

PART B

CHAPTER 4 EXEMPTIONS, EQUIVALENTS & TEMPORARY DISPENSATIONS

4.1 Definitions

4.1.1 Ship Specific Exemption: An exemption from compliance with a particular regulatory requirement granted in respect of a specific and named ship which may include restrictions and/or conditions so as to ensure that an equivalent level of safety is achieved.

4.1.2 Equivalent Level of Safety: An exemption should only be granted where compliance with the regulations is unreasonable (whether on grounds of practicability or for some other reason) and the signatory is satisfied that alternative steps are taken so as to achieve an equivalent level of safety. Where necessary, conditions and limitations will normally need to be laid down when granting an exemption, full details of which should be entered in the 'Conditions' fields on the appropriate certificate.

4.1.3 Equivalent: Compliance with a regulation but using the substitution of a particular fitting material, appliance, apparatus or operational procedure which the UK Administration deems to be at least as effective as that required by regulation. No exemption is required. Recorded in ship technical file and MS/0047/022/0144 file retained in HQ.

4.1.4 Temporary Dispensation: Temporary substitution of a particular fitting material, appliance or apparatus required by regulation where no specific exemption may be made where the condition of the ship and equipment continues to "correspond substantially" with the requirements of the associated statutory certificate.

4.1.5 General Exemption: An exemption from one or more regulatory requirements granted in respect of a class/group of ships to which the particular regulation(s) is/are applicable, for which generic conditions or limitations may be applied.

4.1.6 Period of Validity: The period of time for which an exemption/equivalent remains in force without need for review. Exemptions must not be granted indefinitely. The expiry date will be the expiry date of the certificate to which the exemption is attached. If there is no associated certificate, another date may be entered depending on the need for the exemption for example, to cover a single voyage or short term need. The maximum period of validity is not to exceed 5 years.

4.2 Exemption/Equivalence

4.2.1 Exemptions **are** issued where a vessel has arrangements or equipment that does not comply with a defined standard required by regulation. Exemptions can

only be issued where the power of exemption is granted within the appropriate regulations.

4.2.2 An equivalence does not require powers of exemption as a vessel complies with regulation (so does not need an exemption), but not in the manner required by regulation. The means of providing the equivalent level of safety must be accepted and recorded.

4.2.3 All applications for exemption should be from the owner/ manager/ builder in writing stating:

- Applicant's details
- Ship identification and relevant data (type, size etc.)
- Statutory provisions from which exemption is requested
- Reasons why compliance with the regulations is impossible or impractical
- Measures proposed which would provide an equivalent level of safety to the statutory requirement; and
- Any relevant documents or information to support the application.

Where the exemption request is for the use of innovative and alternative and/or equivalent design methods, the applicant should be referred to the additional guidance contained in *MSC.1/Circ.1455 – Guidelines for the Approval of Alternatives and Equivalents as provided for in Various IMO Instruments* which provides the methodology for the analysis and approval process.

4.2.4 When an application is made the result may be an exemption or an acceptance of equivalence.

4.2.5 Fees are chargeable at the normal hourly survey rate for assessment and issue of exemptions and equivalents. Application for exemption, via form MSF 1261 (see 4.2.13 below), should therefore be accompanied by an Application for Survey form (MSF 5100) unless the exemption is considered part of a survey for which a fee deposit has already been made. In exceptional cases written authorisation should be obtained from the AOM, SiC, or Head of Branch for the work to commence pending receipt of fees. Fees from other Government departments may also be paid in arrears.

4.2.6 When considering an exemption the surveyor should:

- Consider need for internal/external consultation;
- Seek additional policy and/or technical advice, as necessary; and,
- Consider precedents, where applicable.

Note that exemptions are not granted for purely commercial reasons.

4.2.7 All exemptions must have an expiry date entered when issued. In all cases this will be the expiry date of the certificate to which the exemption is attached. In cases where no associated certificate is being issued then 5 years is considered the maximum period of validity which can be allowed. The period of validity can be much less than this if deemed appropriate by the issuing surveyor.

4.2.8 The purpose of having a validity is to review exemptions on a regular basis so as to ensure that they reflect the requirements of current legislation and that the conditions under which they were issued remain valid. Should a surveyor find that an exemption has expired, and the ship owner requests reissue, then the Lead Surveyor may arrange this.

4.2.9 Where a vessel changes operation i.e. area or purpose, then exemptions must be reviewed to ensure they are still valid for the new area of operation and/or purpose.

4.2.10 Exemptions and equivalents are recorded in the **CERS/SVD** E-Forms system database and are available to all survey and inspection staff (**see PtC Ch3 of these instructions**). This allows:

- Centralised production throughout the entire MCA;
- Centralised database interrogation throughout the entire MCA;
- A standardised format for exemptions from UK legislation; and
- An easier means of collating management information and statistics.

4.2.11 For exemptions, two regulation references are normally required to complete the E-Forms certificates:

- The regulation, or section of the Act, giving the power to exempt, and
- The regulation from which the vessel is exempted.

It is important that the surveyor proposing the issue of an exemption makes sure that MCA has the power to permit an exemption, as in some cases the power may not exist or may be more limited, (e.g. EU consultation may be required).

4.2.12 All exemption **assessments** and decisions must be documented on the appropriate themed file (if possible) or the CM 33/01, CM 27/01 or **CM 27/06** file. If placed on a sub-themed file, a supporting minute should be made on the relevant 33/01, 27/01 or **27/06** file for future reference. The decisions must:

- be justified ensuring equivalent level of safety where required; and,
- agree the period of validity, including an expiry date.

4.2.13 *Record of Assessment of Equivalence to/Exemption from Statutory Requirements*

4.2.13.1 For all except the most straightforward cases the **Assessment of Equivalence to/Exemption from Statutory Requirements** (MSF 1261), which requests further information, should be forwarded to the applicant for completion in order to fully explain their proposal ensuring that the applicant is aware of the additional guidance contained in *MSC.1/Circ.1455* where applicable; external applicants should complete sections 1-7. The form provides a means of recording the process of considering proposals for the acceptance of equivalent/exemption arrangements to statutory instruments.

4.2.13.2 Completion of the form by a body other than the Maritime and Coastguard Agency (MCA) does not imply delegation of the approval process. On completion,

the form is to be submitted to MCA Headquarters via a local MCA Marine Office. Information may be provided on the form either directly or by reference to more detailed source documents. Any attachments to the form are to be listed in section 9.0.

4.2.13.3 The information should be checked for accuracy and completeness by the surveyor dealing with the customer, and any other relevant information including their assessment or endorsements added, before being passed to their line manager and HQ. The relevant consultant surveyor and Technical Performance Manager should also be consulted by the MCA surveyor.

4.2.13.4 The Merchant Shipping (Passenger Ships) (Safety Code for UK Categorised Waters) Regulations 2010, regulation 5 requires the owner or master to apply **in writing** for alternative standards **to be considered** and the surveyor **is** to formally endorse **the application to indicate** that the ship will not cease to be fit for purpose.

4.2.13.5 The form, together with the papers containing the decision, will be housed in registered file MS 0047/022/0144 'Assessment of Exemption from/Equivalence to Statutory Requirements' and retained in HQ by the Head of the Technical Support Team (Ship Standards & Technical Performance) for UK ships on behalf of the Directorate of Maritime Safety and Standards. REG 'Assessment of Exemption from/Equivalence to Statutory Requirements' MS files are held by BIA branch.

4.2.13.6 The relevant themed CM file, for example 33/01 Passenger Ships, 27/01 or **27/06** Cargo Ships, should continue to remain the official technical record for the ship in question and therefore be used to house a copy of the **Assessment of Equivalence to/Exemption from Statutory Requirements** and any supporting papers. The form is not intended for use in Load Line Exemption Certificates.

4.2.13.7 It is not intended that the form should provide a comprehensive technical guide to the consideration of equivalence/exemption or risk issues. The intent is simply to provide a means by which the equivalence/exemption proposals which are dealt with on a day to day basis can be recorded along with the assumptions, caveats, mitigating factors etc. which have led to the final conclusions.

4.2.13.8 There is no need to use the form for very minor issues such as the sort of temporary exemption/equivalences for single voyages to the next port which are to be agreed, as a minimum, by email between the local Marine Office and Headquarters or for temporary dispensations, (see 4.5 below).

4.2.13.9 The **Assessment of Equivalence to/Exemption from Statutory Requirements** is not intended to be used for the submission of requests for exemptions from the crew accommodation regulations. For crew accommodation issues MCA form MSF1106 should be used.

4.3 Consultation with Headquarters

4.3.1 HQ must be consulted where the exemption/equivalence application is either requested for the first time or requires amendment. HQ should also be consulted on changes to standard terms and conditions previously agreed.

4.3.2 **MSF 1261** forms are to be submitted to Survey Operations Branch who will distribute to the relevant policy branches for consideration. Survey Operations Branch will also co-ordinate HQ written response back to the Marine Office's.

4.3.3 Subsequent review and re-issue following expiry of the exemption certificate may be dealt with locally by the Lead Surveyor in consultation with the Customer Service Manager, relevant focal point and HQ if considered necessary, provided that:

- (a) there is no change;
- (b) it continues to reflect the requirements of current legislation; and
- (c) the conditions under which it was issued remain valid.

4.4 Types of Exemption

4.4.1 General Exemptions

4.4.1.1 These will be issued by HQ. They are normally issued in order to exempt a class or group of ships from a UK regulation which is considered temporarily inappropriate e.g. starting the Class VI summer period when Easter falls before 1 April, or when regulatory process prevents revocation e.g. the requirement for radio direction finders.

4.4.1.2 Surveyors should check on the Survey Operations Branch microsite (under Exemptions/Decisions) that a general exemption is not already in force before considering ship specific exemptions, as general exemptions are not held in the E-Forms system.

4.4.2 UK Regulations

4.4.2.1 These are held on E-Forms as MSF 1000. They are issued when exemption is from a UK regulation and not one of the special types listed below. The exemption should not be indicated on any associated convention certificate.

4.4.3 SOLAS

4.4.3.1 These are held on E-Forms as MSF 1001. They are only issued in conjunction with a SOLAS certificate.

4.4.3.2 Before issue of a ship specific exemption from SOLAS is considered the Survey Operations Branch microsite (under Exemptions/Decisions) should be consulted to see if the UK has already notified IMO of an arrangement we consider equivalent to the requirements of SOLAS. These notifications usually take the form of IMO Circulars e.g. SLS circulars. If one is found to be appropriate then no exemption certificate is necessary but the SOLAS certificate should be endorsed in the equivalent arrangement section with the number of the circular. A copy of the

circular should be issued to the ship with the certificate for the benefit of flag and port State surveyors.

4.4.3.3 The issue of a SOLAS exemption may be considered adequate evidence of exemption from the equivalent UK regulation and no separate UK exemption certificate is necessary.

4.4.3.4 Most exemptions from SOLAS must be notified to IMO by the HQ Branch approving first issue.

4.4.4 MARPOL

4.4.4.1 Before issue of a ship specific exemption from MARPOL is considered, the Survey Operations Branch microsite or relevant Instructions to Surveyors should be consulted to see if the UK has already notified IMO of an arrangement considered equivalent to the requirements of MARPOL. If one is found to be appropriate then no exemption certificate is necessary but the MARPOL certificate should be endorsed in the equivalent arrangement section. A copy of the statement should be issued to the ship with the certificate for the benefit of flag and port State surveyors.

4.4.4.2 It is very rare for a MARPOL exemption to be issued, and only in very specific circumstances permitted by the convention. Unlike SOLAS no special MARPOL exemption certificate exists. The UKOPP and IOPP certificates have a space for noting of exemptions but no others have this facility. Ships that do not comply with MARPOL will also not comply with a UK regulation and will need to be issued with an MSF 1000 exemption certificate. A covering letter may be used to detail the international requirement for the benefit of port State control officers.

4.4.4.3 Exemptions from MARPOL must be notified to IMO by the HQ Branch approving first issue.

4.4.5 Radio

4.4.5.1 All requests for radio exemptions should be forwarded to Survey Operations Branch in HQ and may then be referred to Navigation Safety Branch for a policy decision.

4.4.5.2 Upon confirmation that an exemption is appropriate and, if the exemption is intended to be long term, a request for payment should be sent to the owner. The file reference will be under the MNA 136/5 series unless it is a Fishing Vessel in which case it will be MNA 136/7; refer to their letter (and reference if supplied). If the vessel has been surveyed delete 'subject to satisfactory...' Send out the letter after taking a copy and placing it with all related papers in the file.

4.4.5.3 If payment (or a reply in the case of queries) has not been received within 1 month, send out a reminder letter which indicates that if no reply has been received within 15 working days the exemption request will be terminated.

4.4.5.4 All exemptions require an expiry date, which will be entered at the bottom of the last page. This is usually in line with the Safety Radio Certificate (SRC),

Passenger Certificate or UK Fishing Vessel Certificate, depending on the vessel type, unless it is for a single voyage in which case an expiry date allowing a reasonable time for the voyage to be undertaken should be agreed.

4.4.5.5 SRC expiry dates can be obtained from the issuing organisation. After a request for an exemption is received, periodic checking is required to establish the SRC expiry dates. Passenger Certificate expiry dates can be obtained from the Marine Office that issued the certificate or SIAS. Fishing Vessel Certificate expiry dates can be obtained from Vessel Policy Branch. If the issuing organisation does not have details of the most recent expiry date contact the radio surveyor who surveyed the vessel in question.

4.4.6 Load Line

4.4.6.1 While the Load Line Convention has a lower limit on ship size the UK Load Line Regulations 1998 have no lower limit. This means that many ships under 24m/150 grt operating commercially must be surveyed for a UK Load Line certificate or Load Line Exemption unless of a class excluded by the application of the regulations. As an alternative to the issue of a Load Line Exemption owners should be encouraged to have their vessel certified under one of the Small Commercial Vessel Codes (see Part A Chapter 19 of these instructions), compliance with which will result in the dis-application of, amongst others, the Load Line Regulations.

4.4.6.2 General advice on the necessity and procedure for issue of load line exemptions is contained in chapter 1 of the Load Line Instructions. More detailed advice on some specific vessel types is contained in chapter 8.

4.4.6.3 Fishing vessels are not subject to the Load Line Convention while fishing however they do become subject to it if carrying out other activities. In particular when carrying cargo or acting as guardships – see scenarios below.

4.4.6.4 Load line exemptions are issued on a UK (MSF 2007) or International (MSF 2008) Load Line Exemption form, which are in HSSC format only. International exemptions must be issued if the ship is to operate outside UK waters and is of convention size but will normally need to be reported to IMO by Marine Technology Branch.

4.4.7 EU Directives / Regulations

4.4.7.1 Exemptions from UK Regulations which implement an EU Directive may be possible however, in practice are not pursued due to the very long application and hearing process. Exemptions from EU Directive requirements that are granted apply to all ships and all countries applying those Directives making the process undesirable. EU regulations which are directly enforceable in the UK, are likely to have no provisions for exemption.

Advice from the relevant HQ Branch and/ or Survey Operations Branch should be sought before indicating to an applicant that a request for exemption may be considered. Surveyors should note that in some cases EU law may prevent the issue of an exemption which SOLAS would allow e.g. AIS.

4.4.7.2 It should be noted that any application for equivalence to an EC Directive requirement has to be referred to the Commission and therefore may involve a significant time delay.

4.4.8 Collision Regulations

4.4.8.1 The Lights and Signalling Equipment Instructions (MSIS 10) contain advice on some possible exemptions.

4.4.8.2 While navigation lights, sound signals etc. are surveyed as part of the safety equipment, the Collisions Regulations are not part of SOLAS. For this reason any exemptions from the Collisions Regulations should be issued on a UK regulation exemption form MSF 1000. The SOLAS certificate of a ship with only an exemption from the MS (Distress Signals and Prevention of Collisions) Regulations 1996 should indicate that no exemption has been issued.

4.4.9 Crew Accommodation

4.4.9.1 Advice on where exemption may be appropriate for merchant ships is contained in the Crew Accommodation Instructions (MSIS 18).

4.4.9.2 Applications should be made on form MSF 1106. The surveyor should complete the appropriate parts of the form with grounds for exemption or remarks before forwarding to **Maritime Security and Safety Management** Branch.

4.4.9.3 All requests for crew accommodation exemption must be forwarded to the relevant seafarers unions for comment before a decision is made. This is due to the tripartite nature of the International Labour Organisation conventions and applies whether or not any current crew are members of a union. Normally this will mean consultation with Nautilus **International** and **the** RMT however if other unions are recognised by the owners then they should be asked to comment. Applicants for exemption should be warned of this process as the consultation period can take some time and they may find it beneficial to make their own approach to the unions in an effort to speed things up.

4.4.9.4 **The initial** exemption certificate **is** issued on form MSF 1003 by HQ on the E-Forms system. **Subsequent certificates may be issued by the local Marine Office providing that the circumstances remain unchanged.**

4.4.9.5 Crew accommodation exemption requests for fishing vessels are **processed by the attending fishing vessel surveyor. They are issued** in a similar way **to that for merchant ships** but application is on MSF 1106 and exemptions issued on MSF 1006.

4.4.9.6 Exemptions will normally have an expiry date harmonised with the expiry of the **Maritime Labour Certificate**, or a maximum 5 years.

4.4.9.7 **Exemptions issued against the Crew Accommodation Regulations (pre MLC) should also be recorded in the Declaration of Maritime Labour Convention Part I (DMLC Part I) for vessels for which, compliance with the 1997 Crew**

Accommodation regulations (or earlier) are used as equivalence to MLC for pre MLC ships.

4.4.10 *Fishing Vessels*

The issue of fishing vessel exemptions is also covered in the Instructions to Surveyors on Survey and Inspection of Fishing Vessels (MSIS 27)

International (EU Directive / Torremolinos vessels).

4.4.10.1 Any exemptions issued to 'new' vessels should be on form MSF 1000 and give full conditions upon which the exemption is granted. Such exemptions must be notified to the EU by Vessel Policy Branch.

4.4.10.2 'Existing' vessels which are to be issued with an International Fishing Vessel Certificate may already have exemption(s) from the 1975 Fishing Vessels (Safety Provisions) Rules. These are also to be completed on form MSF 1000. Standard conditions upon which many exemptions were granted can be found in an annex to the Fishing Vessel Instructions. These exemptions do not need to be notified to the EU.

UK (Non Directive vessels)

4.4.10.3 Any exemptions issued to 'new' vessels should be on form MSF 1000 and give full conditions upon which the exemption is granted.

4.4.10.4 'Existing' vessels which are to be issued with a UK Fishing Vessel Certificate may already have exemption(s) from the 1975 Fishing Vessels (Safety Provisions) Rules. These are listed on the UK FV certificate. Standard conditions upon which many exemptions were granted can be found in the appendices to the Fishing Vessel Instructions.

4.4.11 *Manning*

4.4.11.1 Requests for exemption from manning regulations are likely to fall into two types:

- .1 proposals to sail with crew not properly qualified.
- .2 proposals to sail with number of crew less than that specified by the Minimum Safe Manning Document.

Crew not properly qualified

4.4.11.2 In the event that the owners / managers of a ship claim that a properly qualified crew member cannot be supplied, application form MSF 4309 must be submitted detailing the ship and the crew member.

4.4.11.3 Exemptions to serve in the capacity of Master or Chief Engineer are not permitted under Regulation 1/6 of STCW and the customer should be advised accordingly.

4.4.11.4 All other requests for exemptions must be passed to a Seafarer Training and Certification Branch (STCB) Examiner for initial approval. Requests must include independent letters from 2 crewing agents stating that no correctly qualified officer is available. If these have not been supplied they must be requested from the ship/company. Once STCB have given permission in writing, the candidate can apply to a Marine Office for the oral examination. (A copy of the STCB approval will be sent to the Marine Office).

4.4.11.5 All fees must be paid before the oral examination is conducted. The Marine Office should arrange and conduct the appropriate oral examination. If the candidate is successful the Marine Office should issue an Exemption (Dispensation) Certificate MSF 4230 which exempts the ship from the carriage of the properly qualified person on the condition that the named person is carried instead. Obviously the MCA can only exempt a UK ship. Such exemptions are limited to 6 months duration.

4.4.11.6 A copy of the certificate should be sent to the STCB Examiner. If the candidate fails the oral examination they will need to re-apply to the Marine Office and pay with the appropriate fee before further oral examination can be conducted. The two week wait rule applies; see the Oral Examinations Code of Practice.

Reduced number of crew

4.4.11.7 This situation most commonly arises when a member of crew is injured and no replacement is available at such short notice.

4.4.11.8 Application for exemption should be made by the owner / managers to STCB where the matter will be considered. If the request is agreed to, then permission to operate shorthanded will normally take the form of an exemption from UK Regulations (MSF 1000).

4.4.11.9 It should be noted that while regulation 18 of the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997 allows exemption from any of those regulations, no exemption is permitted by the Merchant Shipping (Hours of Work) Regulations 2002 and so the benefits of exemption from minimum crew levels may be negligible.

4.4.11.10 Problems might also be experienced with Port State Control refusing to accept manning below that specified in the minimum Safe Manning Document. A solution may be found in the temporary employment of a locally available crew member qualified to the necessary STCW standard whose certificate may not be eligible for acceptance for Certificate of Equivalent Competency until a properly qualified person can be supplied. Approval for such arrangements should be given by STCB.

4.4.12 Isolated Incidents

4.4.12.1 Application from owners for the issue of an exemption for an isolated event, for example a relaxation of the Class operating seasonal limits within the Merchant

Shipping (Passenger Ship Construction: Ships of Classes III to VI(A)) Regulations 1998, are no longer accepted.

4.4.12.2 Pleasure vessels and vessels which comply with the Codes of Practice must no longer be considered for exemptions from relevant passenger ship regulations for short durations e.g. during Cowes Week. There should be no more favourable treatment for any vessel. See Part A Chapter 2 of these instructions.

4.4.13 *Equivalencies - Government Ships*

For government ships in most cases equivalencies will be recognised, rather than exemptions issued and listed on form MSF 1020; see Part B Ch 10 of these instructions. This form should not be used for non-Government ships for which any equivalencies utilised should be fully documented on the appropriate file and MSF 1102.

4.5 Temporary Dispensations

4.5.1 There are occasions on which requests are received by MCA for ship owners and managers for a ship to continue operation, despite the ship being temporarily unable to fully comply with the requirements of the regulations which cannot be rectified prior to departure (e.g. damaged equipment for which no spares are available at the current port).

4.5.2 International and UK regulations have various provisions for exemption under certain conditions, including in most UK Statutory Instruments a general provision allowing the Secretary of State to exempt as required. However, the use of such provisions is to enable the boundaries of the legal requirements to be altered, i.e. to change what is and is not legal, and so is only appropriate in the case of permanent exemptions (for example distance between navigation lights).

4.5.3 It is, however, also within the powers of the regulations to allow a ship to continue operation with, for example, damaged equipment without the use of the specific exemption provisions – so long as the condition of the ship and its equipment is considered to “correspond substantially” with the requirements of the associated statutory certificate. It is at the discretion of the MCA and on the basis of professional judgement as to what may be considered as “correspond substantially”. In such cases, the legal boundaries should not be altered by issue of an Exemption Certificate, but instead an acknowledgement made by MCA as to the continued operation of the ship by issue of a **Temporary Dispensation Letter (MSF 1686)**. If the MCA do not acknowledge the continued operation of the ship, the shipowner could be liable to enforcement action by MCA and/or at greater risk of action being taken by Port State Control authorities.

4.5.4 This reflects the guidance contained in Port State Control Committee Instruction 43/2010/11 on “Guidelines on Accepting Flag State Exemptions and Flag State Conditions”.

4.5.5 When it is acknowledged by MCA that a ship can continue operation whilst temporarily not able to fully meet the requirements of the regulations, a Temporary

Dispensation Letter is to be issued by the Marine Office. The Letter must be signed by an authorised official as if it were a certificate. An Exemption Certificate (MSF 1000 or MSF 1001) should not be issued.

4.5.6 Where the particular case has not been previously agreed (see MSIS 38 Instructions for the Guidance of Surveyors on Inspection Policy, Part B Chapter 8), or is not straightforward, contact should be made with the appropriate Consultant Surveyor for advice (see Part C Chapter 1 of these instructions). Where an issue has to be decided by a Duty Surveyor out-of-hours, an MSF 1686 letter should be issued if possible, or alternatively agreed by email at the time and followed up as soon as practical with issue of the letter. MSF 1686 letters issued by Duty Surveyors should be copied to the relevant Customer Service Manager for their records.

4.5.7 In order to ensure that an equivalent level of safety is maintained, conditions must be included on the Temporary Dispensation Letters in much the same way as the type of conditions that would appear on an Exemption Certificate.

4.5.8 To ensure consistency in agreement of temporary dispensations, COPIES OF ALL TEMPORARY DISPENSATION LETTERS (MSF 1686) SHOULD BE SENT TO SURVEY OPERATIONS BRANCH BY EMAIL for recording, until such time as the document is included in SVD eForms. Where the issue relates to a statutory certificate that has been issued by Class on behalf of MCA, Survey Operations Branch will forward the MSF 1686 to the appropriate Class contact.

4.5.9 This guidance does not amend or replace the procedure for recording of deficiencies on the Report of Inspection (MSF 1603) when these are found during the survey or inspection of a UK ship (refer Part C Chapter 4.5 of these instructions and MCA 810). Where such a deficiency has been recorded and a timescale specified for rectification by an action code, it will not usually be necessary to also issue a Temporary Dispensation Letter, unless it is felt that this is needed in order to satisfy Port State Control (i.e. in cases where a short-term Exemption Certificate might previously have been considered).

4.5.10 A Temporary Dispensation Letter will not normally be required where a defect is noted whilst at sea where it is intended that the defect will be rectified prior to departure from the next port or where a vessel is in a port where no repair facilities or spares are available. It is noted, however, that some owners/managers may request a Temporary Dispensation Letter in order to avoid any issues with Port State Control.

4.5.11 The possession of a Temporary Dispensation Letter does not guarantee that action will not be taken at Port State Control as a result of the deficiency, as the Port State Control Officer is not bound to accept the flag State documentation. This should be clearly spelt out in the covering email sent to the Managers, attaching the MSF1686 – *“The attached letter however does not guarantee that Port State Control in other States will permit the ship to continue to operate – this remains a matter for the judgement and discretion of Port State Control Officers”*.

4.5.12 Owners and managers of UK ships should be reminded that all requests for dispensation from a statutory requirement should be directed through the Customer Service Manager (CSM) or local Marine Office, or through the Duty Surveyor if out-

of-hours, in the first instance. It is the responsibility of the CSM (or other appointed surveyor) to follow up Temporary Dispensations to ensure that the issue is suitably rectified within the agreed period.

4.5.13 Any clarification required on this policy can be sought from the Consultant Surveyors or Survey Operations Branch.

4.5.14 Fees are chargeable, at the normal hourly survey rate, for consideration and issue of Temporary Dispensation Letters. Application for such dispensations should therefore be accompanied by an Application for Survey form (MSF 5100) unless the dispensation is considered part of a survey for which a fee deposit has already been made.

4.5.15 Templates of commonly issued Temporary Dispensation Letters can be found on the Survey Operations Branch microsite.

4.6 Common Situations

4.6.1 *Sea Trials – excess personnel*

4.6.1.1 When a vessel without a passenger certificate needs to carry in excess of 12 passengers, an exemption will need to be issued from Regulation 11(a) of The Merchant Shipping (Survey and Certification) Regulations, SI 1995/ 1210.

4.6.1.2 It is common during sea trials and in other exceptional circumstances for a number of persons additional to the crew to sail on board the ship for the purpose of carrying out or witnessing various types of tests or similar activities. These persons not being part of the ships normal crew are, from a legal viewpoint, to be considered as 'passengers'.

4.6.1.3 It is important to ensure that the number of additional persons on board (i.e. passengers) is kept to the minimum needed to enable these tests and other activities to be carried out effectively and also that all such tests and other activities are conducted under strictly controlled conditions (e.g. be of short duration, in favourable weather, within known geographical limits, etc.).

4.6.1.4 It should be noted that an exemption from this regulation alone would only permit the vessel to be used without the need for a passenger certificate to be issued beforehand, it would not, however, exempt it from the statutory requirements for passenger ships relating to LSA or fire protection for instance. The exemption therefore needs to make clear that the vessel is also exempt from the requirements normally applicable to a passenger ship provided that it complies with the requirements for a cargo ship of such Class relating to the type of voyage being undertaken. Additional conditions would need to be made to account for the additional passengers being carried and these conditions need to be stated on the exemption certificate. These might include but would not be limited to, number of additional lifejackets to be carried, additional liferaft capacity to be made available etc.

4.6.1.5 The Marine Office Surveyor in Charge should be satisfied that there is an adequate outfit of safety equipment (LSA, firefighting appliances, radio equipment) for the number of persons to be carried, and that it is all in sound working condition. In most cases, sea trials will require the provision of additional liferafts, lifejackets and immersion suits. A list of persons on board should be held ashore and an abandon ship drill held before departure.

4.6.1.6 Other than for sea trials, requests from owners for exemptions to enable the use of non passenger vessels for the carriage of more than 12 passengers should in general be rejected unless there are compelling circumstances. In such circumstances and in addition to the precepts established in preceding paragraphs, surveyors should ensure that there is adequate space available for passengers, that escape arrangements are adequate and clearly marked, that sufficient qualified crew are available to deal with passenger control and that stability and freeboard issues are not compromised by the additional numbers carried.

4.6.1.7 An exemption certificate issued under Regulation 2(2) of The Merchant Shipping (Survey and Certification) Regulations 1995 should be presented to the ship's master before the ship proceeds on trials. Regulation 2(2) confers the powers to exempt from the Survey and Certification requirements only. To exempt the vessel from any other requirements, reference must be made on the exemption certificate to the exemption clauses of the relevant legislation. The certificate should also indicate the maximum number of persons to be carried, the agreed operational limits (and any other limitations imposed) and the conditions under which the exemption was granted. An example of such an exemption certificate is attached at Annex 2.

4.6.2 *Sea Trials – new ships*

4.6.2.1 Exemptions for sea trials for ships intended for, but not yet on, the UK register should be dealt with by the Administration of the country in which the vessel is being built.

4.6.2.2 For trials in the UK during which the vessel proceeds to sea, consideration needs to be given to the need for an exemption from the Load Line Regulations, in addition to exemptions from survey and certification requirements, although it would be expected that the load line survey was substantially completed before exemption would be considered.

4.6.2.3 A ship that is likely to be carrying more than 12 passengers is, by definition, a passenger ship. Additional conditions will apply as detailed in the following paragraphs:

4.6.2.3.1 For new buildings, irrespective of the intended final use of the vessel, the standards for LSA, FFE, Navigation, Radio, MARPOL and, for non sea going vessels, general construction requirements, appropriate to both the area within which the trials are to be carried out and the conditions for the trials (sea, weather, etc.), should be assessed, and the conditions of exemption based upon that assessment. For example in the case of a Class VI passenger vessel which undertakes trials within Category B waters, the scale of LSA required would, as a minimum, be that for a Class V vessel.

4.6.2.3.2 In interpreting the above statement it is essential that a pragmatic approach is adopted, with the emphasis being on securing equivalence with the standard rather than absolute compliance. In many cases this approach will avoid unnecessary modifications which may be redundant when the vessel commences commercial operations.

4.6.2.3.3 A list of persons on board a vessel engaged in sea trials is required to be maintained ashore by the builder.

4.6.2.3.4 Safety procedures for fire and damage control, mustering and evacuation of personnel in the event of emergency need to be confirmed as adequate by the surveyor before the exemption is issued.

4.6.2.3.5 Before the trials begin the vessel should be visited and the vessel and its equipment checked.

4.6.2.3.6 The exemption must have a period of validity, which, as a maximum, should not exceed 6 months, and normally be for less than 3 months.

4.6.2.3.7 As sea trials vary considerably in duration, area and type, it is essential that manning should be assessed case-by-case by the Surveyor in Charge concerned, having regard to the special circumstances of each case.

4.6.2.3.8 Vessels on trials should carry duly certificated personnel and sufficient experienced crew to ensure the safe running of the ship. Where the Surveyor in Charge is prepared to accept a level of officer certification below the legal minimum for the vessel concerned, an exemption should be issued from any relevant requirements of the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997; SI 1997/1320, as amended. Any such exemption should be issued under the terms of Regulation 18 of those regulations. As a guideline, an example is attached at Annex 3, which relates to deck officer manning in the Near Coastal Area.

4.6.2.4 Trials exemptions should only be granted where full compliance has been achieved or equivalence has been verified, taking account of any risk assessment which has been carried out for all aspects of the activity. Special attention should be given to any innovative arrangements which are being trialled. Consideration must also be given to the effect on the safe operation of the vessel that ongoing or incomplete work may have to the operating parts of the vessel, especially the navigation and engine control stations. The vessel should also be provided with all documentation appropriate for the trials. (Some typical examples for illustration of points which should be considered might be; to ensure a proper passage plan has been completed and suitable preparations made for emergencies; for High Speed Craft, the relevant points required by Craft Operating Manual and Route Operating Manual; and for a ro-ro, the procedures and arrangements for closing of the bow doors.)

4.6.2.5 Where requests for trials are received which involve international voyages, exemptions should not normally be issued and consideration should be given to the issue of qualified certification under the relevant convention with appropriate

exemptions from various provisions stated on an internationally recognised exemption certificate.

4.6.2.6 Surveyors should ensure that builders, owners, and masters all understand their responsibilities for the safe operation of the vessel during trials.

4.6.3 *Sea Trials – Warships & Government Ships*

Warships under construction in the UK for the Royal Navy are regarded as crown property and MCA takes no part in their certification, unless requested by MoD. Other government ships and warships being built for foreign navies can be regarded, until they are commissioned, as falling within the scope of Merchant Shipping legislation and should be exempted as appropriate for the purpose of sea trials. Bearing in mind that these vessels may be constructed to a military specification, it is important for the issue of the exemption that the principle of equivalence is adopted. To assist in this process, liaison with MOD personnel involved in construction should be established in advance of the trials.

4.6.4 *Fire & Rescue Marine Response (FRMR) Personnel*

4.6.4.1 MIRG was formally disbanded on the 1st April 2012; a number of Fire & Rescue Services chose to maintain a capability to deploy firefighters to incidents 'at sea' and are considered within the following section when training for such instances.

4.6.4.2 Shoreside firefighters are to be considered passengers while under training/familiarisation during marine fire exercises on board ships off the UK coast.

4.6.4.3 If more than twelve firefighters are carried on a cargo ship the vessel should be exempted from the MS (Survey and Certification) Regulations 1995 regulation 11(a), which relates to passenger ship certification. The text of the exemption should make clear that the vessel is also exempted from the requirements for a passenger ship.

4.6.4.4 Equivalent conditions are indicated in sections 4.6.1 and 4.6.2, and further issues to include/consider are:

- Additional persons are all to be fully qualified fire fighters with STCW Basic Sea Survival qualifications.
- Life jackets and immersion suits for each additional person.
- Sufficient LSA each side for all on board (which may include additional davit launched (DLR) or throw-over liferafts if needed).
- Fire training exercise to be carried out in strict accordance with the fire brigade's Safe Scheme of Work for such training (which includes ship familiarisation brief by Master as soon as they are on board).
- Training exercise might be limited in time and in distance out to sea (such exercises on cargo ships are normally only a few hours long).

4.6.4.6 If there are twelve or fewer firefighters on a cargo ship then no exemption is needed from Survey and Certification regulations, but there should still be sufficient LSA. If necessary an exemption from the LSA regulations for lifeboat provision should be considered if sufficient additional DLRs or throw-over rafts are provided.

4.6.4.6 On a passenger ship there should be no issue as long as the firefighters are carried within the Passenger Certificate limit. The safety of the fire fighters on board then is simply a H&S issue for the brigade's Safe Scheme of Work.

4.6.4.7 *As the Shipowner is providing a service by allowing this training on board there will be no charge for issuing the exemption.*

4.6.5 *Guardships*

4.6.5.1 Guardships are sometimes employed by offshore installations etc. in an effort to prevent passing ships from colliding with the installation. When fishing vessels are employed to do this they cease to be fishing vessels for the purposes of the Load Line Regulations and should have a Load Line certificate. As they do not normally comply with all the requirements of the Load Line Regulations they need to be issued with a Load Line Exemption, even though they may fish the same waters.

4.6.5.2 The procedure for the issuing of Guardship Exemptions can be found in the Instructions to Surveyors for Fishing Vessels (MSIS 27).

4.6.6 *No rescue boat - tugs of Class IX etc.*

4.6.6.1 Rescue boats should be fitted to class IX vessels in accordance with the MS (Life-Saving Appliances for Ships Other Than Ships of Classes III to VI(A)) Regulations 1999.

4.6.6.2 It will be the responsibility of the Marine Office surveyors to examine applications for equivalence or exemption from the carriage of rescue boats on tugs, and they will consider parameters including the size of vessel, crew complement and operational envelope. However the following should be considered when determining if an application is acceptable:

.1 If due to physical constraints the carriage of a rescue boat is impractical and operating conditions justify it, then exemption from the carriage of a rescue boat may be granted. Provision of man overboard recovery devices should be considered in determination of equivalent arrangements, together with tug manoeuvrability. Also exemption and equivalence may be granted following a review of the vessels intended operation. The review will include an examination of a risk assessment that is to be provided by the applicant. However, it is considered that on any tug of over about 24m length there is unlikely to be any justification for an exemption;

.2 Where a surveyor considers that exemption may be granted, they should submit their recommendation and their detailed review of the case together with the owner's supporting risk assessment to the Vessel Standards Branch

who will review the case, confirm that the circumstances agree with this policy and authorise the issue of an exemption certificate if appropriate.

4.6.6.3 A summary of the concerns raised by industry in 2003 and the response and conclusions from MCA are included at Annex 4 for reference.

4.6.7 Oil Recovery Vessels

4.6.7.1 Vessels employed in the recovery of oil are frequently not designed as tankers but store oil in tanks on board after recovery. The MCA 'Code of Practice for Vessels Engaged in Oil Recovery Operations' has been withdrawn with effect from September 2012. Further information can be found in MGN 457, or from Vessel Standards Branch.

4.6.8 Voyage Data Recorder faults

4.6.8.1 Ships required under the Vessel Traffic Monitoring Directive (Directive 2002/59/EC, as amended, Article 10) to carry a functioning Voyage Data Recorder (VDR) may be detained if the VDR is not functioning correctly. MCA must be informed as soon as possible of any VDR failure and proposed rectification.

4.6.8.2 Port State Control Committee Instruction 43/2010/32 "Guidelines on Checking a VDR" includes guidelines on the appropriate maximum delay for rectification of VDR faults according to each of the IMO VDR Performance Standard data items (IMO Resolution A.861(20), as amended)). When faced with a ship having a VDR fault, the PSSC Instruction (available on SCMS) should be referred to in deciding on the appropriate program for rectification, which in some cases may require rectification prior to departure. In particular, a Ro-Pax vessel suffering total failure of VDR should not operate.

4.6.8.3 Exemptions relating to faulty VDR's MUST NOT be issued. If necessary, a temporary dispensation may be issued against level 2 or 3 failures only, as per paragraph 4.5 above. Suitable temporary arrangements will need to be put in place and should include:

- Temporary bridge audio recording in place to be able to capture sounding of alarms and normal bridge team and VHF radio conversations;
- The date, time, ship's position, speed (through water and, if applicable, over ground), heading, depth, alarms, rudder orders and response, status of hull openings, status of watertight doors and fire doors, wind speed and direction are recorded at regular intervals in the deck log book, or by other means.

No dispensation should be given to level 1 items.

4.7 Dealing with Non-Compliance on Existing Vessels

4.7.1 General

4.7.1.1 This is intended to apply only to clear non-compliances and not issues of interpretation, which should be resolved through line management and the focal point system.

4.7.1.2 When attending a vessel, surveyors may have concerns over the compliance of a design; this could be due to a long standing deficiency or design omission which may have been accepted as far back as the initial survey.

This could be due to:

- An oversight; the item has never been considered against the regulatory requirement before.
- The item may have been accepted previously (for example due to other equivalence measures in place, or due to a lower risk because of suitable operational restrictions or operating area).
- The vessel has been modified or changed, without approval.

4.7.1.3 Where it may not be appropriate to raise the issue formally or include on the report of inspection during the survey, surveyors are requested to further investigate the reasons behind the apparent deficiency using the guidance in section 4.7.2.

4.7.2 Action to be taken upon Identifying Non-Compliance

4.7.2.1 In the event of identifying non-compliance with an item referred to above:

- The surveyor is to note the findings for further investigation (and not record an immediate deficiency or advise the owner at that stage), unless there would be an imminent risk to life if it is not rectified immediately.
- The surveyor should examine relevant vessel files for any information pertinent to the item raised (noting that the record may be on another file – for example a construction/fire protection/LSA file). If the vessel was last surveyed at another marine office, that office is to be requested to provide all the relevant documentation.
- Where records are available on the vessel file, the justification given for the non-compliance is to be reviewed regardless and assessed as to whether the justification is still relevant (e.g. have new regulations changed the original position); this is to be discussed with the Surveyor-in-Charge (SiC). Where it transpires that there is a legitimate reason and justifications are still relevant and an exemption is duly issued (valid to the expiry of the relevant certificate – refer to Chapter 4.3), the surveyor is to note this and ensure all the proper records are placed on file along with a copy of the exemptions issued.
- Where little or no records exist, the surveyor should contact the CSM and/or the original lead surveyor where possible; they may be aware of the issue and the mitigating action that was in place.

4.7.2.2 Where no records or relevant information are obtainable, or where the conditions associated with exemption are no longer relevant, the SiC in conjunction

with the CSM should investigate and propose a management plan to rectify the situation and bring the vessel back into full compliance.

4.7.2.3 The management plan is likely to require the early engagement with owners to seek their intended rectification. This may take some time depending on the circumstances however, depending on the seriousness, a suitable period of time may be allowed (but not normally more than 12 months). The findings and decisions are to be recorded on the appropriate file.

4.7.2.4 Upon implementation of the management plan, the survey declaration is to be endorsed with the following statement in the narrative section:

"The vessel satisfies all relevant regulations subject to the items contained within the agreed plan attached to file CM xxxxx/xx/xx being completed which manages the vessel back into full compliance by [date]".

4.7.2.5 If after any remedial action has taken place, there is still a justified and acceptable outstanding equivalence or exemption, this should be recorded on MSF 1261 – see section 4.2

4.7.2.5 Agreed exemptions or equivalences (and Exemption Certificates where appropriate) will need to aligned with the management plan compliance end date as necessary covering the non-compliances.

Author	S Ireland	Branch	Survey Operations
Approved by	S Roberts	Branch	Survey Operations
Authorised by	T Elder	Branch	Technical Performance

ANNEX 1 - Assessment of Equivalence to/Exemptions from Statutory Requirements

This form is held on the MLD as MSF 1261.



EXEMPTION CERTIFICATE

ISSUED UNDER THE AUTHORITY OF
 The Government of the United Kingdom of Great Britain and Northern Ireland,
 By the Maritime and Coastguard Agency,
 An Executive Agency of the Department for Transport

The Secretary of State in exercise of statutory powers
 Hereby grants exemption in accordance with the following details

PARTICULARS OF SHIP

Name of Ship	EXAMPLE SHIP ONLY						
Port of Registry /Operation	LONDON						
Official No.	12345	Gross Tonnage	5100	IMO Number	9999999	UK Class	VII

POWERS CONFERRED BY

Merchant Shipping (Survey and Certification) Regulations 1995

Regulation	2(2)	Statutory Instrument No. 1995	No.1210	Act year and ch.	No.
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PARTICULARS OF EXEMPTION

The above named ship is exempted from	regulation	11(a)	of the	Merchant Shipping
(Survey and Certification) Regulations 1995, as amended				

Statutory Instrument No. No.

In respect of the requirement to be issued with a Passenger Certificate and by the powers conferred by the Regulations listed below* is exempted from the regulations normally applicable to a passenger ship.

Conditions or terms, if any, on which the exemption is granted:

On condition that the vessel, being a cargo ship carrying more than 12 passengers complies with all the requirements applicable to the vessel as a cargo ship (UK Class VII) and in addition;
 The vessel carries no more than x persons on board
 Duration of voyage is less than y hours
 Additional liferafts and lifejackets are carried to accommodate all persons on board and instructions for their use are displayed
 Vessel to be manned in accordance with the agreed minimum manning Etc.
 Powers conferred by :-
 SI 1999 No. 2721; Regulation 85(3) SI 1999 No. 2723 Regulation 4
 SI 1998 No. 1011; Regulation 47 SI 1998 No. 1012 Regulation 1(8)
 SI 1998 No. 2514; Regulation 4 SI 1998 No. 2515 Regulation 4
 SI 1993 No. 69; Regulation 45 SI 1999 No. 1869; Regulation 9
 SI 1992 No. 2357; Regulation 7 Merchant Shipping Act 1995 s.48

This exemption will remain valid unless otherwise altered, cancelled or revoked, until Subject to

To which this certificate is attached, remaining valid.

Place Signed
 (Signature of Authorised Official issuing the Certificate)
 Date Name





EXEMPTION CERTIFICATE

ISSUED UNDER THE AUTHORITY OF
 The Government of the United Kingdom of Great Britain and Northern Ireland,
 By the Maritime and Coastguard Agency,
 An Executive Agency of the Department for Transport

The Secretary of State in exercise of statutory powers
 Hereby grants exemption in accordance with the following details

PARTICULARS OF SHIP

Name of Ship		EXAMPLE SHIP ONLY					
Port of Registry /Operation		LONDON					
Official No.	45678	Gross Tonnage	10000	IMO Number	12345678	UK Class	VII

POWERS CONFERRED BY

Merchant Shipping Act 1995							
Section	48	Statutory Instrument No.	No.	Act year and ch.	1995 ch.		

PARTICULARS OF EXEMPTION

The above named ship is exempted from regulation 11 of the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997

Statutory Instrument No. 1997 No. 1320

In respect of all the provisions contained therein.

Conditions or terms, if any, on which the exemption is granted:

That the Deck Officer manning complies with the requirements of the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997 for a voyage in the Near Coastal Trading Area with the exception that for a ship of 1000GT but less than 1600GT, only two deck officers may be carried.
 That one of the deck officers carried holds a certificate for Master (Near Coastal).
 That the ship carries the full complement of engineer officers required under the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997.
 That any voyage undertaken is within a radius of [...??...] etc.

This exemption will remain valid unless otherwise altered, cancelled or revoked, until 14 June 2010 Subject to Cargo Ship Safety Equipment Certificate

To which this certificate is attached, remaining valid.

Place Signed

Date Name

(Signature of Authorised Official issuing the Certificate)



ANNEX 4 - Exemption from the requirements to fit rescue boats on tugs of Class IX

Concerns raised by industry:

The concerns raised are summarised below, and are drawn from correspondence by the interested parties.

- Failure to provide a rescue boat will deprive crew of an important means of escape and seriously reduce the levels of safety.
- A tug may not always be able to operate as its own rescue craft, either because of its draft, other obstructions or the dangers which may occur when towing if the tow is slipped.
- Reliance on the availability of other rescue craft in the area to assist in rescue can not be assured.
- Provision of additional equipment for 'man over board' situations, while useful, can not be used in all circumstances.
- Improved crew training is needed for the additional equipment provided.
- Customers believe that the MCA does not have the resources to check the exemptions on an individual basis nor consult with the crews.
- Owners believe that exemptions are a mere formality.

Conclusions:

The operation of tugs without the provision of rescue boats have been carefully considered, and the response to the concerns are as follows:

- Rescue boats should not be considered as primary means of escape where liferafts are provided that can be quickly deployed and offer its occupants protection.
- The MCA examines every exemption and equivalence application very carefully and accepts or rejects the application based on the vessel construction and operational envelope. The primary concern when examining applications is that safety levels are maintained, applications are not treated as a mere formality.
- Rescue boats are provided on tugs to enable the crew to effect a rapid rescue of a colleague who has fallen overboard. A tug, because of draft restrictions, obstructions or because it can't safely slip a tow, may not be able to act as the rescue boat for a person in the water and hence the man overboard equipment may not be utilised. Similarly while acting on its own, the provision of rapid rescue from other sources may not be guaranteed.
- In many instances it will be the tug itself that can provide the best rescue operation. A tug with good manoeuvrability together with adequate onboard equipment and resources is likely to recover a person from the water before a rescue boat can be launched without the danger inherent in launching another craft.

NOT PROTECTIVELY MARKED

- The provision of a rescue boat on a tug will be a function of both the size of the tug and its complement. Sufficient clear area is required to allow the prompt launch of a rescue boat if it is to be effective, and that sufficient crew are required to prepare, launch and recover a casualty in the water.