Public consultation on proposed changes to legislation to implement the 2014 Amendments to the Maritime Labour Convention, 2006 and some additional amendments

RESPONSES TO PUBLIC CONSULTATION ON MISCELLANEOUS AMENDMENTS

In addition to the comments below, some consultees also identified typos in the Regulations which have been noted and corrected.

Reference	Consultee	Comment	Response
Amendment of the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998			
Part 3 Regulation 3(3).	RYA	The intention behind this provision appears to be to introduce a requirement that small commercial vessels used for sport or pleasure must comply with both the relevant Code of Practice *and* either MGN 490 or 491. However, in our view there is a significant risk that setting out crew accommodation and recreational facilities provisions in three separate documents will lead to conflict between the applicable provisions and confusion within the industry as to the appropriate standards. We therefore strongly believe that the preferred method of ensuring MLC compliance in relation to crew accommodation and recreational facilities is to incorporate all the applicable provisions into the relevant Code of Practice and for the relevant Code of Practice then to be treated as a "substantially equivalent standard". We have started this process already in our work on revisions to the Code of Practice for Small Commercial Vessels. In light of the above, we consider that references to MGN 490 and 491 should be omitted from Regulation 3 of the proposed Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) (Amendment) and Miscellaneous Amendment Regulations 2016.	As these Regulations are likely to be made before the changes to the Codes come into force, the regulations must reflect the current situation which is that crew accommodation requirements for new vessels are contained in the MGNs specified.

Amendment of the Merchant Shipping (Maritime Labour Convention) Medical Certification Regulations 2010			
Reg 4 2010 reg 8(2A)	RMT	The union is concerned that as currently worded, the draft amendment does not clarify this duty and has the potential to provide ship owners with grounds on which to challenge occupational injury or sickness payments to seafarers who were not aware they were suffering from a long term condition, for example, before going to work at sea. … (2B) states that seafarers must disclose knowledge of pre-existing medical conditions to MCA Approved Doctors "…as soon as is reasonably practicable." Not only does this risk criminalising seafarers, we do not believe that it achieves the MCA's aim of clarifying the duty on seafarers. 'Reasonably practicable' does not clarify that duty, it merely repeats it. RMT does not argue for the regulations to include a time limit within which seafarers must report a medical condition to an MCA Approved Doctor. Although this matter has been discussed in general terms at the Tri-partite Working Group level, the reason for its introduction are not entirely clear. Annex A of DfT's Regulatory Triage Assessment of the draft SI states that there is no impact on shipowners, so the union assumes that the reason must be connected with the fees MCA Approved Doctors receive for ENG1 medical assessment and renewal work. We are also concerned by the MCA's constant publication of amended lists of Approved Doctors in recent months. …. A likely result of this is that seafarers	There is no offence related to the amendments, so no risk of criminalising seafarers. The duty to disclose applies only to the medical conditions of which the seafarer is aware. What would actually happen if the seafarer failed to disclose is: 1. the certificate could be withdrawn under reg 13(c) IF the medical practitioner felt he could not reasonably have considered that the person was fit; or 2. the certificate could be withdrawn under reg 13(d) on the basis that it was issued other than in accordance with the regulations. Only a seafarer who fails without reasonable excuse to surrender the medical certificate or who continues to work on a ship without a valid certificate would be liable for prosecution. We believe this is a proportionate approach. Even if the condition was not known to the seafarer at the time of their medical examination, once it came to light, if they were not in fact fit to work at sea, it would be appropriate for their medical certificate to be withdrawn.

		will find it harder to obtain ENG1 re-validation before a tour of duty, which would have a damaging effect on the seafarer, as well as on ship owners operating in the UK and the national maritime skills base. Specifically, we believe that the effectiveness of the proposed amendment would undoubtedly be compromised by a high turnover of MCA Approved Doctors.	There is no connection with the consultation on the proposed increase in the fee for an ENG1 medical certificate, nor with the recent high turnover of approved doctors in some areas.
	RMT	References to MSN 1822(M) are out of date.	These references were updated by the Merchant Shipping (Maritime Labour Convention) (Consequential and Minor Amendments) 2014 (S.I. 2014/1614) reg 13(5).
Amendment of the Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013			
Part 4. Regulation 5(2)(b)	RYA	The definition of "pleasure vessel" for the purposes of merchant shipping legislation is well established in the Merchant Shipping (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998 and in many other statutory instruments. This established definition of "pleasure vessel" is also contained in the Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013. While the proposed amendment to this definition does not, in our view, make a substantive difference to its interpretation there is equally no reason or justification for deviating from the established definition of "pleasure vessel".	The definition of pleasure vessel was criticised by the Joint Committee on Statutory Instruments and the amendments are intended to address the points the Committee raised. There is no change of policy on what constitutes a pleasure vessel.
Amendments to Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers, etc.) Regulations 2014			
Amending regs 6(1) to (3)	RMT	We accept draft Miscellaneous Amendment 6(1) to 6 (3).	Noted
Part 4. Regulation 6.	RYA	Ditto Part 4 Regulation 5(2)(b).	Ditto

Reference		Comment	Response
Reg 6(4)	UK COS	The Chamber appreciates the Government's willingness to revise this section following representations from several member companies. However we are not convinced that the proposed draft captures all the points that the Chamber believes should be covered.	Noted
	UK COS	Reg 50(5) This shortens the 'period of incapacity' where the SEA is for a fixed term. A fixed term contract may be fixed by reference to a specified event such as completion of a ships voyage. Sub-para (5) (b)(iii) should be amended to accommodate this possibility. The chamber had understood that liability for payments would not continue beyond the contractual period. The expiry of a fixed term contracts is not the only circumstance in which this might arise. Regulations should take account of other situations – e.g. seafarer or the company might have already given notice to terminate the SEA for reasons unrelated to sickness or injury.	We agree this needs to allow for "natural" termination for reasons other than sickness or injury, and in other circumstances than a specified date of termination. We will revise the wording so that voyage and indefinite contracts are covered, as will be situations where the seafarer or shipowner may have terminated the contract early following the termination provisions laid down in the SEA.
	UKCOS	50(13) As it is rare for seafarers to be employed and/or paid by the shipowner, the changes allowing for CBA payments could be rendered ineffective by this specific reference to the shipowner. The regulations should acknowledge that the person or entity responsible for paying wages may be separate from the shipowner. The present drafting of para (13) is unclear and could give rise to difficulties. A reordering of the paragraph along the lines below would overcome this: "The requirement is that the collective bargaining	We accept that wages are often not paid by the shipowner. We will consider an alternative approach in regulations 50(13). We will review the drafting.

		agreement requires the shipowner to pay to an incapacitated seafarer the relevant amount in the whole or in part for the period of incapacity"	
	RMT	Reg 50 The proposed amendment of regulation 50 is not acceptable to the union. Shipowners made no complaint about the MCA's interpretation of this MLC Standard during the consultation period in 2012. RMT and Nautilus argued for sick/injured seafarers to continue to be paid beyond the 16 week period if they remain sick or injured, including for periods beyond the end of the tour of duty (inc. temporary or agency staff). Ferry companies operating in the UK claim that the current drafting of Regulation 50 could cost them £4m and would jeopardise the future employment of UK seafarers. RMT regards this claim as a slur on seafarers and an indictment of bad employment practices by ship owners. Proposed change reflects shipping industry's growing use of zero hours and guaranteed minimum hours contracts of employment since 2012, including seafarers employed to work outside seasonal peaks. The Regulatory Triage Assessment makes no reference to the impact on seafarers employment rights and provides no analysis of the £4m cost claimed by the four ferry companies in terms of the number of employees this would involve. We are also concerned that the development of CBAs to establish company by company arrangements would undermine the MLC's status as the minimum international standard. By changing its interpretation of	The proposal to amend the Regulations was prepared following requests from both sides of industry (a) to allow the operation of CBAs which had already been agreed in the light of the MLC but prior to the making of the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers, etc.) Regulations 2014, laying down arrangements for payment during periods of incapacity, which provide for part payment of wages (rather than full basic wages) for a specified period; (b) to reflect the reality that an SEA may naturally expire during the period of incapacity. This is particularly the case where seafarers are employed for seasonal work or otherwise on short term contracts. We accept the principle that the MLC was not intended to require payment of wages beyond the period of employment.

		MLC Standard A4.2.4, the UK Government clearly risks a conflict with the ILO over the MLC's status as a minimum set of international rights for seafarers. As such, RMT reject Miscellaneous Amendment 6(4). Should the MCA decide to take the CBA route, which is the desired outcome in the Regulatory Triage Assessment document, we would request that our sister union Nautilus' proposals for re-wording draft amendment 6(4) are adopted.	
	Nautilus Intl.	Reg 50(12) More thought needs to be given to how a CBA may override reg 50 paragraphs (4) to (9). Will a CBA have to specifically exclude paragraphs (4) to (9) or will exclusion by implication be sufficient? Many current CBAs will have been drafted without this provision in mind. Does "may" indicate that the exclusion is discretionary? Who decides whether paragraphs (4) to (9) are excluded? Nautilus would prefer "A provision or part of a provision in a CBA may, to the extent that it meets the requirements of paragraph (13), apply instead of paragraphs (4) to (9)	How a CBA excludes or limits the operation of those provisions is up to the parties to the CBA. We cannot comment on existing CBAs. "May" means that the CBA has the option to exclude or limit, provided that the condition in (13) is met.
Part 4. Regulation 7.	RYA	Ditto Part 4 Regulation 5(2)(b).	Ditto
Amendment of the Merchant Shipping (Maritime Labour Convention) (Recruitment and Placement) Regulations 2014			
Amending regs 7(3) R&P regulations – new reg 7A(3)	Nautilus International	Allowing the complaint to be dealt with until the seafarer is no longer employed/represented by the EA/EB could leave the complaint unresolved for a very long period. Would prefer inclusion of "within a reasonable time",	The proposed wording "within a reasonable time" isn't certain enough and invites litigation. The MCA will issue a Marine Shipping

			Notice to set standards of a complaints scheme, as was done for on board complaints. MSN 1849(M) allows for the timeframe for resolution of complaints to be “agreed” between the parties. A similar approach could be taken here. To be taken forward separately.
Amending regs 7(3) R&P regulations – new reg 7A(3)		What does “represented” mean in the context of “employed or… represented by the EA or EB”? This could continue long after employment on a ship has ended.	It means represented in the sense that the seafarer is the client of the agency for the purposes of finding work. The complaints scheme referred to here is for complaints against the operation of the EB or EA, not complaints about employment/engagement on the ship which are to be dealt with under the on-board complaints procedure. To be taken forward separately.
Amending regs 7(3) R&P regulations – new reg 7A(3)	RMT	The DfT Regulatory Triage Assessment also fails to make any comment on the impact on seafarers of this draft amendment, which tightens the regulations for maritime recruitment and placement organisations. To leave this section blank is a major oversight when we take into account the number of seafarers working on UK registered vessels and on non-UK registered vessels from UK ports recruited in their countries of origin before working on shipping routes thousands of miles away from their home countries. The incomplete nature of the consultation document, therefore, makes it impossible for the union to reach a decision on whether or not the current wording of the	Noted. However, the introduction of a requirement for a complaints system should benefit seafarers in those EB and EA companies where there is as yet no such system if the EB or EA fails to meet their obligations. UK regulations for EBs and EAs can only affect those based in the UK. Companies based outside the UK will be regulated under their own national law. To be taken forward separately.

		draft Miscellaneous Amendment 7 is acceptable. We therefore request the MCA produces evidence of the impact that this draft amendment will have on seafarers and the ability of the MLC complaints system to uphold seafarer rights in the context of recruitment and placement companies	