vessel (whether or not subject to the HSWA), OR
 - not covered by the HSWA (whether or not under the control of the master) then the MCA / Flag State will take the lead for enforcement and MAIB for accident investigation

4.3 **If the activity is not under the control of the Master of the vessel, and the activity is covered by the HSWA, then the HSE will take the lead** (but see paragraph 1.4 above)

N.B. The application of legislation regarding work equipment or lifting equipment includes some exceptions to this principle - see section 9.3.10.

4.4 HSE, MCA and MAIB will adopt this key principle in areas where their jurisdiction overlaps. The supporting principles below outline additional factors that should be considered by officials for particular activities or scenarios.

Supporting Principles

I. **HSE leads on the regulation of activities taking place on, or under the control of the operator of: offshore installations involved in the**

exploration or production of oil or gas; offshore installations involved in gas importation and storage or in relation to underground coal gasification; and energy structures (wind or wave).

- 4.5 It is important to determine for the purposes of the activity being considered if the vessel involved is an offshore installation undertaking oil and gas exploration or production, underground coal gasification or gas storage and importation, or is an energy structure as defined under the Health and Safety at Work etc. Act 1974 (Application Outside Great Britain) Order 2013 (AOGBO)¹ - <http://www.legislation.gov.uk/ukxi/2013/240/contents/made>. However, in the event of a collision or similar event which is a direct result of the navigation of the vessel, notwithstanding the HSE interest, the MCA or MAIB will lead on investigation of that aspect of the accident (in accordance with Table 2).

For guidance on the AOGBO see -

<http://www.hse.gov.uk/offshore/legislative-changes.pdf>

II. HSE leads on all diving operations² or well operations³ covered by the HSWA whether they are performed from an offshore installation, energy structure or vessel.

- 4.6 Due to the specialist nature of these activities, HSE takes the enforcement lead even when these activities are under the control of the Master of the vessel. Note that the HSWA does not cover diving operations in the UKCS that are not associated with an offshore installation, wells, pipelines, mines, gas importation and storage, energy structures or underground coal gasification.

III. The MCA will take the lead for enforcement and the MAIB for accident investigation for an activity under the control of the Master of a UK vessel (which is not an offshore installation or energy structure) anywhere in the world.

- 4.7 If the vessel is non-UK Flagged within the territorial sea, and the activity is under the control of the Master of the vessel, the MCA and / or MAIB will lead (other

¹ The Health and Safety at Work etc. Act 1974. The Health and Safety at Work Act 1974 (Application outside Great Britain) Order 2013 (AOGBO) outlines the activities the HSWA and its prescribed provisions apply to within the territorial sea adjacent to Great Britain and to areas designated under the Continental Shelf Act 1964.

² As defined in the Diving at Work Regulations 1997

<http://www.legislation.gov.uk/ukxi/1997/2776/contents/made>

A diving operation is one identified in the diving project plan, which is any activity, made up of one or more diving operations, in which at least one person takes part or will take part as a diver and extends from the time when that person, or the first such person, commences to prepare to dive until that person, or the last such person, has left the water, chamber or other environment in which the dive, or any part of the dive, took place and has completed any requisite decompression procedures, including, where it may be reasonably anticipated that this will be needed, any therapeutic recompression.

³ As defined in the Offshore Installations (Offshore Safety Directive)(Safety Case etc) Regulations 2015 - <http://www.legislation.gov.uk/ukxi/2015/398/contents/made>, or the Offshore Installations (Safety Case) Regulations 2005 <http://www.legislation.gov.uk/ukxi/2005/3117/contents/made>

than diving operations or well operations – see II. above). This includes when a vessel is involved in an activity connected to an offshore installation undertaking oil and gas exploration or production, underground coal gasification or gas storage and importation, energy structure, or is in a dock or a harbour area. If the activity is not under the control of the Master of the vessel, and the activity is covered by the HSWA, the HSE would take the lead.

IV. HSE leads on fish farm work activities where these occur on floating installations that are ‘permanently moored’.

4.8 Due to the specialist nature of these activities, HSE takes the lead for fish farming work activities.

4.9 Permanently moored refers to floating installations attached to the seabed by anchors. Fish farm work activities would include loading / unloading activities associated with fish farm work both onshore and at the floating installation (when the boat is moored to it) carried out by or putting at risk shore-based personnel.

V. MCA will not lead on an activity performed by a non-UK Flagged vessel in the UKCS.

4.10 If the non-UK flagged vessel is involved in an activity in the UKCS, and the activity is covered by the HSWA, then the HSE would take the lead. For all other activities it will be the Flag State which takes the lead.

VI. MCA and / or MAIB will take the enforcement / accident investigation lead respectively for a non-HSWA activity, which is not under the control of the Master of the vessel, on a UK vessel anywhere in the world or for a non- UK flagged vessel in the territorial sea.

4.11 As HSE cannot lead for an activity which is not under the control of the Master of the vessel, if this activity is not within scope of the HSWA, the MCA will take the lead for enforcement and MAIB for accident investigation.

4.12 It should be noted that MCA, MAIB or HSE can inform the Secretary of State's Representative (SOSREP) of an incident, but SOSREP makes the decision whether to invoke their powers. Where the SOSREP is in control of a shipping casualty, they will restrict access to the vessel to essential personnel only, until they are satisfied (following consultation with the appointed Salvage Master) that it is safe for other parties (i.e. MCA, MAIB, HSE) to board. Access to the casualty by interested parties will be considered on a case by case basis.

www.gov.uk/guidance/how-we-respond-to-marine-pollution-incidents

4.13 The subsequent sections of this OWA will demonstrate how the key and supporting principles can be applied to identify who has the lead for a range of activities involving vessels. It will be for the HSE, MCA and MAIB officials involved to apply these principles to the particular case they are considering, and then enter into a discussion to agree who should take the enforcement

and/or accident investigation lead.

5. OFFSHORE OIL AND GAS OPERATIONS

- 5.1 Operational experience has indicated that the two most likely scenarios where HSE, MCA and MAIB jurisdiction may overlap in terms of vessels and offshore oil and gas installations, is when there is an incident involving a fatality or injury when a vessel is undertaking an activity (e.g. a lifting operation) connected with an offshore oil and gas installation or when a vessel is in a collision with an offshore oil and gas installation. **Flow Diagrams 1 and 2 (at the back of this document) identify the lead regulator / investigator for such activities.** In the case of an injury, the diagram is the same as that for a fatality apart from the police involvement.
- 5.2 In addition, **Tables 1 and 2** highlight the lead regulator under a more detailed range of offshore oil and gas scenarios. The flow diagrams and tables have been developed using the key and supporting principles outlined above.

6. FLOATING STORAGE UNITS & FLOATING STORAGE REGASIFICATION UNITS

- 6.1 A floating storage unit (FSU) can store gas or oil and a floating storage regasification unit (FSRU) receives liquefied natural gas (LNG) via transfer from LNG carriers, stores and regasifies the LNG and unloads the gas to a gas pipeline.
- 6.2 If for these purposes the FSU or FSRU is standing or stationed (which includes dynamic positioning) in the territorial sea or UKCS, it is an offshore installation to which HSWA applies (as these are both an offshore installation as defined in the AOGBO). It is important to note that the offshore safety case regime may also apply in some cases e.g. to the FSU. In such circumstances HSE will take the enforcement lead. **Tables 1 and 2**, and **Flow Diagrams 1 and 2**, will be relevant under such circumstances.
- 6.3 If the FSU or FSRU is not standing or stationed with a sufficient degree of permanence, it is likely that the MCA and MAIB will have the enforcement and accident investigation lead respectively for those activities respectively in accordance with the overarching principles, including when the FSU or FSRU is moored in a dock or harbour.

7. RENEWABLE ENERGY

- 7.1 The offshore renewable energy industry comprises wind, wave and tidal developments. Operational experience has indicated that the three most likely scenarios where HSE, MCA and MAIB jurisdiction may overlap in terms of vessels and energy structures are:
- i. when there is an incident involving a fatality or injury when a vessel is undertaking a work activity (e.g. a lifting operation),

- ii. when a vessel is connected with an energy structure, or
- iii. when a vessel is in a collision with an energy structure.

Flow Diagrams 1 and 2 identify the lead regulator for such incidents. In the case of an injury the diagram is the same apart from police involvement.

- 7.2 Table 3 outlines the regulator who has the enforcement lead for a range of different renewable energy activities involving vessels

8. CONSTRUCTION ACTIVITIES

- 8.1 The nature of construction work carried out at the water margin, offshore or on some inland waterways is very varied. Such work includes construction, repair or demolition of marine structures (e.g. bridges, piers, jetties, cabling works and coastal protection works, including ancillary work such as piling, dredging and lifting) or "non-marine" buildings which are adjacent to these offshore or inland waters. When these activities involve vessels (e.g. floating cranes), there is potential for overlap in the roles and responsibilities of HSE, MCA and MAIB. Officials should use the overarching and supporting principles to determine who has the lead for a given activity.

9. OTHER VESSEL RELATED ACTIVITIES

- 9.1 As this OWA is designed to manage the overlaps between the work of HSE, MCA and MAIB, it will not address activities where no such overlap exists or where HSE, MCA or MAIB liaises with other regulators or organisations on vessel related issues (e.g. Local Authorities (LAs), the Adventure Activities Licensing Authority (AALA), navigation authorities or port and harbour authorities).
- 9.2 MCA will normally take the enforcement lead for any issue relating to navigation, vessel standards (including stability), or crew competence on commercial vessels. MCA regulation primarily relates to certain classes of vessels operating commercially in categorised waters (i.e. waters which have been assessed against criteria relating to depth and wave height which determine the appropriate standards to apply). Categorised waters are listed in a Merchant Shipping Notice (currently MSN 1837(M) available on the MCA website). However, the Merchant Shipping Act 1995 applies to any ship ("any vessel used in navigation") and so MCA powers can be used in other inland waters. It should be noted that navigation authorities / local authorities may also license operation on their waters and have local navigation bylaws.
- 9.3 When considering if HSE, MCA and/or MAIB should take the lead for a given vessel related activity, use the overarching and supporting principles outlined in this document, and other relevant information, to agree a way forward.

Some relevant points to note are:

- 9.3.1 **When considering docks and harbours**, the dividing line between MCA and HSE responsibilities for passengers is at the gangway. If the vessel provides the gangway the MCA lead ends at the bottom of the gangway, if the gangway is provided by others MCA lead starts at the top of the gangway;
- 9.3.2 **In the case of dangerous cargoes**, HSE is the enforcing authority for the Dangerous Goods in Harbour Areas Regulations 2016 (which replaced the Dangerous Substances in Harbour Areas Regulations 1987 on 1st October 2016), except where the statutory harbour authorities enforce.
- 9.3.3 **There is some overlap in relation to gas safety.**
The Gas Safety (Installation and Use) Regulations 1998 - (<http://www.legislation.gov.uk/ukxi/1998/2451/contents/made>)
– apply to vessels not requiring a national or international load line certificate that are;
- (a) hired out in the course of a business;
 - (b) made available to the public in the course of a business carried out from the vessel;
 - (c) used primarily for domestic or residential purposes.
- For further information refer to HSE’s Gas Safety (Installation and Use) Regulations 1998 Approved Code of Practice and Guidance.
www.hse.gov.uk/pubns/books/I56.htm
- 9.3.4 The Gas Safety (Installation and Use) Regulations 1998 (which apply both to natural gas and LPG) include detailed requirements for safe installation and use of gas systems and appliances. MCA may apply the Merchant Shipping and Vessels (Provision and Use of Work Equipment) Regulations 2006 and gas safety may also fall under Small Commercial Vessel (SCV) certification or passenger ship certification.
- 9.3.5 **Permanently moored vessels** such as those used as restaurants / bars etc. are not ships and fall to local authorities (or HSE depending on the nature of the work activity).
- 9.3.6 **Chain ferries** are not ships (because they are not used in navigation) however the MCA has published a voluntary code of practice and undertakes inspections against the code of practice at the operators request. Any incident, investigation or enforcement action would be undertaken by HSE under HSWA and secondary legislation (taking specialist advice from the MCA if required).
- 9.3.7 **Amphibious vehicles** operate as ships under merchant shipping legislation / subject to MCA and/or MAIB investigation when on water but when on land may be regulated as vehicles on the public highway or by local authorities or HSE depending on the main work activity.
- 9.3.8 **Personal watercraft** may be ships if used in navigation. As such, when they

are used for a work activity either the MCA (if used in navigation, for example, in travel between points), HSE or the local authorities (if not used in navigation), will be the enforcing authority depending on the main work activity. The MAIB may also undertake an accident investigation.

9.3.9 **Work from vessels at fish farm installations** will fall under HSE's legislation if equipment is used by, or affects the health and safety of, workers other than the master and crew of the vessel. The standards for ship's equipment itself falls to the MCA as the enforcement authority and MAIB will have an interest in any accident investigation, but operational aspects such as maintenance of equipment and planning of operations may fall to HSE⁴.

9.3.10 **Work involving ship's work equipment or lifting equipment:** HSE's legislation (including the Lifting Operations and Lifting Equipment Regulations 1998 (LOLER) and Provision and Use of Work Equipment Regulations 1998 (PUWER)) will be disapplied for ship's work equipment and lifting equipment, except where the ship's work equipment is used in a specified operation. Specified operations are where the ship's work equipment is used by persons other than the master and crew of the vessel or where the master is in control of the work and the crew may be involved, but other persons are put at risk by the work being carried out. In such circumstances, specific requirements relating to the operation of the equipment will be re-applied. (See footnote 4). Where LOLER or PUWER applies, the equivalent merchant shipping legislation is disapplied.

9.3.11 As the situations encountered can be more complex when considering commercial and pleasure vessels on coastal and inland waters. **Table 4** has been prepared to demonstrate how the overarching principle and other information can be used to identify the lead.

⁴ The Lifting Operations and Lifting Equipment Regulations 1998 (LOLER) are dis-applied to ship's equipment (reg 3(6)). However this disapplication does not apply to–

- the positioning or installation of lifting equipment; or to
- the organisation of lifting operations;

either

- (a) when persons other than the master and crew operate the lifting equipment; or
- (b) when persons other than them are liable to be exposed to a risk to their health and safety from the operation of the equipment. (reg 3(9))

The Provision and Use of Work Equipment Regulations 1998 (PUWER) are dis-applied to ship's equipment (reg 3(6)). However, this disapplication does not apply to

- specific risks (use, repair, modifications, maintenance or servicing of equipment only by specified/designated persons, who have been trained to do so.
- Provision of information/instructions
- Training of users and supervisors
- Protection of workers from hazards posed by machinery
- Stability
- Lighting
- Maintenance

either

- (a) when persons other than the master and crew operate the lifting equipment; or
- (b) when persons other than them are liable to be exposed to a risk to their health and safety from the operation of the equipment. (reg 3(9))

10. ENFORCEMENT / INVESTIGATION DEMARCATION DECISION MAKING PROCESS

10.1 Despite this OWA outlining the overarching and supporting principles to be used to identify which organisation will take the lead when HSE, MCA and MAIB jurisdiction overlaps, on some occasions the complexity or irregularity of an issue will mean that the lead regulator is not easy to identify.

Contacting HSE, MCA or the MAIB

10.2 If after an incident an urgent agreement has to be reached between HSE, MCA and/or MAIB on who should take the enforcement and/or accident investigation lead, the HSE, MCA and/or MAIB officials involved should use the principles in this OWA, and other relevant information, to make a quick decision. This can be done by officials directly if contacts are known and available. In all other situations, the duty officer system should be used to facilitate a quick and accurate response.

10.3 The contact numbers to use are:

HSE:- Office hours (Monday to Friday 8.30am – 5.00pm), for reporting fatal / specified, and major incidents **only**. Call the Incident Contact Centre, tel:- 0345 300 9923.

Out of Hours Call the Duty Officer, tel:- 0151 922 9235;

Non-urgent matters can be directed to the Transport Sector e-mail account:
docks@hse.gov.uk

MCA:- Office hours contacts:

- Survey Operations Manager, tel:- 020 3817 2458
- Inspection Operations Manager, tel:- 020 3817 2543

Out of Hours Call the Duty Surveyor, tel:- 07810 528 504;

MAIB:- 24 hours reporting line, tel:- 023 8023 2527

TABLES AND FLOW DIAGRAMS

For inspection, enforcement or following an incident, tables (1 – 4) indicate

which organisation will assume the regulatory lead, or identifies (where there is jurisdictional overlap), where organisational agreement needs to be reached (using the principles outlined in this OWA) on who will take the lead.

Table 1 Health and safety enforcement and accident investigation on offshore installations

Phase in life cycle	Type of Installation (1)							
	Non-mobile Territorial Sea		Mobile Territorial Sea		Non-mobile UKCS		Mobile UKCS	
	UK Flag	Non-UK Flag	UK Flag	Non-UK Flag	UK Flag	Non-UK Flag	UK Flag	Non-UK Flag
Design (2)	HSE	HSE	HSE (3)	HSE (3)	HSE	HSE	HSE (3)	HSE (3)
On working station - including construction and demolition	HSE	HSE	HSE (4)	HSE (4)	HSE	HSE	HSE (4)	HSE
Operating as a vessel, including transit to or from working station, and while in a UK port	MCA / MAIB	MCA / MAIB	MCA / MAIB	MCA (5) / MAIB	MCA / MAIB	Flag State	MCA / MAIB	Flag State
Stacked within GB baselines or the territorial sea	Not applicable (N/A)	N/A	HSE (6)	HSE (6)	N/A	N/A	N/A	N/A

For the purposes of Table 1, the following definitions apply:

- (1). **"Non-mobile installation"**: one that is not considered in Merchant Shipping law as a "ship" on its working station, but which may be a "ship" when being floated out or otherwise when in transit. Non-mobiles include permanently anchored floating installations, such as tension leg platforms, ones with catenary mooring lines and pile anchors, or gravity platforms, but not jack- ups.

"Mobile installation": an offshore installation which can be moved from place to place without major dismantling or modification, whether or not it has its own

motive power. NB. This is not the definition used in the Offshore Installations (Offshore Safety Directive) (Safety Case etc.) Regulations 2015 (SCR 2015). Mobile installations are at all times considered in Merchant Shipping law as "ships". This includes jack-up drilling rigs, flotels and floating production, storage and offloading units (FPSOs).

- (2). Design here refers to interest in the design process (e.g. Design notification under SCR 2015 for HSE) and not to responsibilities for regulating the construction stage carried out away from the working station. MCA retains responsibilities to inspect any seagoing ship or floating unit when in UK ports for compliance with UK certification requirements and (for non-UK flag) in accordance with the requirements and procedures under the Paris MOU for Port State Control (see "operating as a vessel").
- (3). HSE's responsibility concerns mobile production installations that require a SCR 2015 design notification (i.e. FPSOs) and when they are on station and acting as an installation. The MCA / MAIB has an interest in design and the application of relevant maritime codes (e.g. MODU) and class rules. As this table relates to an offshore installation HSE is the lead.
- (4). Relates to when the installation is on station, which is HSE's lead. Mobile installations will maintain their ability to move off station when necessary, and MCA / the Flag State retains an interest in continuing compliance with maritime standards. However, HSE is in the lead until the installation moves off station and then it's the MCA or Flag State who have the lead.
- (5). Relates to Port State Control and to accident investigation in the event of an incident in the UK territorial sea. If the incident is in UKCS, and is a Flag State lead, MCA will take the lead on liaison with the Flag State as this is a marine issue.
- (6). A stacked installation (i.e. one which is temporarily out of use) is not legally an "offshore installation", but remains subject to HSWA if stacked in the territorial sea. MCA / the Flag State retains an interest in continuing compliance with maritime standards, to allow the vessel to move off station when necessary.
- (7). If, in the interests of maritime safety, MAIB conducts an accident investigation, it will be independent of and proceed in parallel with any enforcement investigations.

Table 2 Health and safety enforcement and accident investigation for vessels attending offshore installations, wells and energy structures

Work activity carried out by vessels in connection with an offshore installation or well	Territorial Sea		UKCS	
	UK Vessel	Non-UK Vessel	UK Vessel	Non-UK Vessel
Navigation	MCA / MAIB	MCA / MAIB	MCA / MAIB	Flag State
Ship Maintenance / repair under the Master Not under master	MCA / MAIB HSE (1)	MCA / MAIB	MCA / MAIB	Flag State
Search and Rescue (standby vessel (SBV))	MCA / MAIB (2)	MCA / MAIB	MCA / MAIB	Flag State
Towing (an installation)	MCA / MAIB	MCA / MAIB	MCA / MAIB	Flag State
Anchor-handling	HSE / MCA / MAIB (3)	HSE / MCA / MAIB	HSE / MCA / MAIB	HSE
Loading / unloading	HSE / MCA / MAIB (3)	HSE / MCA / MAIB	HSE / MCA / MAIB	HSE
Construction / Demolition	HSE / MCA / MAIB (3)	HSE / MCA / MAIB	HSE / MCA / MAIB	HSE
Servicing and maintenance of a well	HSE	HSE	HSE	HSE
Cable-laying	HSE / MCA / MAIB (3)	HSE / MCA / MAIB	HSE / MCA / MAIB	HSE
Surveying	MCA / MAIB	MCA / MAIB	MCA / MAIB	Flag State
Diving	HSE	HSE	HSE	HSE
Vessel's primary role is to provide accommodation for offshore installations	HSE (4)	HSE	HSE	HSE
Accommodation on vessels related to energy structures vessels	MCA / MAIB (3)	MCA / MAIB	MCA / MAIB	Flag State
Access to climb onto energy structure	HSE	HSE	HSE	HSE
Working from a jack up or moored barge to maintain an energy structure	HSE / MCA / MAIB (3)	HSE / MCA / MAIB	HSE / MCA / MAIB	HSE

For the purposes of Table 2, the following apply where marked:

- (1). Maintenance or repair operations that are not under the control of the Master but are carried out in UK waters are enforced by HSE. MCA would enforce in other circumstances. MAIB may conduct an accident investigation in parallel with any enforcement action.
- (2). Concerns the safety of SBVs and those working on them. It does not concern HSE requirements for provision of effective emergency arrangements for an installation – including the standby vessel (Emergency Response and Rescue Vessel).
- (3). HSE's interest excludes the voyage prior to or following the anchor handling, loading / unloading, construction / demolition or the cable-laying activity. MCA / MAIB will lead if the work activity is under the control of the Master of the vessel or if the activity is not covered by the HSWA. If the activity is not under the control of the Master of the vessel and is covered by the HSWA, HSE will take the lead.
- (4). "Accommodation" refers to vessels whose primary role is to provide accommodation for workers working on an offshore installation. This makes such vessels offshore installations and so HSE leads once the vessel is on station. MCA enforces national and international standards for the vessel if calling at a UK port or during transit to / from the station. When vessels provide accommodation for workers on energy structures, or for workers undertaking other activities, MCA / MAIB lead.

Table 3 Health and safety enforcement and accident investigation for other activities from a vessel in the territorial sea and on the UKCS

Work Activity	Territorial sea		UKCS	
	UK Vessel	Non-UK Vessel	UK Vessel	Non-UK Vessel
Safety of persons on board a vessel who are undertaking pipe-laying, pipeline repair and maintenance, pipeline removal etc.	HSE / MCA / MAIB (1)	HSE / MCA / MAIB (1)	HSE / MCA / MAIB (1)	HSE (1)
Loading, unloading, fueling or provisioning of a vessel	MCA / MAIB / HSE (7)	MCA / MAIB / HSE (7)	MCA / MAIB (7)	HSE (2) (7)
Diving (not in connection with offshore installations, wells, gas storage, energy structures, underground coal gasification and pipelines)	HSE (3)	HSE (3)	MCA	Flag State
Transfer of personnel, stores and equipment between a vessel and a structure (not another vessel, an offshore installation or energy structure, gas storage or underground coal gasification structure)	HSE / MCA / MAIB (4) (7)	HSE / MCA / MAIB (4) (7)	MCA / MAIB (7)	Flag State (7)
Navigation	MCA / MAIB	MCA / MAIB	MCA / MAIB	Flag State
Ship maintenance / repair: under the Master Not under the Master (5)	MCA / MAIB HSE	MCA / MAIB	MCA / MAIB	Flag State

Work Activity	Territorial sea		UKCS	
	UK Vessel	Non-UK Vessel	UK Vessel	Non-UK Vessel
Cable-laying (not related to an offshore installation, well, pipeline, energy structure, gas storage or underground coal gasification structure)	HSE / MCA / MAIB (1)	HSE / MCA / MAIB (1)	MCA / MAIB	Flag State
Dredging	MCA / MAIB	MCA / MAIB	MCA / MAIB	Flag State
Pollution control	MCA / MAIB	MCA / MAIB	MCA / MAIB	Flag State

For the purposes of Table 3, the following apply where marked:

- (1). HSE's interest excludes the voyage prior to or following the pipeline or cable laying work activity. MCA and/or MAIB will lead if the work activity is under the control of the Master of the vessel or if the activity is not covered by the HSWA. If the activity is not under the control of the Master of the vessel and is covered by the HSWA, HSE will take the lead.
- (2). HSE's responsibility extends only to loading etc. of vessels engaged in a work activity connected with offshore installations, wells and energy structures (see table 2) and pipelines, gas importation and storage and underground coal gasification.
- (3). Even when this activity is taking place from a vessel, HSE and MCA have agreed that HSE will lead as they have the relevant expertise. Note, outside the territorial sea, HSE can only regulate diving associated with the named activities.
- (4). HSE's interest excludes the voyage prior to, or following, transfer of people, stores and equipment. MCA and/or MAIB will lead if the work activity is under the control of the Master of the vessel or if the activity is not covered by the HSWA. If the activity is not under the control of the Master of the vessel and is covered by the HSWA, HSE will take the lead.
- (5). Maintenance or repair operations that are not under the control of the Master but are carried out in UK waters are enforced by HSE. MCA would enforce in other circumstances.
- (6). If, in the interests of maritime safety, MAIB conducts an accident investigation, it will be independent of and proceed in parallel with any enforcement investigations.

- (7). Work activities on the floating fish farm installations including when persons other than the master and crew operate the lifting equipment; or when persons other than the Master and crew then are liable to be exposed to a risk to their health and safety from the operation of the equipment.

Table 4 Commercial and pleasure vessels on coastal and inland waters

The questions of who regulates, and who leads an investigation following an accident or incident, are more complex for inland waters as the vessel, the individual in control of the vessel, and the entity in control of the activity itself are often regulated by different authorities. In addition, inland waters are controlled by a wide variety of authorities that could include:

- Statutory harbour authorities, each governed by their own legislation.
- Inland Navigation Authorities (INA), mostly defined by their own Acts of Parliament giving them statutory responsibility for the management and operation of navigable waters for navigation and wider public use.
- Local authorities, some of whom have statutes empowering them as navigation authorities.
- Land owners – small lakes and ponds that are not categorised under merchant shipping legislation, will come under the operational control of the landowner.

While many harbour, navigation and local authorities can themselves authorise vessel operations, **they do not all have the same powers**, and they will often recognise MCA standards (e.g. vessels coded under one of the colour codes or MGN 280) as alternative means of demonstrating the necessary compliance. Also, operators may choose to meet MCA standards as a means of demonstrating due diligence for compliance with health and safety requirements. The application of such standards, though, does not mean that the MCA is then responsible for those vessels. Responsibility belongs to the organisation having the underlying responsibility in the absence of such compliance.

Whether a particular “item” found on inland waters comes under merchant shipping legislation varies for different areas of that legislation. For example, for merchant shipping legislation concerned with health and safety it will depend on the extent to which it is a “ship”. In order for an “item” to be a “ship” under merchant shipping law (as a result of case law) it must be a “vessel” and also be “used in navigation”.

If, under the criteria above, an “item” is a “ship” then it will be either a Class IIA passenger ship or a Class IX(A)(T) cargo ship or a fishing vessel, as the definition of both classes applies to any voyage or waterway. If not a “ship” then safety is regulated by HSE or another authority as appropriate (e.g. see relevant enforcing regulations and MOUs). Almost all navigable waterways are categorised, so “items” found on non-categorised waters, such as flooded gravel pits, fish farm ponds etc. are unlikely to be “used in navigation” and so are more likely to be work equipment or access equipment

under HSE or another authority.

It is also worth stating that responsibility for the safety of a vessel lies firmly with the owner and Master, regardless of who is responsible for setting standards, investigating accidents, enforcing regulations or prosecuting offenders.

Table 4 below addresses vessels in coastal and inland waters and is intended to provide an “at a glance” guide to jurisdiction, but does not replace the overarching and supporting principles of the OWA.

Table 4

What	At Sea	Categoris ed Waters	Other inland waters	Comments
All passenger ships >12 passengers (“passenger ship”)	MCA / MAIB	MCA / MAIB	MCA / MAIB	All ships carrying more than 12 passengers, whether fee paying or otherwise, must be certified by the MCA.
Commercial vessels <24m length and commercial vessels >24m length other than passenger ships	MCA / MAIB	MCA / MAIB / INA	MCA / MAIB	Class IX(A) and IX(A)(T) applies to ships which don’t go to sea, so covers both categorised and other inland waters.
Commercial Fishing vessels	MCA / MAIB	MCA / MAIB	MCA / MAIB	The application of merchant shipping legislation to fishing vessels is based on the requirement for DEFRA licensing of commercial fishing rather than where the vessel is operating (i.e. if the activity is defined as commercial fishing for DEFRA’s purposes, and needs a license, the MS legislation applies). Merchant shipping legislation applies to FVs on any voyage.

Crown owned and operated vessels (MoD, HMRC, etc.)	HSE / MCA / MAIB	HSE / MCA / MAIB	HSE / MCA / MAIB	The Merchant Shipping Act 1995 does not generally apply to Crown vessels, as a matter of policy vessels contracted by the Crown are required to be voluntarily certified as approp. to their activity, length and area of operations. HSE regulations do apply to Crown vessels.
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What	At Sea	Categoris ed Waters	Other inland waters	Comments
Local Authority owned and operated craft (Police, Fire, etc.)	MCA / MAIB	MCA / MAIB / INA	MCA / MAIB	These are straight-forward commercial vessels.
Craft hired on a bareboat basis for public leisure use	MCA / MAIB	LA / INA / National Governing Body / MAIB / HSE	LA / MAIB / National Governing Body / HSE	Seagoing vessels as for seagoing commercial vessels. Hire boat code for inland waters is industry best practice. We would expect LA or INA to enforce it if they chose to use it. Technically, as Class IX(A) vessels, MCA would have some residual responsibility.
Commercial adventurous training	MCA / MAIB / AALA	MCA / MAIB / INA / AALA	MCA / MAIB / AALA	Generally, these are straightforward commercial vessels. But see description of role of AALA below.

Adventurous activity training provided by voluntary organisations	NGB / LA / MAIB	NGB / LA / MAIB	NGB / LA / MAIB	Voluntary organisations such as Scouts, Guides, Sea Cadets etc. undertaking adventurous activity training do not fall under AALA, but the vessels are treated as “commercial” operations as they do not meet the definition of “pleasure vessels”. Vessels used by school groups etc. undertaking such activities might come under this definition, as would private sailing clubs etc.
Privately owned pleasure vessels	MCA / MAIB	MCA / MAIB	MCA / MAIB	Pleasure vessels are subject to some Merchant Shipping legislation, each case is considered on its own merits. The MAIB can investigate accidents involving privately owned leisure craft, but will only do so where there are widely applicable safety issues.

Notes associated with Table 4:

“At Sea” – There is no definition of “At Sea”, so for the UK it is taken as meaning to seaward of Categorised waters as defined in MSN 1837(M).

“Categorised waters” – (as defined in MSN 1837(M)) fall into 4 types listed below:

- (1) Category A:- Narrow rivers and canals where the depth of water is generally less than 1.5 meters.
- (2) Category B:- Wider rivers and canals where the depth of water is generally 1.5 meters or more and where the significant wave height could not be expected to exceed 0.6 meters at any time.
- (3) Category C:- Tidal rivers and estuaries and large, deep lakes and lochs where the significant wave height could not be expected to exceed 1.2 meters at any time.
- (4) Category D:- Tidal rivers and estuaries where the significant wave height could not be expected to exceed 2.0 meters at any time.

MCA responsibility for seagoing vessels can be exercised either directly (e.g. by Load Line Exemption) or indirectly via Class Society certification or Certifying Authority coding.

For non-passenger operations on inland waters, MCA’s Class IX(A) standards only cover minimal requirements for firefighting and lifesaving appliances. “Merchant

shipping legislation” in the above table needs to be understood in this context.

Adventure Activities Licensing Authority

Adventure activities licensing is delivered jointly by the Adventure Activities Licensing Authority (a role undertaken by HSE since 1 April 2007) and the Adventure Activities Licensing Service, which is under contract to HSE to deliver licensing day to day on their behalf.

The AALA licences commercial watersports operation through the Adventure Activities Licensing Regulations 2004 (i.e. activities that are provided in return for payment), in which ‘young people’ participate (e.g. those under 18 years of age).

On ‘specified waters’ this includes the use of:

- canoes, kayaks or similar craft propelled or steered by paddles held in the hand (but excluding rowing-boats propelled or steered by oars);
- rafts (including those which are inflatable or which are improvised from various materials but excluding those propelled by means of a motor or towed by a motor-boat); or
- sailing boats, windsurfers, sailing dinghies or other craft whose principal means of propulsion is the wind but excluding craft whose construction, equipment and use of which require a certificate in line with the Merchant Shipping Act 1995 or any regulations made under it.

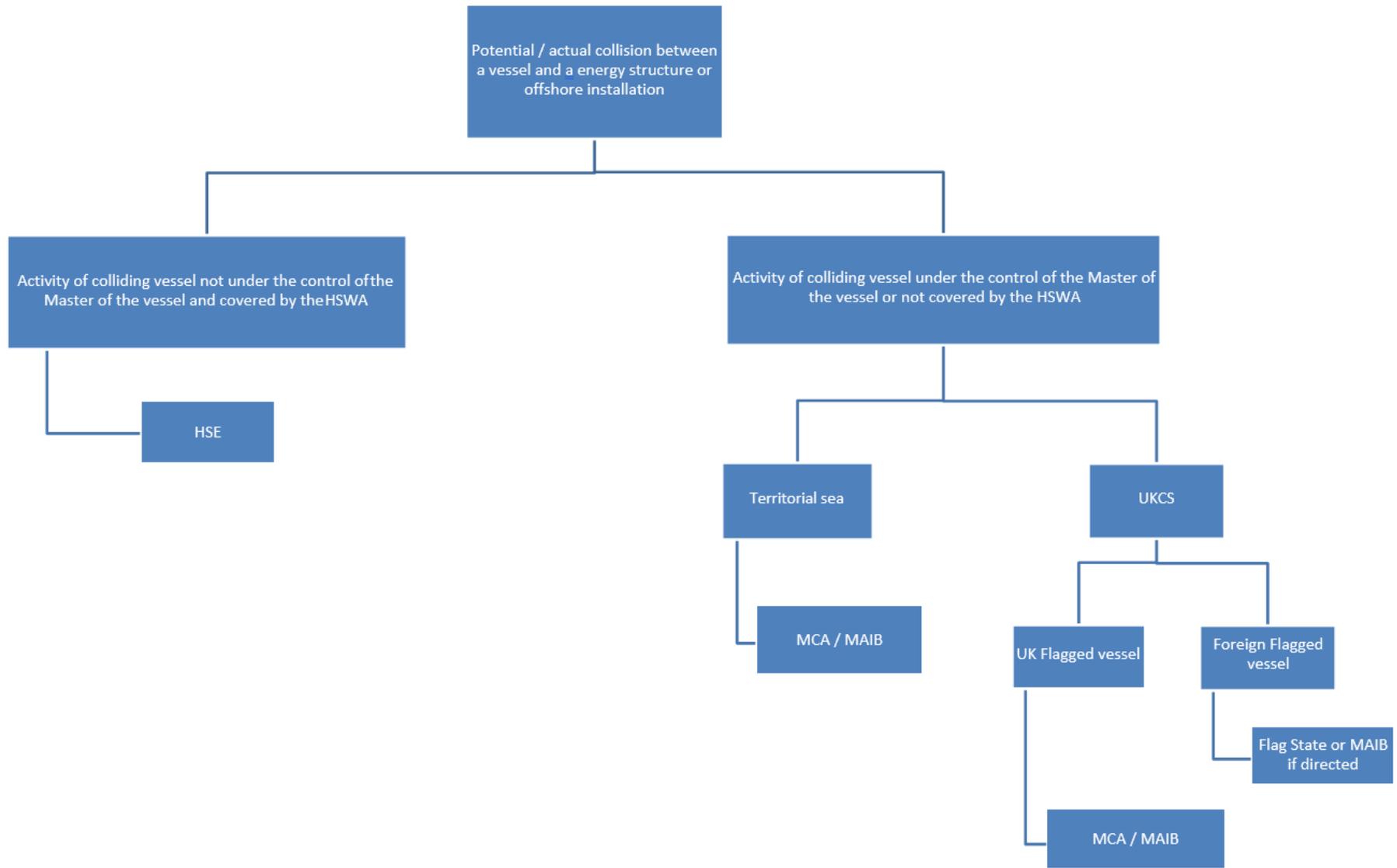
For any of these activities to be licensable, they need to be undertaken on 'specified waters', this is the sea, tidal waters (e.g. estuaries), inland waters more than 50 meters from the nearest land excluding any island or on turbulent inland waters e.g. weirs, rapids, waterfalls or fast flowing currents.

Adventurous activities include ‘watersports’, however, if the facilities for adventure activities are provided by a voluntary organisation to its members they are not required to hold a license.

The most familiar watersport activities include canoeing, kayaking, dragon boating, wave skiing, white-water rafting, improvised rafting, sailing, sailboarding and windsurfing. This list is not exhaustive and the AALA can advise if a particular activity is licensable.

Should there be questions or overlaps regarding regulatory jurisdiction associated with adventure activity licensing this should be discussed between the appropriate organisations.

FLOW DIAGRAM 1 Determining the Regulatory lead for a potential or actual collision involving a vessel and an energy structure or offshore installation 2016/20436



FLOW DIAGRAM 2 Determining the Regulatory lead for a fatality involving an activity in connection with an energy structure or offshore installation 2016/204389

