

Consultation Document:

Consultation on six draft Marine Guidance Notes (MGNs) entitled Yacht and Powerboat Safety at Sea

June 2019

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| **The following Annex can be found with this consultation document in the Gov.UK web site:** [***www.gov.uk/government/publications***](http://www.gov.uk/government/publications)Annex A: Draft MGNs |  |

# **Section 1: Overview of this consultation**

## Aim

1.1. This consultation seeks your views on 6 draft Marine Guidance Notes (MGNs). The main reason for the intervention is to reinforce to owners, managing agents and skippers what is good practice in terms of safety when going out to sea. This is to reduce the risk of any accidents occurring as a result of not following the most acceptable standards of safety required. Another reason for the intervention is to ensure that guidance on safety is applied equally to those who fall within a regulatory framework and to those that fall outside it. This will ensure that as many stakeholders as possible are aware of what practices they need to put in place to meet the acceptable level of safety. The guidance contained within this suite of MGNs is not looking to amend or change the text of the applicable regulations, but rather provide further detail on the intent of the regulation.

## Views sought

1.2. Your views are sought in the following areas:

* Whether the draft notes contain guidance that is realistic to carry out in practice
* If there is the right level of content in each MGN

1.3. A full list of consultation questions is contained in Section 5 of this consultation.

## Deadline for responses

1.4. Responses are welcomed from Thursday 20th June until Thursday 18th July 2019.

Overview timetable

# **Section 2: Areas for consideration**

##

## Background and proposed changes

2.1 The guidance contained within the suite of MGNs, all under the same title, has already been published in part or in full by other members of industry, and looks to support and underpin what should be already seen as good practice for those going to sea.

2.2 For small commercial vessels (SCVs) the guidance would be considered as good practice for the operation of a SCV and industry have agreed from feedback given at different consultation meetings, to be a demonstration of good practice for either seamanship or surveying.

2.3 For pleasure vessels, this is a sector that is largely unregulated by the MCA (class XII) so in most instances this will be the first time that the MCA, as a regulator, has published such direct advice to the leisure sector. However, great care has been taken to ensure that the advice contained within the MGNs supports and replicates advice given by groups representing the leisure / pleasure sector such as the Cruising Association and Royal Yachting Association (RYA).

2.4 Where clarity is sought to be given to the owners/managing agents of SCVs, special care has been given not to change or amend the text of the applicable regulations these MGNs look to support. Instead, the text looks to provide further detail on the intent of the regulation. At the same time, the clarity provided is also commonly understood as good seamanship principles for both the pleasure and commercial sectors.

Summary of Options and Recommendation

2.5 Options:

* Do nothing- this would not comply with one of the values of the MCA of doing everything within their capacity to ensure the safety of lives at sea as far as possible.
* Encourage voluntary application – although boat owners, managing agents and skippers may already be carrying out best practice when it comes to safety, these notes are to ensure that as many as possible are aware of what they need to do to meet the acceptable standard.
* Publish Marine Guidance Notes (MGNs) that highlight yacht and powerboat safety at sea. This is the best option to reinforce to owners what it is they need to do to meet reasonable standards of safety and to ensure that guidance on safety is applied equally to those who fall within a regulatory framework and those that fall outside.

Supporting information

2.6 It can be argued that markets work best, that is they are at their most efficient, when knowledge is perfect and is evenly shared by all the parties. Asymmetric information is an economic problem which occurs when someone has more information than another person in the market. There is asymmetry in this market as some vessel owners will be following the regulations on safety more closely than others. This is because a lot of vessel owners will have completed a course that teaches some elements of safety whilst others have not. They have in effect been taught how to interpret the legislation around safety in practice. Whilst it could be argued that this safety legislation is available to all vessel owners, the exact way they should be interpreted in practice may not always be clear. As a result, these 6 MGNs’ purpose is to close that knowledge gap so that everyone is interpreting the regulations in the correct way and applying at least the minimum safety standard.

2.7 The consequence of there being asymmetric information in the market is that passengers going on board pleasure vessels will not be able to determine which owners have put the correct safety measures in place and which ones have not. The 6 MGNs could therefore restore confidence for passengers such that whichever vessel they are travelling on, the chances that the vessel owner is using the minimum safety standard is substantially higher as they will be aware of what they need to do to achieve this standard and so will have put the correct safety measures in place.

2.8 By providing clarity around industry best practice, the MGNs are more likely to present a level playing field for owners/operators who want to harmonise safety standards amongst small commercial vessels.

The individual MGNs

Maintenance, Modifications, Repairs and Damage

2.9 This MGN introduces four key areas to owners, managing agents and skippers around maintenance, modifications, damage and repairs. The MGN provides a range of potential scenarios that could occur and highlights that, if you are unsure as to how to proceed with each case, an experienced marine professional should be consulted to support the owner. Broadly speaking, this MGN offers guidance on what is a modification of a vessel as well as guidance on the different types of damage that may occur and how to best deal with it, including statutory requirements to report accidents and damage.

2.10 The MGN also gives further clarity to owners/managing agents of SCVs of the requirements to notify their Certifying Authority in respect to damage and accident reporting, when making a modification to a vessel and what appropriate maintenance measures should be taken to ensure that a vessel remains seaworthy.

2.11 For pleasure vessel owners, the guidance contained reinforces good seamanship principals that are already communicated by user groups such as the RYA and Cruising Association – therefore the actions and guidance contained within this MGN are already published and is highly likely to be followed by a prudent owner of a pleasure vessel.

2.12 For owners / managing agents of SCVs, the requirements to report damage, notify of a modification and to maintain a vessel to a standard are already contained within the applicable Codes of Practice. This MGN provides further areas of consideration which may not necessarily be evident from the existing requirements. An example of this is for an owner to notify the Certifying Authority if increasing the size of the headsail onboard a SCV, which would change the requirements on which the initial stability was set. This requirement exists within the Blue Code and MGN 280 but is not explicitly covered.

Keel Grounding

2.13 The MGN focusses on guidance for owners of fin keeled yachts with regards to inspection, how to identify structural failures and mitigating actions to take in the case of a grounding/damage. The MGN highlights concerns around groundings in that there are secondary elements to a grounding which may not necessarily be considered by an owner / managing agent.

2.14 This guidance backs up the advice presented by many industry experts as well as the maintenance guidance for recreational vessels with regards to inspection techniques. It details that an owner, unless they are themselves an experienced marine professional, should not carry out structural checks on the structure of the vessel. Furthermore, it details that damage can occur in the most innocuous of scenarios and that an owner should not be complacent in regularly arranging for structural assessments of their vessel.

2.15 For owners / managing agents of SCVs, the requirements to have an authorised person inspect damage already exist and that this looks to clarify the existing regulatory obligations.

LSA Stowage

2.16 This MGN focusses on the stowage of life saving appliances. It covers a number of different items of equipment, all of which are mandatory for SCVs and therefore there is no change in regulation. For recreational vessels, these items of equipment are considered by user groups such as the Cruising Association and the RYA, through guidance published by themselves, to be good practice carriage requirements – therefore this MGN supports current expectations.

2.17 With regards to some of the detailed stowage requirements, the primary consideration is to support any stowage requirements as issued by the manufacturer and does not look to override the manufacturer’s instructions. In some cases, where the manufacturer is silent on the stowage requirements, there may be minor adjustments that need to be made to a vessel if the guidance was followed but as this at the discretion of the owner, this is considered negligible.

Preparedness

2.18 This MGN focuses on actions that should be taken prior to undertaking a voyage. It looks at some requirements to conform to international regulations with regards to passage planning as well as looking at well-established good practice.

2.19 If an owner, in undertaking the considerations that are contained within the MGN, realises that the vessel they have purchased, or the crew/passengers they plan on taking on any voyage are unsuitable, there is the potential for additional costs that may be incurred. However, drawing attention to the unsuitability of a voyage should not be seen as a cost if it provides a higher level of safety and the owner is not obliged to follow the advice.

2.20 All of the advice contained within are based on preparation prior to undertaking a voyage to minimise the risks of the voyage to the owner, passengers and crew. If the advice is followed or not followed, or a practice drill not carried out, there are no cost implications to the owner of the vessel.

Rigging Inspection

2.21 This MGN focusses on ensuring that a rig and its rigging is regularly inspected by an experienced marine professional. The reason for doing so is to ensure that the vessel is safely operated and able to return safely to port. It recognises that rigs are complex in their design and construction, as well as being difficult to access and inspect.

2.22 The costs associated with this is the recommendation to remove rigs in order to carry out a thorough inspection of the rig although this is in line with industry advice and does not look to change the maintenance regime that an owner would normally do to ensure the security of their rig and rigging.

2.23 For SCVs there are requirements to obtain a rigging report which are confirmed within the MGN. The MGN details that in order to obtain a rigging report that the rig should be inspected out of the vessel. An experienced marine professional would only be able to provide a report when the rig is not in situ and therefore this is not considered a change.

Emergency Procedures, Equipment and Actions

2.24 This MGN focuses on actions that should be taken during a voyage. The actions replicate advice which is already offered by safety training providers with regards to actions to be carried out or equipment advised to be carried for the voyages described within the MGN.

2.25 There are a number of different scenarios contained within the MGN which would either prevent the loss of the vessel or the loss of life. These are predominantly action based with little or no carriage requirements. Where equipment is detailed, it is equipment that is either already required for commercial operation and is strongly advised to be carried by representative bodies such as the Cruising Association or the RYA.

**Section 3: Responding to this consultation**

3.1. There are specific questions highlighted in section 5 of this document and information on how to respond to this consultation document.

## Consultees

3.2. Anyone may respond to this consultation and consideration will be given to all responses. We will be particularly interested to hear from: ship owners, shipping companies, protection and indemnity clubs as well as other parties with an interest in shipping.

## Duration

3.3. This consultation is open for 4 weeks from 20th June 2019. The deadline for responses is 18th July 2019.

## Submitting your response

3.4. Consultation responses should be emailed to **codes@mcga.gov.uk**. Any questions should be sent to this email address.

Alternatively, responses may be posted to:

The Ship Standards Team

Maritime & Coastguard Agency

Bay 2/23, Spring Place

105 Commercial Road

Southampton

SO15 1EG

3.5. When responding, representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions.

## Freedom of Information

3.6. Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

3.7. If you want the information that you provide to be treated 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, amongst other things, with obligations of confidence.

3.8. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information 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/MCA.

3.9. The MCA will process your personal data in accordance with the data protection framework and, in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Data Protection

3.10. The MCA is carrying out this consultation to gather evidence. The consultation is being carried out in the public interest to inform the development of policy.

3.11. The MCA will use your contact details to send you information about the consultation, for example if we need to ask follow-up questions, as part of its functions as a government department. Your information will be kept secure and will not be used for any other purpose without your permission.

3.12. To find out more about how the MCA looks after personal data, your rights, and how to contact our data protection officer, please go to:

 <https://www.gov.uk/government/organisations/maritime-and-coastguard-agency/about/personal-information-charter>

If you do not wish to remain on this list, please reply and let us know.

**Section 4: Outline of plans beyond this consultation**

4.1. Once this consultation closes we will review all responses. In considering the responses we will apply appropriate weight to those from organisations and individuals with specialist knowledge of the subject area.

4.2. We will be analysing the responses during July and August 2019. Our aim is to publish an overview of the responses and the MCA’s comments within two months of the close of the consultation which will be available from: [www.gov.uk/government/publications](http://www.gov.uk/government/publications)

4.3. Where appropriate the draft Regulations/Guidance, accompanying guidance and de minimis assessment will be revised to take into consideration the consultation responses.

4.4. Our aim is for the Marine Guidance Notes to come into force no later than the end of August 2019. The Regulations will be published on [www.legislation.gov.uk](http://www.legislation.gov.uk)

4.5. Every effort will be made to publish the revised accompanying guidance on GOV.UK in advance of the coming into force date.

4.6. An overview timetable is below for reference:

July

August

**Entry into Force / Publication**

June

**Publishing**

Overview of consultation responses with comment and guidance to go with the proposed regulations will be published

**Consultation**

4 Week Consultation to seek views on proposals

**Analysis of Responses**

Reviewing responses from the consultation

**Post-Consultation Revisions**

In light of the responses amendments may be required

**Scrutiny**

Scrutiny of the proposed Regulations, Guidance and Impact

# **Section 5: Response form**

|  |  |
| --- | --- |
| What is your name?  |  |
| What is your email address? |  |
| What is your job title? |  |

|  |
| --- |
| **When responding please state whether you are responding as an individual or representing the views of an organisation:** |
|  |
|[ ]  I am responding as an individual |  |
|[ ]  I am responding on behalf of an organisation |  |
|  |  (name of organisation) |  |

**Please check the box that best describes you as a respondent and the size of your organisation:**

|  |  |
| --- | --- |
| Respondent Type | Size of Organisation |
|[ ]  Classification Society |[ ]  Large business (over 250 staff) |
|[ ]  Government Agency/Department |[ ]  Medium business (50 to 250 staff) |
|[ ]  Individual |[ ]  Micro business (up to 9 staff) |
|[ ]  Legal representative |[ ]  Small business (10 to 49 staff) |
|[ ]  Protection & Indemnity  |  |  |
|[ ]  Seafarer |  |  |
|[ ]  Ship Operator |  |  |
|[ ]  Ship Owner |  |  |
|[ ]  Trade Union  |  |  |
|[ ]  Other |  |  |
|  | (please describe) |  |

**Section 5.1 Consultation Questions**

1. Does the proposed guidance meet your needs in terms of content?

 Yes

 No

We welcome further explanation for your answer.

Comments:

1. Do you agree with the way the MCA has applied each of the MGN requirements?

We welcome further explanation for your answer.

Comments:

**Section 5.2**

Do you have any additional comments to add to the response?

# **Section 6: Conduct of this consultation**

6.1. This consultation has been conducted in accordance with the Cabinet Office Consultation Principles.

## Consultation principles

6.2. The Cabinet Office Consultation Principles can be found at:

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/492132/20160111_Consultation_principles_final.pdf>

## Feedback on conduct of consultation

6.3. If you have any comments regarding the conduct of this consultation, please contact the Consultation Co-ordinator at consultation.coordinator@mcga.gov.uk.

6.4. We are continually trying to improve the way in which we conduct consultations and appreciate your views. We would be grateful if you could complete and return the attached feedback form. These should be submitted to the Consultation Co-ordinator and are not affected by the deadline for this consultation.

6.5 If you require this consultation in an alternative format, please contact either the Consultation Co-ordinator or the named official conducting this consultation.

**MCA CONSULTATION FEEDBACK FORM**

1. Please indicate on which Consultation you are providing feedback:

***……………………………………………………………………………***

|  |  |
| --- | --- |
| 2a. | Please indicate whether you are responding on behalf of: |
|  |[ ]  Yourself as an Individual |
|  |[ ]  A Trade Association |
|  |[ ]  A Company |
|  |[ ]  A Government Organisation |
|  |[ ]  A Trade Union |
|  |[ ]  Other(please specify) |  |

|  |  |
| --- | --- |
| 2a. | Please indicate whether you accessed this consultation package through: |
|  |[ ]  Post |
|  |[ ]  Email |
|  |[ ]  Website |

|  |  |
| --- | --- |
| 3. | Please rate the quality of this consultation regarding accuracy, good English and spelling: |
|  |[ ]  Very good |
|  |[ ]  Good |
|  |[ ]  Average |
|  |[ ]  Poor |
|  |[ ]  Very Poor |

|  |  |
| --- | --- |
| 4. | Please rate the format of the consultation presentation (layout, Annexes etc.): |
|  |[ ]  Very good |
|  |[ ]  Good |
|  |[ ]  Average |
|  |[ ]  Poor |
|  |[ ]  Very Poor |

|  |  |
| --- | --- |
| 5. | Please rate the consultation in terms of how clear and concise you felt it was: |
|  |[ ]  Very good |
|  |[ ]  Good |
|  |[ ]  Average |
|  |[ ]  Poor |
|  |[ ]  Very Poor |

|  |  |
| --- | --- |
| 6. | Did you feel that the consultation was conducted over a sufficient period of time? |
|  |[ ]  Yes |
|  |[ ]  No |

|  |  |
| --- | --- |
| 7. | Were any representative groups, organisations or companies not consulted who you felt should have been? |
|  |[ ]  Yes |
|  |[ ]  No |
|  | If yes, who? |  |

|  |  |
| --- | --- |
| 8. | Please let us have any suggestions for improvement or other comments you wish to make about this consultation below: |
|  |  |

Thank you for your time. Please return this form to:

Consultation Co-ordinator,

Maritime and Coastguard Agency,

Spring Place, Bay 3/26, 105 Commercial Road

Southampton SO15 1EG

Or e-mail it to: consultation.coordinator@mcga.gov.uk

If you are happy to supply your name in case we need to contact you to discuss your views further, please enter it below (this is optional, and your feedback will still be taken into account if you wish to remain anonymous):

|  |  |
| --- | --- |
| Name  |  |
| Tel. No. |  |

**Please note that the deadline for responses to the Consultation itself**

**does not apply to the return of this form.**