

SECTION 12

TITLE 4.3 HEALTH AND SAFETY

Introduction

13.1 This section seeks your views on the Maritime and Coastguard Agency's proposals for giving full effect to Regulation 4.3 and Standard A4.3 of the ILO Maritime Labour Convention, 2006 which give minimum standards for health and safety.

In addition, it invites views on a new duty to grant shore leave to seafarers to benefit their health and well-being, implementing Regulation 2.4.2. That duty will in due course be contained in the Merchant Shipping (Maritime Labour Convention) (Hours of Work)(Amendment) Regulations, but is included here for the purposes of consultation. See paragraphs 13.20 to 13.26 below.

The current provisions relating to seafarer's health and safety are set out in the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (S.I. No. 1997/2692), which implement the European Framework Directive on Occupational Health and Safety as respects seafarers, and a series of other UK Regulations implementing the "daughter directives". The full list is the schedule to the draft Regulations.

13.2 The proposed Merchant Shipping (Maritime Labour Convention) (Health and Safety) Regulations 20xx (the "Health and Safety Regulations 20XX") would amend those Regulations so that the requirements of Title 4.3 are fully implemented.

N.B. MCA has amended the definition of "seafarer" and "sea-going ships following comments received from consultations on earlier regulations implementing other provisions of the Maritime Labour Convention, 2006 (MLC). Comments were also received on the definition of "shipowner", which have been considered, but no significant change has been made to the definition. An MGN is being produced which will explain the key definitions common to all or many of the UK regulations implementing the MLC.

Application

13.3 The current Regulations apply to "all activities of workers on United Kingdom ships".

"Worker" is defined as "any person employed by an employer under a contract of employment, including trainees or apprentices". The MLC requires protection to be provided to all "seafarers", which includes any person "employed, engaged or working in any capacity on a ship to which the Convention applies". The proposed Regulations therefore change the scope and application of the health and safety provisions, as discussed below.

13.4 The current Regulations apply to both merchant ships and fishing vessels. These amendments do NOT make any changes to the duties of employer or others on fishing vessels, which are not covered by the MLC. The definition of seafarer inserted in Regulation 2(2) by these regulations therefore explicitly excludes those who work on a fishing vessel.

13.5 Whilst the UK is not applying the MLC itself to ships operating no more than 60 miles from a safe haven in the United Kingdom, the changes introduced by these Regulations are not considered to introduce new burdens for shipowners as it is understood they represent normal practice on most ships, and so in the interests of consistency and to avoid confusion for both shipowners and seafarers, we propose that these regulations should apply to all sea-going merchant ships.

Consultees are invited to comment on any elements of these proposed regulations which would not be appropriate where they apply to vessels on domestic voyages, with evidence of any unreasonable costs or burdens.

N.B. The amending regulations which implement MLC provisions do NOT apply to pleasure vessels, ships of traditional build, warships or naval auxiliaries.

Summary of the Provisions

Definitions

13.6. Regulation 2(2) is amended to insert or amend a number of definitions:

Marine Guidance Note – this new definition is inserted to allow for the proposed new MGN which MCA would publish annually, highlighting statistical information which might assist shipowners with evaluation of risk. See paragraph 13.8 of this document.

Maritime Labour Certificate - this is required for Part VI of the Regulations where different enforcement provisions apply, depending on whether or not the ship inspected has a valid Maritime Labour Certificate.

Merchant Shipping Notice – the definition is updated to cover a new Merchant Shipping Notice (MSN) on the reporting of occupational diseases – this MSN forms part of this consultation package.

seafarer (discussed at paragraph 13.3 above);

shipowner - a definition is inserted, because regulation 2(3) extends various duties to shipowners (see below).

13.7 Regulation 2(3) extends a number of the provisions of the regulations to ensure that
(a) seafarers are provided with the same protection, whether or not they are “workers” as defined in the 1997 regulations; and
(b) shipowners are given parallel responsibilities to employers where appropriate. This reflects the overall duty of shipowners to ensure compliance with the MLC, regardless of whether certain functions and responsibilities are delegated to others (e.g. employers).

There are however some duties which are not covered by the MLC, and will remain duties on employers, and limited in their application to workers, in particular, the protection measures for new and expectant mothers (regulations 8 to 10 of the 1997 Regulations) and the requirement for health surveillance (regulation 11).

The duties which have been amended are listed below for ease of reference.

<i>Reference</i>	<i>Provision</i>	<i>Current application</i>	<i>Proposed application</i>
4(1)(a)	Duty to comply with these Regulations	(a) Employer and (b) any other natural or legal person upon whom a duty is imposed by the regulations	(a) Employer and shipowner, and (b) <i>unchanged</i>
5(1)	Duty to ensure the health and safety of	Employer in respect of “workers and other	Employer and shipowner, in respect

	workers by applying general principles	persons"	of workers, seafarers and other persons...
7(1)	Risk assessment (RA) to identify:	Risks to workers,	Risks to workers and seafarers,
7(1)(a)		Groups of workers at risk	Groups of workers and seafarers at risk
7(1)(b)		Measures to be taken to comply with employer's duties	Measures to be taken to comply with employer's and shipowner's duties
	RA to be brought to notice of [those affected]	..workers	.. workers and seafarers
7(2)	RA to extend to risks	including from acts and omissions of employer	including from acts and omissions of employer and shipowner
7(4)	Company to be informed of risks	Employer and self-employed persons to inform	The shipowner may have to inform the Company if different.
7(5)	Measures to be taken/PPE supplied to improve H&S	.. of workers	..of workers and seafarers
12(1)	Capabilities	Capabilities of workers	Capabilities of workers and seafarers
12(2)	Health and safety training	Adequate training for workers	Adequate training for workers and seafarers
16(1)(b)(iii)	Safety officer to investigate complaints	Complaints by workers	Complaints by workers or seafarers
18(b)	Safety officials to make representations to employer on hazards affecting workers	..to employer on hazards affecting workers	..to employer or shipowner on hazards affecting workers or seafarers
18(c)	Safety officials to make representations to employer on matters affecting workers	..to employer on matters affecting workers	..to employer or shipowner on matters affecting workers or seafarers
19(1)(b)(ii)	Provide information on health and safety issues	Company to inform workers	Company to inform workers and seafarers
20	Consultation with workers	Employers to consult with workers	Employers and shipowners to consult with workers and seafarers
21	Duties of workers	Workers to take reasonable care for self and others; co-operate with others to fulfil health and safety duties; comply with safety training and instructions; report any deficiency.	Workers and seafarers to take reasonable care etc.

Regulation 4(2) of the 1997 regulations which extend the duty of care to the natural or legal person who has control of the matter remains in place.

Duty to take account of statistical information (draft regulation 7(4)(a))

13.8 The MLC requires the competent authority to collect, analyse and publish statistical information on accidents and occupational diseases. This requirement is currently met by MAIB's accident statistics, published annually. However this data is published primarily as a summary of reported incidents and is not intended to assist shipowners to evaluate risks on their ships to inform their safety management – which the MLC requires shipowners to do. As a first step towards this goal, MCA will publish a draft MGN annually giving information about existing sources of data. MCA is also considering what improvements can be made to data collection and how it is published in future to provide a source of information which shipowners can use in assessing and improving their health and safety measures on board.

Duty to report occupational diseases (draft regulations 11A)

13.9 Current reporting requirements are defined in the Merchant Shipping (Accident Reporting and Investigation) Regulations 2012. The MLC introduces a new requirement to report occupational diseases. In order to minimise the burden of reporting, it is proposed that this would be implemented by a parallel system to that run by HSE for reporting of occupational diseases ashore. Under new regulation 11A, employers would be required to report to MCA if a medical practitioner reported to them in writing that a seafarer was suffering from an occupational disease.

13.10 The Regulations allow that a medical practitioner may be in the UK or abroad, but would have to be qualified at a level acceptable to work as a medical practitioner in the UK. In practice, that means that for overseas doctors, employers would only be required to submit report from overseas doctors if submitted by a practising doctor approved for the purpose of seafarer medical examinations, or meeting the criteria set out on the GMC website for practising in the UK. Further details are included in the MSN.

13.11 The draft MSN attached to this notice sets out the details of the reporting system including the current list of occupational diseases, which is the same as currently used by HSE under the RIDDOR procedures.

13.12 HSE is currently in the process of reviewing their requirements for the reporting of occupational diseases. It is intended that the procedures for reporting should remain unchanged, but the threshold requiring reports would change to focus on the six short-latency diseases which currently account for around 90% of all ill-health reports received:

- Hand Arm Vibration Syndrome
- Carpal tunnel syndrome
- Dermatitis
- Severe cramp of the arm
- Tendonitis
- Occupational asthma

In addition, the reporting requirements from EU directives on occupational cancer and biological agents (in force for ships under the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Carcinogens and Mutagens) Regulations 2007 and the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Biological Agents) Regulations 2010) would remain in place.

13.13 Since there has been no reporting of occupational diseases for seafarers in the past, we have no evidence from which to assess whether the same group of occupational diseases are as relevant for seafarers as for the working population ashore. However, there

may be an advantage in adopting HSE's list, because UK medical practitioners and employers will only have one set of occupational diseases to refer to, and this may improve levels of reporting. Data would also be directly comparable between the maritime sector and other sectors. Conversely, doctors overseas may be more familiar with the ILO list of occupational diseases.

http://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/@publ/documents/publication/wcms_150323.pdf

Consultees are invited to comment on whether, when HSE's regulations are amended to simplify the list of occupational diseases as outlined above, MCA's Merchant Shipping Notice should follow suit, or whether the maritime sector should retain a longer, more diverse list, such as that produced by the International Labour Organisation.

Extension of other H&S duties (draft regulations 13A)

13.14 The MLC requirements appear, taking into account the guidelines in Code B4.3, to be intended to go wider than simply high level general duties for health and safety. However, to amend all the UK health and safety regulations to impose duties on employers and shipowners in respect of "seafarers" whether or not they are employed, would go considerably further than the MLC requires.

13.15 Draft Regulation 13A therefore creates a "reasonable endeavours" obligation on shipowners to secure similar protections for seafarers who are not workers as employers are required to secure in respect of workers under such regulations. This creates a potentially wide ranging duty, but the duty is limited in two ways:

- (a) the duty in Regulation 13A extends only to seafarers employed on ships where workers are also employed; and
- (b) the duty is limited to "as far as is reasonably practicable and appropriate" so shipowners would not be expected to extend the protection to seafarers where it is disproportionate to do so, nor in circumstances where similar protection is not genuinely required as regards seafarers.

13.16 The limitation in (a) is in line with the thinking behind proposed changes to the way that health and safety duties apply to self-employed persons ashore. Following the Löfstedt Report, HSE consulted on changes to disapply health and safety duties from self-employed persons whose work did not put others at risk. The change is likely to take the form of a general exemption for self-employed persons from health and safety legislation, based on the risk of harm posed to others. In addition the Secretary of State will prescribe a list of high hazard / high risk sectors or activities where the exemption does not apply. Working at sea is not included in that list because HSE's legislation does not apply on ships at sea. However, based on rates of accidents statistics, the maritime sector must be considered to be a high risk sector, and so it is not proposed to exclude them from the protection of general health and safety duties (under the 1997 regulations).

13.17 There is often little difference in practice between the occupational health and safety risks faced by self-employed seafarers and those who are employees, and the case for safety regulation may accordingly be similar. However, the MCA proposal would limit the additional burdens of wide-ranging and detailed measures on particular aspects of health and safety to self-employed seafarers working alongside employed seafarers. Many of these duties, for example health surveillance to cover exposure to specified hazards at work, would be inappropriate duties to place on short-term contractor or consultants, or those engaging them for short-term contracts.

13.18 In practice, it is also considered unlikely - particularly in the context of the International Safety Management Code for ships - that any employer makes health and safety provision in a manner which limits its application to employees so as to exclude self-employed workers who are exposed to the same risk. The existing “Company” duty to co-ordinate health and safety provisions on ships (which applies even where the ISM Code does not) has a similar function, as does the broad duty to protect the health and safety of workers “and others”.

Invitation to Comment

13.19 Your comments are invited on the proposed regulations, supporting MSN on reporting of occupational diseases, and the draft impact assessment.

New duty to grant shore leave

13.20 A provision will be added to the draft Merchant Shipping (Maritime Labour Convention) (Hours of Work) (Amendment) Regulations, to implement regulation 2.4.2 of the MLC. The draft regulations will amend the Merchant Shipping (Hours of Work) Regulations 2002. They were consulted on in 2009 to amend the Annual Leave requirements in line with the MLC, but this provision was not included, other than in the Merchant Shipping Notice. Since the provision is part of the social partners agreement annexed to EC Directive 2009/13/EC, it is now considered that a statutory duty is required to adequately implement both the MLC regulation and the Social Partners Agreement.

13.21 The new provision (see below) would require the shipowner and the master to “ensure that shore leave is granted to seafarers to benefit their health and well-being where consistent with the operational requirements of their positions”. The definitions of “shipowner” and “seafarer” would be the standard UK MLC definitions.

13.22 The provision in the MLC appears to have words missing, but the draft regulations implements what we understand to be the intention, which is supported by the ILO’s own “model national provisions” to implement MLC Regulation 2.4.2. That is, there should be no absolute duty to give seafarers shore leave, but that where such leave is compatible with the seafarer’s operational duties, and benefits the seafarer’s health and wellbeing, shore leave must be provided. An example of where shore leave would not benefit the seafarer’s health and well-being might be where there is public disorder or a security risk in the port.

13.23 The duty is placed on the shipowner (which has responsibility for the operation of the ship) and the master (who has day to day control of operations).

13.24 The penalty for breach of the duty will be a fine not exceeding level 5 (the same penalty as for other offences under section 20(1) of the 2002 Regulations).

13.25 When this issue was discussed with the MLC Tripartite Working Group, it was agreed that it was not always possible for the shipowner or master to ensure the seafarer could have shore leave, because of factors outside their control. To allow for such circumstances, there is a defence of showing that the duty holder did what was reasonable to ensure compliance at existing regulation 20(5). The shipowner and the master will not be liable if the seafarer is unable to go ashore as a result of shore-side restrictions or circumstances.

Text of the draft regulation:

“Shore leave

12A. The shipowner and the master must ensure that shore leave is granted to seafarers to benefit their health and well-being where consistent with the operational requirements of their positions”.

13.26 Your comments are invited on the proposed regulation, and the draft impact assessment.