

# MAIB

MARINE ACCIDENT INVESTIGATION BRANCH

## Response to the Marine Accident Investigation Branch's Public Consultation on a New Marine Guidance Note for Marine Casualty and Marine Incident Reporting

March 2017

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# Introduction

On 20<sup>th</sup> March 2017, the MAIB opened a consultation to stakeholders to gather views on a new Marine Guidance Note (MGN) to replace MGN 458. The MGN provides guidance on the legal obligation to report marine casualties and marine incidents to the MAIB, as contained in The Merchant Shipping (Accident Reporting and Investigation) Regulations 2012. It describes the process and the information required for reporting.

The draft new MGN was divided into sections, designed for quick reference, being:

- A brief introduction
- Who Must Report
- What to Report
- When to Report
- How to report

The consultation was accessible via the [www.Gov.uk](http://www.Gov.uk) website and via a link on [www.Gov.uk/maib](http://www.Gov.uk/maib). Announcements about the consultation were also made via the MAIB's Twitter and Facebook accounts. Those who have signed up for DfT consultation alerts and/or MAIB news alerts will also have received notification of the consultation.

The consultation remained open for 4.5 weeks, until 19<sup>th</sup> April 2017.

The method of response was to e-mail comments on the MGN to the MAIB's Business Support Manager, Helen Johnston.

In total, the MAIB received 22 responses, from a variety of sectors of the maritime industry.

# Summary of Responses

## General Feedback on the MGN

An overwhelming majority of responses received welcomed the shorter, simpler version of the MGN, compared to the current one. Many respondents felt that the pertinent information about reporting accidents was much easier to locate within the document.

A small number of typographical errors were noted. These have all been corrected.

A few respondents made reference in their feedback to 'new requirements' within the MGN. The new draft MGN is a refreshed version of the previous one. Although the format and some of the wording has changed, no new requirements have been introduced. The MGN reflects the reporting obligations set out in The Merchant Shipping (Accident Reporting and Investigation) Regulations 2012 (the Regulations), which remain extant.

## Feedback on Specific Points within the MGN

A number of comments were received relating to individual points within the MGN, these were, with the MAIB's response in italics beneath each comment:

### *Who Must Report.*

- The "master of *any ship...*" (referring to a non-UK flagged vessel) is not specific about the accident being associated with a master's own ship.

*The MAIB believes that this is largely self-explanatory. There will be no change to this wording.*

- To add the wording "in consultation with the Chief Engineer, if a technical matter" to the wording "The master / skipper of..."

*Under the Regulations, the duty to report rests with those listed in the Regulations and is repeated in the MGN. It is up to an individual master / skipper whether they wish to consult any other crew before reporting an accident. There will be no change to this wording.*

- The definition and exclusion of 'pleasure vessels' is seen (by many in the superyacht industry) as an exclusion of all large yachts, and superyachts. Also, the duty to notify should be extended to the superyacht manager, as many owners are not aware of the requirement to report, and many captains are reluctant to do so.

*The comment regarding the definition of 'pleasure vessels' is noted. The MGN must reflect the Regulations as they are currently and therefore*

*will not be re-worded. However, these points will be considered as part of a review of the Regulations at a future date.*

*With regard to extending the duty to notify to ‘managers’ as owners may not be aware of the requirement to report, Regulation 2(2) provides that “Where a ship is managed by a person other than by the owner (whether on behalf of the owner or some other person, or on their own behalf), a reference in these Regulations to the owner shall be construed as including a reference to that person”. This requirement has been added to the MGN.*

#### *What to Report:*

- The terms ‘Very Serious Marine Casualty’, ‘Serious Marine Casualty’ and ‘accident’ should be reintroduced to the MGN and define them as a ‘marine casualty’ or ‘marine incident’ to reflect the Act.

*The purpose of the MGN is to simplify the provisions of the Regulations. An accident is either a marine casualty (in varying degrees of severity, from ‘very serious’ to ‘less serious’) or it is a marine incident. The MGN, for simple guidance purposes, will remain as it is.*

- Under ‘do not report’, add to the wording ‘vessel detentions’ “that are not related to a marine casualty or marine incident”.

*Agreed. We have moved the category ‘vessel detentions’ to the first bullet point of the ‘do not report’ section, so it now reads “Defects to equipment and vessel detentions, unless they are related to a marine casualty or marine incident.*

- Add the wording “and/or damage that could impact on the integrity of the ship” to the line ‘any event that had the potential to result in serious injury’.

*It is felt that the definition of a marine incident, provided in the MGN, covers this point and the MGN remains unchanged.*

- “Serious injury” criteria should be changed from 72 hours to 7 days, in line with the HSE’s extension. Also a question was asked as to whether the MAIB wish to specify injuries that must be reported, or leave it defined to the timescale / admittance to hospital.

*Although the HSE extended the time frame for a serious injury to 7 days, the MGN must reflect the provisions of the Regulations. The reference to 72 hours is in accordance with the definition of a serious injury in section 2.18 of the IMO Casualty Investigation Code. The UK MAIB is bound to follow the Code. Therefore, specific injuries will not be specified. If an injury renders somebody incapable of performing their normal duties for over 72 hours, this is a ‘serious injury’, regardless of the injury type. If it is less than 72 hours, but the event had potential to*

*render the person with a serious injury, this is reportable as a marine incident.*

- In the 'marine incident' section regarding "Any event that had the potential to result in serious injury", it would be helpful to clarify this example and to refer to the 'do not report' section.

*Any injury (which does not qualify as a marine casualty) which occurred due to an event or sequence of events, directly in connection with the operation of a ship qualifies as a marine incident. An example of a non-reportable injury is provided in the 'do not report' section of the MGN. Therefore it is felt that there is sufficient guidance to assist the reader with their interpretation of this section. The MAIB is always happy to discuss whether a particular incident is reportable, prior to formal notification, to prevent unnecessary reporting.*

- "The ship being unfit to proceed or requires flag state approval..." could be interpreted as any event that requires flag state approval, including certain defects to equipment or other circumstances that are not reportable marine casualties.

*The definition of a marine casualty, contained in the MGN, states that it is an event or sequence of events that occurred directly in connection with the operation of a ship. Further, the 'do not report' section of the MGN includes "defects to equipment and vessel detentions, unless related to a marine casualty or marine incident". It is therefore felt that this is self-explanatory and the MGN will remain unchanged.*

- "The stranding or disabling of a ship..." in the examples of a marine casualty could be interpreted as any type of grounding, including unintended temporary groundings as provided for under 'marine incidents'.

*All groundings are reportable to the MAIB, including those falling under the marine incident category. The severity of the occurrence / damage to the vessel will determine whether it falls into the category of marine casualty or marine incident, but this is a matter for the MAIB to decide, on a case by case basis. Therefore, as all groundings are reportable, the MGN will remain unchanged.*

#### *The Whole Document:*

A number of comments were received relating to the document as a whole:

- The MAIB's requirements should be listed in the same way as the Cayman Islands Shipping Notice 02/15 rev 1:

*The MAIB's aim is to not make the MGN overly prescriptive. If the same model was followed as for the Cayman Islands Shipping Notice, with all conceivable examples provided, the MAIB's version would be prescriptive and overly lengthy. It is also felt that the MGN provides*

*adequate guidance on reporting requirements under the Regulations.  
The MGN will remain in its current format.*

- Add a comment to the MGN to explain the work of the MAIB e.g.: “The MAIB examines and investigates all types of marine accidents to or on board UK vessels worldwide, and other vessels in UK territorial waters. MAIB will publish investigation reports to draw the attention of the marine community to some of the lessons learned from them. Information is published to inform the shipping industry, the pleasure craft community and the public of the general circumstances of marine accidents and to draw out the lessons to be learned. The sole purpose is to prevent similar accidents happening again. Reports do not assign fault or blame and nor do they determine liability. Lessons often extend beyond the events of the incidents themselves to ensure the maximum value can be achieved.”

*The introduction to the draft MGN has been revised to include an overview of the MAIB, its responsibilities and the purpose of MAIB reports.*

- The existing MGN contains useful information on the investigation process. Make information available, even if as a further guidance document.

*The MAIB’s intention was to cut down the text within the MGN by restricting it to the notification requirements and to make the pertinent information more accessible. Information contained in the existing MGN, omitted from the new draft is readily available on the MAIB’s website and in many MAIB publications including information leaflets provided to stakeholders who are involved in an investigation.*

- A link to the Regulations would be useful.

*Agreed, a link has been added to the end of the first paragraph of the document.*

- Refer to the information in annexes B and C of the current MGN, maybe as a link to further guidance on the MAIB website?

*Annex B is definitions for ‘accident’ ‘serious injury’ and ‘severe pollution’. Annex C is reporting procedures. These can be found in the Regulations, a link to which is now within the MGN (see above) and on the MAIB website.*

### Significant Feedback on Specific Points within the MGN

Several points were made by multiple respondents. These significant topics were:

- *The Reference to ‘any ship’ in UK waters:*

Respondents pointed out that the guidance states that a non-UK flag ship in UK waters need only notify the MAIB of a casualty or incident if it is carrying passengers to/from the UK or is within the jurisdiction of a UK harbour master. That is, there is no requirement for a non-UK ship passing through UK waters to notify the MAIB of a casualty or incident.

*The notification obligations stated in the MGN reflect those in the Regulations. Despite the lack of notification requirement, the Chief Inspector of Marine Accidents may still order an investigation into a marine casualty occurring to or on board such a vessel passing through UK waters if it involves the substantial interests of the UK. The MGN will remain unchanged.*

- *Reporting requirements on harbour authorities for occurrences in or adjacent to their harbour area*

It was pointed out that under the ‘who must report’ section, harbour authorities must report occurrences in or adjacent to their harbour area. This was deemed too ambiguous and in conflict with a later reference to a harbour master’s ‘area of responsibility’.

*The text reflects the wording contained in the Regulations. This is interpreted as meaning the area of responsibility of the Statutory Harbour Authority (SHA) boundary, and ‘adjacent to’ as being outside the SHA, but within, if appropriate, the Competent Harbour Authority Area.*

- *Recreational Craft*

Comments received pointed to the fact that the MGN defines ‘pleasure vessel’ but not ‘recreational craft’ and queried why the duty to notify does not apply to small recreational craft.

*The MGN reflects the Regulations, which provide a definition for ‘pleasure craft’ but not for ‘recreational craft’. This will be considered at the next review of the Regulations.*

*The Regulations also place no obligation to notify the MAIB (or for the MAIB to investigate) casualties occurring to/on board pleasure vessels or recreational craft on a bareboat charter (unless for the latter it is a specific casualty type, listed in the Regulations and the MGN). Despite there being no notification requirement, the MAIB welcomes notifications from the pleasure craft sector.*

- *Close Quarters*

Feedback was also received regarding the term ‘close quarters’ which appears as an example of a marine incident. The main point in this regard was that ‘close quarters’ is very hard, some stated impossible, to define. It

is a subjective term and different people will hold different views as to whether a close quarters situation arose. The reference to "...where avoiding action was required to avoid collision" was also highlighted due to the fact that vessels take avoiding action every day to avoid a collision, in their normal routines e.g. narrow channels, busy waterways. A further comment was that the collision avoidance regulations do not define what a 'close quarters situation' is (although they do refer to the term).

*It is agreed that the term 'close quarters' is subjective and hard to define. In light of the comments received, the MGN wording has been changed to include the phrase 'urgent action' and it now reads "Close quarters situations where urgent action was required to avoid collision." The MAIB would also refer the reader to the definition in the Marine Safety Act 2010, Section 4, as guidance:*

*For the purposes of this Act, a close quarters situation is a situation where –*

- a) *At least 2 vessels pass within proximity of each other such that a reasonable person would in all the circumstances conclude there was a risk of collision by those vessels;*

*It would follow that an 'every day' close quarters situation (such as two vessels passing in a narrow channel) would not satisfy the requirement of a reasonable person concluding that a risk of collision existed.*

- **Small Fires**

Questions were asked, with regard to the inclusion in the examples of 'marine incidents' of "A fire that did not result in material damage". Clarification was sought as to whether a small fire discovered and dealt with by on board systems, or minor electrical component failures would fall within this category.

*A small fire, even if it does not result in material damage falls within the definition of a marine incident (provided it occurred in connection with the operation of the vessel). This is because, if it were not discovered and extinguished, it could endanger the safety of the ship, its occupants or any other person or the environment. It is felt that the definition is sufficient and, therefore, the MGN will remain unchanged.*

#### Feedback on the MAIB

A number of comments were also received regarding the work of the Branch, procedures, industry views etc. As the purpose of this consultation was to deal with the MGN itself, these comments have not been included in this consultation response. However, they have been noted within the MAIB and will be considered as and when the Regulations and/or in-house procedures are reviewed.

# Conclusion

The MAIB is extremely grateful for all the feedback received from stakeholders and for their time and effort in forwarding their valuable comments. A significant proportion of comments received justified amendments to the MGN and, where this was the case, the text has been changed.

There were many cases where good suggestions were made, but the scope of the Regulations, upon which the MGN is based, do not facilitate their inclusion in the MGN. However, many of these comments have been noted and will be considered in future revisions of the Regulations.

In other cases, we felt that the current definitions and/or examples provided in the MGN were sufficient in guiding the reader and therefore the text in the MGN remained unchanged. On this note, should readers find that ambiguity still exists in a particular circumstance, the MAIB is very happy to discuss individual occurrences, to advise whether or not they are reportable, before formal notification is made.