RESPONSES TO PUBLIC CONSULTATION ON CONSOLIDATION OF

MERCHANT SHIPPING (HOURS OF WORK) REGULATIONS 2002

AND SUBSEQUENT AMENDMENTS

	ORGANISATION	COMMENT	GOVERNMENT RESPONSE
Regulations			
Reg 2,4, and 7	**Nautilus International**	Nautilus objects to the continued use of the "workforce agreement" – uniquely British and not provided for in any of the international or the regional EU regulations referred to. The provision of a "Collective Agreement" as defined in accordance with Section 178 of the Trade Union and Labour Relations (Consolidation) Act 1992 is perfectly acceptable. The difference is that of an independent trade union, not a servile workforce. A "Workforce Agreement" between an employer and persons employed by the employer or their representatives has the potential for undue pressure to be applied on a small group of seafarers who, by the nature of shipping, constantly change. In many cases, acceptance of a "Workforce Agreement" is essentially a condition of employment. This provision should be struck out, since it undermines safety.	The provision for workforce agreements mirrors the shore-based UK working time regulations and reflects wider government policy.
	RMT	We are particularly concerned at the use of the term "workforce agreement" throughout, and defined in Schedule 1 of the draft regulation. The repeated use and formal regulatory definition of this term not only legitimises anti-trade union employment practices but clearly undermines collective bargaining and other protections on vessels within scope.	The provision for workforce agreements mirrors the shore-based UK working time regulations and reflects wider government policy. MCA would not approve a workforce agreement where it conflicted with an existing collective bargaining agreement.

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		The term "workforce agreement" does not appear anywhere in the MLC or STCW. As such the use of this term also risks conflicting and even undermining these conventions, particular the MLC's provisions, the requirement for Seafarer Employment Agreements, for example.	
Reg 7	**Nautilus International**	Reg 7(3): Authorised exceptions are perfectly valid as provided for in the MLC this is somewhat mischievous – i.e. using a provision from STCW and combining it with the flexibility afforded by the MLC. The MLC provides for a social partners agreement, whereas STCW does not. It is therefore suggested to insert "no more than" in front of "three periods" so there is no doubt that three periods should not be the norm and is very much the exception. Ideally it should be two, as provided for in the MLC. It is totally unacceptable to compound this defined exception in STCW [Manila amendments] with a "Workforce Agreement".	
Reg 18:	**UK Chamber of Shipping**	The consultation document indicates that reg 18 replaces current regulation 13, but is radically different. Current regulation 13 is extremely important since it makes clear that, where a worker already has a contractual right to pad annual leave at least equally to the statutory minimum, the employer is not under any obligation to grant further paid leave. The proposed regulation 18 does not reflect this and is so vague as to be effectively meaningless. The wording in Regulation 13 should be retained in the new Regulations.	Regulation 18 has the same effect as regulation 13 which is open to misinterpretation. However, we will review the wording of the supporting guidance in the MSN to clarify this practical application.
Reg 22	**Nautilus International**	Nautilus is unhappy with the thread running through this Section. Continual reference is made to the shipowner and the master". It is expected that the "directing mind",	MCA agrees that the master should only be held liable for an offence for which they are personally culpable. MCA's published prosecution policy makes this clear. There are

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		generally the DPA ashore, should be held to account. The master should only be held accountable where they can be shown to have acted independently without knowledge of the owner or their shore representative.	offences and penalties for the DPA in the ISM Regulations which would be appropriate in the circumstances suggested. They do not need to be duplicated in these Regulations.
Reg 25	**Nautilus International**	It is not appropriate, nor acceptable to levy fines on a master to the same degree as on an employer. Regrettably this has been a feature of recent legislation and reprinted without any thought or rationale. The penalties should reflect the significant difference between the shipowner and the master who is simply another employee.	Having a single provision regarding fines keeps the regulations simple and clear. In the event of prosecution, the court will determine an appropriate fine, depending in part on the resources available to the defendant.
Reg 26 & 27	**Nautilus International**	It is important that any remedies are such as not to disadvantage the seafarer; in particular, on occasions, the requirement for an extended time period in order to present a complaint given the nature of employment. Reference is made to this is in 26(2)(b). It is expected Tribunal staff are made aware of the particular nature of seafaring and exercise due discretion.	The limitations on seafarers' access to a tribunal is noted; however they are not unique in this respect. Tribunals are used to allowing appropriate flexibility for those working out of the country/away from home.
Reg 29	**Nautilus International**	The time periods for the first report (three years) and subsequent reports (five years) are noted. Nautilus acknowledges that all other stated requirements in carrying out such a review should be closely followed.	Noted.
Draft MSN			
General	**Nautilus International**	Nautilus has no issue with the provision of the MLC. It is the conflation of the provisions with STCW that is the issue. The two Conventions are not 100% compatible. This has been acknowledged in plenary at the IMO.	One of the differences between MLC and STCW is their scope of application. STCW applies only to ships on international voyages. MLC applies – with very limited exceptions – to ships on both domestic and international voyages. UK Hours of Work regulations apply to both domestic and international operations. MCA is proposing that exemption from the limits on authorised exceptions would only be permitted for vessels falling outside the scope of STCW, and within specified types of operation (operating within 60 miles of a safe haven in the UK and not those on regular trading routes) as agreed with social partners in the cases already approved.

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General	**Nautilus International**	Nautilus requests that no changes are made to the existing text other than suggested above without further consultation.	Noted
Section 5	**Nautilus International**	The limits to the exceptions on Hours of Rest are made in 5.2. The result is the possibility of exceptions to STCW 2010 undermining the MLC. This was never the intention. With the safeguard of a Collective Agreement the opportunity for abuse is significantly reduced. However, safeguards provided for in the MLC and the "no exceptions rule" other than permitted specific exceptions in the STCW 2010, are rendered ineffective with the combining of the two separate and distinct instruments. The possibility of this is higher with the provision of the Workforce Agreement in 5.3.	One of the differences between MLC and STCW is their scope of application. STCW applies only to ships on international voyages. MLC applies – with very limited exceptions – to ships on both domestic and international voyages. UK Hours of Work regulations apply to both domestic and international operations. MCA is proposing that exemption from the limits on authorised exceptions would only be permitted for vessels falling outside the scope of STCW, and within specified types of operation (operating within 60 miles of a safe haven in the UK and not those on regular trading routes) as agreed with social partners in the cases already approved,
Section 5	**UK Chamber of Shipping**	Paragraph 5.2 needs to be re-drafted as it does not properly reflect Section A-VIII/1 of the STCW Convention as revised. Sub-paragraph (a) should state that the minimum 10 hours of daily rest must be provided in no more than three periods, one of which must be at least six hours in length and all three of which should be at least one hour. This would allow sub-paragraph (b) to be deleted. Additional periods of rest, whether or not they are under one hour in length can be counted towards the weekly rest period.	We will review the wording in the MSN for clarity. It is not UK policy to allow rest periods of less than one hour to count towards daily or weekly hours of rest – see paragraph 4.6 of MSN 1842 (M).
Section 5	**UK Chamber of Shipping**	Paragraph 5.2.(f), the word "consecutive" should be inserted between "two" and "weeks", in order to provide greater accuracy and clarity.	We will review the wording in the MSN for clarity.
Section 5	**UK Chamber of Shipping**	With regard to paragraph 5.2.(g), is the focus on the ship or on the individual members of its crew? If an exemption is applied to the crew, the vessels could work accordance with an exception for four consecutive weeks, then revert to the normal minimum rest for four weeks before re-	MCA interprets this provision in STCW to mean that no seafarer can work the exceptional pattern for more than two consecutive weeks, and must have a period of at least twice the length of time that the exception applied before working under the exception again.

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		instating the exception for a further four weeks. Since this falls under the heading of "fitness for duty" in STCW, it is presumed that the application is to the crew rather than the ship. Guidance should be inserted in the MSN accordingly.	
Section 9	**UK Chamber of Shipping**	Paragraph 9.1 is somewhat open-ended; shipowners would appreciate some guidance on what information on night workers they might be asked to provide, along with an indication of the legal basis for such a request.	The provision is taken directly from the European Agreement on the organisation of working time of seafarers, and follows provisions in the general Working Time Directive. Since most ships operate 24 hours a day, night working is inevitable for some seafarers, and MCA only likely to request information under this provision in the context of (a) a complaint or follow-up to an accident or incident; or (b) research on the impacts of different watch patterns.
Section 9	**Nautilus International**	Nautilus suggests stronger wording, as reflected in Regulation 14. Night work has been identified as particularly hazardous to health, particularly for women; when couple with shift work and extended hours the dangers are compounded. It is therefore important that information is sought and provided.	The provision is taken directly from the European Agreement on the organisation of working time of seafarers, and follows provisions in the general Working Time Directive. Since most ships operate 24 hours a day, night working is inevitable for some seafarers, and MCA only likely to request information under this provision in the context of (a) a complaint or follow-up to an accident or incident; or (b) research on the impacts of different watch patterns.
Question 1: Do you agree with the MCA's assessment of the impact of the changes outlined in paragraph 3 [of the consultation letter]? If not, please give a full explanation of the impact you expect and as much information as possible about costs.			
	Trinity House	Paragraph 3 explains that, other than drafting changes, there are two substantive changes: (1) implementing limitations on authorised exceptions to hours of rest set out in STCW, applied administratively by the MCA since 2012. The MCA therefore believes that this change will have no direct impact on business. Trinity House agrees with the MCA on this point. (2) Simplification of enforcement procedures relating to foreign ships. The MCA concludes that this simplification will not affect shipowners but will significantly streamline	Noted.

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		the legislation. Trinity House does not challenge MCA's conclusion on this point.	
	RMT	Unfortunately, paragraph 3 of the MCA's assessment of the regulatory changes is silent on the impact or otherwise on seafarers (para 3.1)… In the case of any impact of these regulatory changes on non-UK seafarers, paragraph 3.2 is confusing, particularly where is states: "*The enforcement provisions relating to foreign ships have been simplified, to implement the enforcement provisions under the MLC, 2016 and Directive 2009/16 on Port State Control as amended by Directive 2013/38/EU) ".* We presume that this refers to MLC, 2006. Paragraph 5 of the consultation document states that: "*simplification of the enforcement procedures will not affect shipowners or seafarers, and will have extremely limited practical impact for MCA surveyors. It will however significant streamline the legislation*." We note that ILO 180 [Seafarers' Hours of Work and the Manning of Ships Convention, 1996] has been superseded but require a more detailed assessment of the implications for UK and non-UK seafarers of the changes outlined in paragraph 3, [including] practical examples.	The reference should have been to MLC, 2006 – this was a typo in the consultation document. Regulation 15 of the 2002 Regulations, which implemented the earlier Directive 1995/95, cited specific items for inspection as part of a port State Control inspection including the posting of a schedule or hours or work, correct record-keeping and endorsement of those records. A more detailed inspection was required to be carried out in the event of a complaint having been received, or if the surveyor's own observations suggested that seafarers were unduly fatigued. If deficiencies were found, the surveyor was required to report to the flag State. Any complaints were to be treated in confidence. In 2014 when the MLC provisions were added to the Hours of Work Regulations[1], regulation 14 was amended to make separate provision for UK and non-MLC ships and regulation 14A was added to provide for inspection of MLC ships (i.e. non-UK ships with a valid maritime labour certificate), in accordance with the EC Port State Control Directive as amended by Directive 2013/38/EU to incorporate MLC inspections. The MLC contains general enforcement provisions for the whole spectrum of issues covered by the MLC including hours of work. But in common with other international Conventions, where the flag State has issued a certificate demonstrating compliance with the Convention, the

[1] S.I. 2014/308

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			Maritime Labour Certificate must be considered prima facie evidence of compliance. Where the surveyor has grounds – including from a complaint or from their own observations - to suspect that conditions on board are not compliant, they may carry out a more detailed inspection, and enforcement powers follow. That has superseded the prescriptive provision in reg 15 of the original Hours of Work Regulations. In practice, since the MLC was introduced, it is the MLC procedures which have been followed. MCA takes a particular interest in hours of work where the manning of the ship and pattern of operation are likely to put pressure on compliance with the minimum hours of rest, and will raise a deficiency/ take enforcement action where appropriate if there is evidence of non-compliance with the minimum hours of rest. MCA therefore believes that there is no impact on businesses or on seafarers from this change.
Question 2: Should the new regulations give MCA the flexibility to authorise such arrangements in future, where social partners support the arrangement and the operations in question are not subject to the STCW Convention or to the Directive 2008/106/EC (as amended)?			
	UK Chamber of Shipping	We support the intention to continue to allow exceptions for those aggregate carriers that currently operate an 8-on 8-off work pattern. The mechanism by which this is achieved is – I resume – an exception from the UK's interpretation of the MLC definition of ship, on the basis that these vessels do not venture more than 60nm from a safe haven in the UK and do not visit any foreign ports.	Noted
	Nautilus International	Nautilus accepts that authorised exceptions are permissible with the agreement of the social partners and where not detrimental to seafarers. The 60-mile limit of a	MCA agrees that the exceptions to STCW requirements should not be permitted for vessels operating regular trading routes. The examples referred to in the consultation

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		safe haven should be taken in context – namely, that of a non-trading vessel for a very limited time period. For example, a "coastal pleasure steamer" transiting between two ports or piers. The idea of allowing this exception for trading or working vessels undermines the very spirit of the MLC.	document where agreement has already been reached are in operations which have regular interruptions to operation which allow for additional unscheduled rest hours. Consideration is being given to how this concept can be enshrined n legislation.
	Nautilus International	Notwithstanding the regulatory provisions of both the MLC and STCW, Nautilus draws attention to the findings of the EU-funded Project Horizon (PH) which illustrate that working 12 to 14 hours in any 24 hours and 91/98 hours in any seven-day period is potentially unsafe. In addition to acute and chronic "fatigue" (tiredness or sleepiness) examined in PH, the long-term health effects, particularly of shift workers, is well documented.	MCA was a contributor to PH, and is very well aware of its findings. The examples of authorised exceptions referred to in the consultation document where agreement has already been reached are in operations which have regular interruptions to operation which allow for additional unscheduled rest hours.
	RMT	We would appreciate a reminder of when and how this agreement was obtained and the details of the two cases in which exceptions to draft regulations 6(2) and (3) were granted by the MCA.	MCA has written to RMT with information about the two cases, both of which were authorised on the basis of agreements between the company and the national representatives of the union representing the workers concerned.
	RMT	The authorised exemptions in paragraph 7(a) [of the consultation document] could potentially apply to vessels undertaking one port voyages in the offshore energy industry, in the North Sea, Irish Sea and Channel. Notwithstanding the applicability of the STCW and Directive 2008/106/EC, it is important for the union to be fully aware of the impact of these changes as they have potential implications for the granting of exceptions to existing collective bargaining agreement. We do not want to see these changes result in an increase in applications from employers to require seafarers to work longer hours than contractually agreed.	Where the seafarers affected were subject to a CBA with a union, MCA would only consider a proposal for an authorised exception agreed with that union. Where there is no CBA, and no union representation, there are still checks in the process. According to the MLC and Directive 1999/63, exceptions may only be authorised "With due regard for the general principles of the protection of the health and safety of workers,…".In addition, "Such exceptions shall, as far as possible, follow the standards set out but may take account of more frequent or longer leave periods, or the granting of compensatory leave for watchkeeping seafarers or seafarers working on board ship on short voyages. (Clause 5.6 of the SPA attached to Directive 1999/63/EC).

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		Where there is no CBA and the provisions of STCW and Directive 2008/106/EC do not apply to the vessel, then it is absolutely essential that there is no loophole, as far as it is possible proscribe in regulation, otherwise employed seafarers risk not even having the minimum employment and welfare standards established and promulgated by the MLC.	In addition, article 15.11 of Directive 2008/106 as amended by 2012/35/EU says: "Exceptions shall, as far as possible, take into account the guidance regarding prevention of fatigue laid down in Section B-VIII/1 of the STCW Code." We will look again at the wording of the Regulations and the MSN to take full account of these conditions.
	RMT	We note in MGN 448 that Marine Offices have a role in increasing the MCA's flexibility to authorise exceptions to the revised regulations. The RMT is opposed to the MCA's plans to reduce the national network of Marine Offices, with a net loss of seven in the five years to 2018. In this context, it would seem counter-intuitive to reduce the Marine Office network at the same time as giving the remaining Marine Offices more regulatory responsibilities, including where the authorisation process for exceptions to the legal regulations governing seafarers' hours of work has failed.	The review carried out by Marine Offices when MGN 448 was published in 2012 was to ensure that any existing authorised exceptions were compliant with the tighter limits brought in by STCW Manila amendments. That exercise was required in 2012. There is no need for Marine Offices to carrying out a further review now, as the standards are not changing. Any new request for an authorised exception must be considered by MCA HQ, in discussion with Marine Offices which have "local knowledge" of the operation.
	RMT	Before we can agree to the regulations giving the MCA the flexibility sought in the consultation, the union seeks further reassurance over the safeguards that are in place to ensure that these regulatory changes are not interpreted by employers as a way of undermining or avoiding CBAs, STCW and MLC. We also seek an impact assessment of these proposal on the Marine Office network before we can make any further decision.	According to the MLC and Directive 1999/63, exceptions may only be authorised "With due regard for the general principles of the protection of the health and safety of workers,...".In addition, "Such exceptions shall, as far as possible, follow the standards set out but may take account of more frequent or longer leave periods, or the granting of compensatory leave for watchkeeping seafarers or seafarers working on board ship on short voyages. (Clause 5.6 of the SPA attached to Directive 1999/63/EC). In addition, article 15.11 of Directive 2008/106 as amended by 2012/35/EU says: "Exceptions shall, as far as possible, take into account the guidance regarding prevention of fatigue laid down in Section B-VIII/1 of the STCW Code."

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			The proposals have no impact on Marine Offices. Any new request for an authorised exception must be considered by MCA HQ, in discussion with Marine Offices, which have local knowledge of the operation.
	Trinity House	We consider that this question is asking whether, in the circumstances framed in the question, the MCA should have the ability to authorise exceptions to the minimum hours of rest (as set out in draft regulation 6) in respect of vessels which (i) operate only within 60 miles of a safe haven; and (ii) do not operate to or from, or call at, any port in a country other than the UK. We agree that the UK should have this ability where it has been satisfied that the proposed pattern of operation is not detrimental to the seafarer's safety and health.	Noted.
General			
	Nautilus International	It is noted that this is a consolidation exercise including the provisions of the MLC and STCW that are enshrined in EU law in Directive 2012/35/EU amending Directive 2008/106/EC. It is further noted that the MCA believes that these changes will have no direct impact on business, as they are already included in MGN 448(M) since 2012. It is disappointing, however, that there is no reference to any possible impact on seafarers.	Noted. As the limits on exceptions are already been applied administratively, the MCA does not expect there to be any impact on either individual seafarers or businesses.
	Nautilus International	Nautilus is concerned at the enforcement capacity of the MCA to ensure compliance with these regulations by UK ships as required by Flag State Implementation and other vessels visiting the UK subject to Port State Control. Considerable resources are required uncover a single case of abuse of working and rest hours.	As the regulations are a consolidation of existing provisions, no increase in workload is expected for MCA.
	Nautilus International	Nautilus regrets that once again, the time for consultation is limited to four weeks.	As the proposals make no material change to current practice, which implement a social partners' agreement and a well-established International Convention, a longer period of consultation was not considered necessary.

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	Unite	We confirm that, having consulted with our members, we have no comments on this consultation.	Noted.

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