



Maritime & Coastguard Agency

Consultation on consolidated Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2016

Purpose of this consultation

1. This consultation seeks views on the proposed consolidation of the Merchant Shipping (Hours of Work) Regulations 2002 and its amending regulations. The proposed new statutory instrument (S.I.) would substantially replace the 2002 Regulations and two amending statutory instruments.

The supporting Merchant Shipping Notice (currently MSN 1842(M)) would also be replaced.

N.B. References to “the 2002 Regulations” in this document mean the amended regulations unless otherwise stated.

What will stay the same?

2. For the most part, this is a simple consolidation of earlier regulations, although some text has changed to try to clarify the drafting. There are no substantive changes to the general duty, minimum hours of rest, requirements for the posting up of schedule of duties, record keeping, exceptions for emergencies, entitlement to annual leave and additional leave, or provision for shore leave. Enforcement provisions relating to UK ships, and remedies for seafarers who feel they are not receiving their entitlements under annual leave provisions, are also unchanged.

What is changing?

3. Other than drafting changes, there are two substantive changes:

3.1 The 2002 regulations as included the provision for authorised exceptions to hours of rest, on the basis of an agreement between both sides of industry. That provision remains. However, the new Regulations would also implement the limitations on exceptions set by the IMO Standards of Training, Certification and Watchkeeping Convention 1978 as amended in 2010 (“the Manila amendments”). Those limits are also enshrined in EU law in Directive 2012/35/EU amending Directive 2008/106/EC. The MCA believes that this change will have no direct impact on businesses as these limitations have been applied administratively by the MCA under MGN 448(M) since 2012, although they have not previously been transposed into law.

3.2 The enforcement provisions relating to foreign ships have been simplified, to implement the enforcement provisions under the Maritime Labour Convention, 2016 and Directive 2009/16 on Port State Control as amended by Directive 2013/38/EU. Separate enforcement provisions under Directive 1999/95/EC, which was designed to enforce ILO 180 standards on non-EU ships calling in EU ports, have been removed as they are superseded by the later provisions.

Note: The 2002 Regulations in part implement EU legislation. On 23 June, the EU referendum took place and the people of the United Kingdom voted to leave the European Union. It will be for the Prime Minister to begin negotiations to exit the EU, and until exit negotiations are concluded, the UK remains a full member of the European Union and all the rights and obligations of EU membership remain in force. During this period the Government will continue to negotiate, implement and apply EU legislation.

What will the new regulations mean in practice?

4. The MCA does not think that the introduction into law of the limitations on exceptions from the hours of rest provisions will have any practical impact. The UK has been applying these limitations administratively to ships covered by STCW since 2012.

5. The simplification of the enforcement procedures will not affect shipowners or seafarers, and will have extremely limited practical impact for MCA surveyors. It will however significantly streamline the legislation.

6. As a result of this assessment, no impact assessment has been prepared.

Do you agree with the MCA's assessment of the impact of the changes outlined in paragraph 3 above? If not, please give a full explanation of the impact you expect and as much information as possible about costs.

Authorised exceptions

7. The limitations on authorised exceptions in draft regulation 6(2) and 6(3) come from the Manila amendments to STCW, and from Directive 2008/106/EC as amended by Directive 2012/35/EU. The provisions apply to sea-going ships, defined as a "ships other than those which navigate exclusively in inland waters or in waters within, or closely adjacent to, sheltered waters or areas where port regulations apply". This is the same wording as is used in the Maritime Labour Convention, 2006 to define the ships to which the Convention does not apply, and is defined more precisely in the Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013 as

a) 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 United Kingdom,

and in this sub-paragraph "safe haven" means a harbour or shelter of any kind which affords safe entry and protection from the weather.

8. Currently the limitations on authorised exceptions are set out in MGN 448(M), and the MCA abides by them when considering requests for authorised exceptions.

However, for operations which fall within the exclusion set out in paragraph 7(a) and with the agreement of social partners, the MCA has authorised exceptions in two cases which do not fully comply with the limitations in draft regulations 6(2) and 6(3) where it is satisfied that the proposed pattern of operation is not detrimental to seafarers' safety and health. Neither related to vessels on regular trading routes.

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 Directive 2008/106/EC (as amended)?

Enforcement provisions

9. The Merchant Shipping (Hours of Work) Regulations 2002 (the 2002 regulations) originally provided for enforcement of the provisions of the International Labour Organisation Convention on Seafarers Hours of Work (ILO 180) against non-UK ships calling at UK ports. This implemented EC Directive 1999/95/EC. When the 2002 regulations were amended in 2014, new enforcement provisions were added to allow enforcement of the provisions of the Maritime Labour Convention, 2006 (MLC) relating to hours of work and rest, annual leave and shore leave against non-UK ships in UK ports in accordance with Title 5.2 of the MLC.

10. It has now been agreed that EC Directive 2009/16/EC on port state control, as amended by Directive 2013/38/EU on port state control of the MLC, supersedes Directive 1999/95/EC entirely. This has enabled us to simplify the enforcement provisions – draft regulations 18 to 23 replace the existing regulations 14 to 19 including 14A and 17A and 17B.

Draft Merchant Shipping Notice

11. As a result of the consolidation of the Regulations, Merchant Shipping Notice 1842(M) would become obsolete. A revised draft MSN is attached.

12. The only sections which have been amended substantially are the summary box, and paragraphs 5 and 16. Changes are highlighted for ease of reference.

13. If you have any comments on the proposal to consolidate the Regulations, on the draft regulations themselves or on the draft MSN, please contact us.

Please send your responses, marked for the attention of Julie Carlton,

to mlc@mcga.gov.uk or

to Seafarer Safety and Health Branch
Bay 2/19, Spring Place
105 Commercial Road
Southampton
SO15 1EG

About this consultation

This consultation document is issued by the Maritime and Coastguard Agency (MCA) in compliance with its duty to consult under section 86 of the Merchant Shipping Act 1995. Due to the limited nature of the changes proposed, the consultation period is limited to four weeks.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004 (EIR)).

If you want us to treat any of the information you provide, including personal information, as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply, and which deals, among other things, with obligations of confidence. It would be helpful if you could explain to us in your response why you regard the information as confidential. If we receive a request for disclosure of the information you have provided, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself be regarded as binding on the Department.

The MCA will process all personal data in accordance with the DPA and in the majority of circumstances, this will mean that personal data will not normally be disclosed to third parties.

Consultation Principles

This consultation is conducted in accordance with the Cabinet Office [Consultation Principles Guidance](#).

Feedback

If you have any feedback about the way the consultation has been conducted, please address them to:

The Consultation Co-ordinator
Office of the Chief Executive
MCA
Bay 3/29, Spring Place
105 Commercial Rd
Southampton
SO15 1EG

Consultation.coordinator@mcga.gov.uk

Annex 1: - Draft Regulations

Draft Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2016

Annex 2: – Draft MSN

Draft Merchant Shipping Notice which supports the draft regulations. This would replace MSN 1842(M).

