

Title: Maritime Civil Sanctions Provisions IA No: DfT00431 RPC Reference No: N/A Lead department or agency: Maritime & Coastguard Agency (MCA) Other departments or agencies: Department for Transport (DfT)	Impact Assessment (IA)
	Date: 13/08/2021
	Stage: Consultation
	Source of intervention: Domestic
	Type of measure: Primary Legislation
	Contact for enquiries: MCA.Investigations@mcga.gov.uk
Summary: Intervention and Options	RPC Opinion: N/A

Cost of Preferred (or more likely) Option (in 2019 prices)			
Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status Non-qualifying provision
£2.4m	£0.00m	£0.00m	

What is the problem under consideration? Why is government intervention necessary?

The Maritime and Coastguard Agency (“the MCA”) does not currently have powers to use civil sanctions to the same extent as other competent UK enforcement bodies, which have powers to issue financial fixed and variable monetary penalties. **Consequently, the MCA is reliant on the use of warnings and criminal sanctions to punish both minor and high-level offences and breaches of the merchant shipping regulations.** Warnings are notices informing the operator they have breached Regulations and will need to rectify the breach or further action could be taken; however, the MCA do not have powers themselves to incentivise operators to correct the problem until further action is taken.

Prosecution to pursue criminal sanctions is time consuming and costly to both the MCA and the operators or individuals. A prosecution requires legal representation on both sides and leaves the operator or individual with a criminal record if found guilty. Criminal sanctions are considered disproportionate for many low-level breaches of maritime legislation but must be used when action is deemed necessary and while a prosecution is underway the underlying breach may not be fixed until they are found guilty. This leaves safety risks persisting for a prolonged period of time which puts the vessel, crew, passengers and the environment at higher risk than achievable.

Intervention is necessary to bring the MCA into line with the Government’s current thinking on enforcement and as part of an existing strategy to update maritime legislation to meet the needs of today’s shipping industry by giving the MCA the powers to impose a wider range of robust civil sanctions for non-compliance within the maritime sector, in addition to criminal prosecution. Civil sanctions in the form of fixed and variable monetary penalty notices as an enforcement tool, where appropriate, allow a more proportionate and targeted approach for a modern progressive regulator; this better reflects current Government policy relating to having fewer criminal sanctions and aligns the MCA with other UK regulators and local authorities which already have these.

- What are the policy objectives and the intended effects?**
- Bring the MCA in line with other enforcement bodies by amending the Merchant Shipping Act 1995 to give the necessary civil sanction powers to issue fixed and variable financial penalties
 - Build upon existing civil sanctions to require an operator to stop breaching Regulations or make steps to remedy a breach.
 - Provide the MCA with greater flexibility in its choice of response to instances of non-compliance
 - Increase compliance with existing UK Regulations onboard vessels by having available and issuing civil sanctions as a deterrent (especially within the fishing industry)
 - Reduce the MCAs reliance on criminal sanctions, seeing reduction in cases saving the MCA/Government money from a reduction in legal fees.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

We have considered three policy options within this assessment, one being our counterfactual of a 'Do Nothing' scenario where no change is implemented:

Option 0 - 'Do Nothing' (Status Quo)

This is our counterfactual against which all other options are compared, this would see no changes being made to the current civil sanction powers and current processes for penalising non-compliant operators and/or those involved with any incidents.

Option 1 – Amend primary legislation enable the Secretary of State to give the MCA extended powers to enforce existing offences through civil sanctions.

This scenario would see the Merchant Shipping Act 1995 being amended to give the MCA power to impose monetary fines ranging from £250 to £50,000, for breaches of Merchant Shipping Legislation.

Option 2 – Expand the application of existing MCA civil sanction powers (detention, improvement and prohibition notices)

This scenario would see the extension of the MCA's existing civil sanction powers so as to facilitate enforcement of those powers.

Option 1 is our preferred way forward as it will provide an effective and more proportionate way for the MCA to enforce regulatory requirements, reducing the reliance on criminal sanctions, while providing an adequate deterrent which is currently lacking. Under Option 0 'Do Nothing' and Option 2 the key policy objectives would not be achieved – Increase safety and compliance of operators/vessels, bring the MCA in line with other UK enforcement bodies and close the gap in current powers to provide the cover and flexibility needed to punish breaches efficiently. Doing nothing would result in no or little change with existing civil and criminal sanctions remaining costly, time consuming and disproportionate for many breaches. Extending the application of existing civil sanctions might have the effect of increasing compliance but is considered disproportionate to punish many smaller breaches, potentially harming industry.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date: TBC**

Is this measure likely to impact on international trade and investment?	No			
Are any of these organisations in scope?	Micro Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)	Traded: N/A		Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible: **SELECT SIGNATORY** Date: _____

Description: Do Nothing scenario – Do not expand civil sanction powers

FULL ECONOMIC ASSESSMENT

Price Base Year 2021	PV Base Year 2022	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		N/A	N/A

Description and scale of key monetised costs by 'main affected groups'

This option would see no changes being made with the status quo being upheld with no additional costs taking place bar the missed benefits from other options, as such, there are no monetised costs being quantified within this assessment.

Other key non-monetised costs by 'main affected groups'

With no changes being implemented the non-monetised costs would be the avoided benefits associated with Option 1. The existing enforcement gap will continue to persist with no potential for additional powers to impact the current levels of compliance and safety, with a potentially increased risk of incidents and associated costs from fatalities, clean up and environmental damages.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		N/A	N/A

Description and scale of key monetised benefits by 'main affected groups'

This option would see no changes being made with the status quo being upheld and no additional benefits taking place, as such, there are no monetised benefits being quantified within this assessment

Other key non-monetised benefits by 'main affected groups'

N/A

Key assumptions/sensitivities/risks

The level of compliance within industry would stay similar to what they are today without the aid of additional powers/intervention.

Discount rate

3.5%

BUSINESS ASSESSMENT (Option 0)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: N/A	Benefits: N/A	Net: N/A	
			N/A

Description: Expand civil sanction powers to include the ability to issue fixed and variable financial penalties.

FULL ECONOMIC ASSESSMENT

Price Base Year 2021	PV Base Year 2022	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: 2.3	High: 3.1	Best Estimate: 2.7

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	0.0	0.0	0.0
High	0.0	0.0	0.0
Best Estimate	0.0	0.0	0.0

Description and scale of key monetised costs by ‘main affected groups’

The main costs placed on industry would be the cost of the financial fine issued against operators found to be in breach of Merchant Shipping Regulations, based on HMT (Her Majesty’s Treasury) Green Book standards these costs are not to be counted as they are costs only applied to those operators found non-compliant and are not considered additional requirements or costs.

Other key non-monetised costs by ‘main affected groups’

The addition of extra civil sanctions could result in some administrative costs incurred by the MCA; however, each breach is investigated fully before any sanctions (civil or criminal) are placed on an operator with no change being introduced with these additions. This should result in little to no difference in cost unless the number of issued fines was much higher than expected apart from the time taken by staff to familiarise themselves with the new process for issuing these fines.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low	0.0	0.3	2.3
High	0.0	0.4	3.1
Best Estimate	0.0	0.3	2.7

Description and scale of key monetised benefits by ‘main affected groups’

The key monetised benefits are the potential reduction in legal fees the MCA face in criminal prosecutions. This has been estimated to represent a potential saving of £3.2m over the appraisal period of 10 years (undiscounted), ranging between £2.7 – £3.6m depending on the proportion of criminal prosecutions which could instead be solved via a fixed or variable monetary penalty.

Other key non-monetised benefits by ‘main affected groups’

The key non-monetised benefits arising from the introduction of monetary penalties are the potential increase in compliance and safety within industry and avoided reputation damage on the MCAs reputation. The compliant sectors of the maritime industry will be encouraged by the regulator taking a more robust approach to non-compliance and will allow the MCA to set the standard as a reasonable, prudent, and competent regulator.

Key assumptions/sensitivities/risks	Discount rate	3.5%
<p>The implementation and use of fixed and variable financial penalties will act as a suitable deterrent for industry seeing an increase in compliance and safety, lowering the number of incidents and associated cost. The MCA/Government will see a decrease of criminal sanctions leading to a reduction in legal costs. Additionally, the number of appeals to the new civil sanctions do not outweigh the overall savings from a reduction in criminal sanctions. The number of cases which result in sanctions being used remain similar. Value Per Fatality of £2.1m (2021) applied to benefits of lives saved¹</p>		

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: 0.0	Benefits: 0.0	Net: 0.0	
			N/A

¹ Source: Department for Transport – Transport Appraisal Guidance (TAG) Table A4 1.1 <https://www.gov.uk/government/publications/tag-data-book>

Description: Expand application of existing civil sanction powers (improvement, detention and prohibition notices)

FULL ECONOMIC ASSESSMENT

Price Base Year 2021	PV Base Year 2022	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: N/A	High: N/A	Best Estimate: N/A

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant	Total Cost (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		N/A	N/A

Description and scale of key monetised costs by ‘main affected groups’

This option has not had any costs monetised as it is considered not viable and would not see the key objectives met.

Other key non-monetised costs by ‘main affected groups’

The potential costs from this option would be the avoided benefits associated with Option 1.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant	Total Benefit (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		N/A	N/A

Description and scale of key monetised benefits by ‘main affected groups’

This option has not had any benefits monetised as it is considered not viable and would not see the key objectives met.

Other key non-monetised benefits by ‘main affected groups’

By expanding the application of existing civil sanctions there is the potential for compliance to increase and non-compliance to decrease and should scale down the level of fatalities and serious injuries within the maritime industry.

Key assumptions/sensitivities/risks	Discount rate	3.5%
N/A		

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:	
Costs:	N/A	Benefits:	N/A	Net:
				N/A

1. Policy Background

1.1 The Future of Transport review is a cross-cutting piece of legislation that aims to address a number of issues at the interface of transport and technology. This impact assessment (IA) relates to modernising maritime enforcement.

Problem under consideration

Maritime & Coastguard Agency (MCA) current criminal and civil sanctions

- 1.2 Many maritime sectors are considered as high-risk occupations, for example, the fishing industry has been labelled as the most dangerous occupation within the UK seeing around seven deaths and fifty-three serious injuries per year. 2021 has already seen eight fishermen's lives lost, six of which were partly due to the vessels foundering or capsizing quickly¹. Between 2011 and 2020 the fishing sector had reported to the Marine Accident Investigation Branch 406 injuries to fishermen in the workplace, this includes 60 deaths² Government implement Regulations and standards to reduce this level of risk and ensure the safety of vessels, crew, passengers, and the environment.
- 1.3 The MCA's powers to use civil sanctions are mostly contained in primary legislation: namely the Merchant Shipping Act 1995 ("the MSA")³. These sanctions include improvement, prohibition and detention notices, which are limited in their application. The MCA does not currently have powers to use civil sanctions to the same extent as other competent UK enforcement bodies (Home Office, Police Forces, Government Regulators, local authorities) who have the ability to issue financial fixed and variable monetary penalties.
- 1.4 Consequently, the MCA is reliant on the use of warnings and criminal sanctions to punish both minor and high-level offences and breaches of the merchant shipping regulations. Warnings are notices informing the operator they have breached Regulations and will need to rectify the breach or further action could be taken; however, the MCA do not have powers themselves to incentivise operators to correct the problem until further action is taken.
- 1.5 Prosecution to pursue criminal sanctions is time consuming and costly to both the MCA and the operators or individuals. A prosecution requires legal representation on both sides and leaves the operator or individual with a criminal record if found guilty. Criminal sanctions are considered disproportionate for many low-level breaches of maritime legislation but must be used when action is deemed necessary (see section 2.17 for more details).
- 1.6 While criminal proceedings are underway this does not stop operators from continuing business as usual, even when their vessel or operation(s), (see 2.18) may represent a higher risk of accidents or incidents due to breaches in merchant shipping regulations. The identified offending may continue until the criminal proceedings are completed. In this situation the only option open to the MCA is to issue warnings which have little or no deterrent effect. The MCA does not have the necessary ability to fully penalise non-compliant operators proportionately and expeditiously.
- 1.7 These sentiments have also been brought up by stakeholders and informal feedback from within industry which were summarised during informal consultation with Queens Counsel and senior lawyers (Jan 2020). During this consultation it was suggested that relying solely on criminal sanctions to enforce regulations is disproportionate and inappropriate, particularly for breaches that are relatively minor.

¹ Marine Accident Investigation Branch. (MAIB) annual report 2020 - <https://www.gov.uk/government/collections/maib-annual-reports>

² Marine Accident Investigation Branch. (MAIB) annual report 2020 Annex A - <https://www.gov.uk/government/collections/maib-annual-reports>

³ Merchant Shipping Act 1995 - <https://www.legislation.gov.uk/ukpga/1995/21/contents>

Government intervention

1.8 Expanding the range of civil sanctions available to the MCA is necessary because the current system relies heavily on criminal sanctions. Where non-compliance occurs in the maritime industry, we propose that alternative civil fixed and variable penalty notices will be a far more suitable, appropriate, and justified sanction over a criminal conviction in many of the MCA's investigations. This should start to shift legacy inherent behaviours within the maritime sector and encourage greater compliance and an appropriate use of public money.

The specific regulations and regulatory processes to be amended

1.9 Provision for civil sanctions would (a) apply to offences contained in the MSA, and (b) have the effect that civil sanctions are also available as an alternative to offences which are contained in secondary legislation made under the MSA.

1.10 The use of these civil sanctions would be at the discretion of the MCA, acting in accordance with its published enforcement guidance. The power to impose civil sanctions would sit in primary legislation and not be subject to the need to repeatedly make new secondary legislation.

1.11 In summary, appropriate amendments to the MSA would allow for civil sanctions in relation to all existing offences in the MSA and secondary legislation made under the MSA which contains offences.

2. Rationale for Intervention

Economic rationale

2.1 Safety and efficiency are the overarching themes of the rationale for amending the MSA to expand the MCAs powers to issue civil sanctions. The expansion would allow the MCA to issue monetary fines to operators found to be non-compliant with merchant shipping regulations.

2.2 Currently, there is a gap in the current suite of sanctions the MCA can use in response to operators being found non-compliant with merchant shipping regulations. The lack of ability on the part of the MCA to issue a monetary penalty notice to these operators limits its ability to punish low level non-compliance which the current suite is not equipped to handle. This leaves the maritime sector with less effective deterrents that other enforcement bodies already have.

2.3 This gap in enforcement powers can be seen as a failure on the part of the Government, which has resulted in the risk of higher negative externalities and distorted competition persisting within the maritime sector.

2.4 **Enforcement gap** - Currently, civil sanction powers are limited to improvement, prohibition and detention notices. These are restricted in their use and can be quite costly for operators as it can stop them from conducting business until the problem is solved. This is not always seen as proportionate to the identified breach.

2.5 Warnings are found to have little impact until further enforcement measures are taken. Criminal sanctions are a serious form of punishment and are only used when significant breaches or incidents are occurred. These are costly, time consuming and disproportionate for many of the breaches as they can leave operators and individuals with criminal records.

- 2.6 **Negative externalities** - Warnings as well as the slow nature of criminal proceedings allow operators to carry on in their 'business as usual' until a final decision is made. This means they may continue to put themselves, crew, passengers and the environment at risk. Negative externalities occur when private and social costs or benefits are not aligned, when an incident takes place which results in an injury, fatality or vessel loss there is a higher cost placed on society than on the operator themselves. The operator only sees the cost of repairs or replacing the vessel/labour, however, there are larger costs placed on industry, such as, potential environmental damage, salvage and loss of productivity.
- 2.7 **Competition** – Operators which are non-compliant with merchant shipping regulations and standards could have a cost advantage over their fully compliant peers, the longer they are able to operate while not conforming puts them at an unfair advantage which could distort competition within the maritime sectors.
- 2.8 Expanding the civil sanctions available to the MCA and enabling the ability to issue monetary penalties to industry will close the existing enforcement gap resulting in an increase of overall compliance, increased vessel safety, reduction of accidents and incidents and the negative externalities which arise from them.

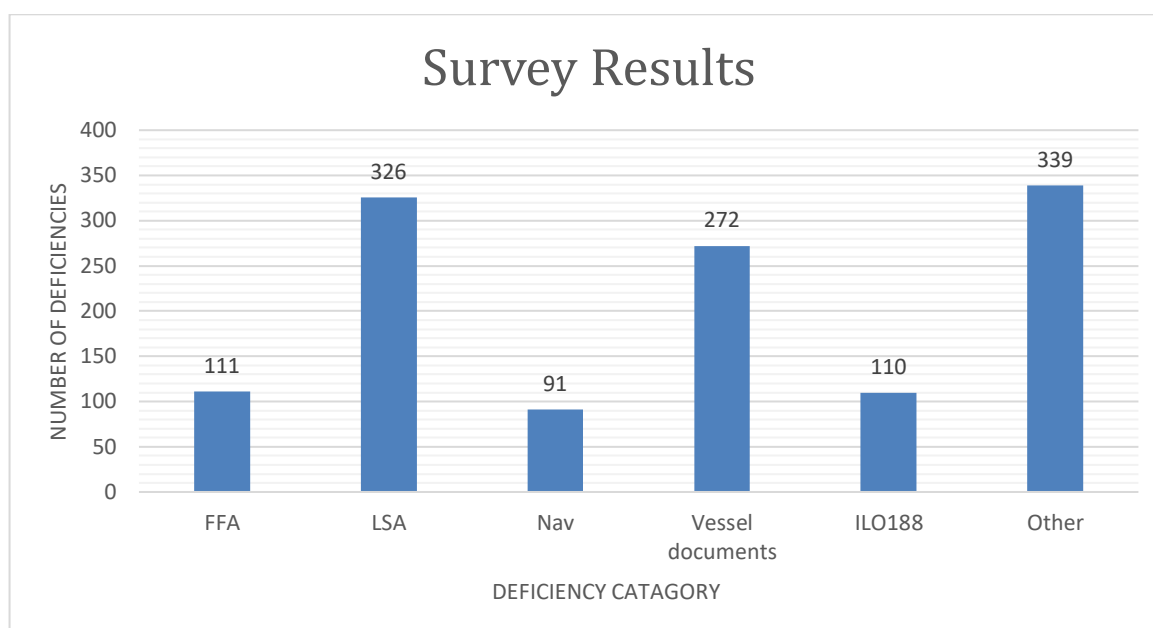
Further details on deficiencies and criminal sanctions

- 2.9 This section details additional evidence which demonstrates the current issues with the level of deficiencies, lack of civil sanction powers and reliance on criminal sanctions.

Warnings and Deficiencies

- 2.10 From 8th March 2021 to present, the MCA's Regulatory Compliance Investigations Team (RCIT) have sent out one hundred and sixty-four notices of intended prosecutions to fishermen not wearing personal protective equipment (lifejackets) in the workplace, all of which could end up being prosecuted through the criminal justice system. Our proposal for additional civil sanctions to encourage compliance would mean that that we could on a first offence, found committing, issue a standard fixed penalty notice of £250 to an individual and potentially £1000 to the owner or operator.
- 2.11 In June 2021, between Wednesday 16th to Tuesday 22nd the MCA conducted a targeted survey and inspection campaign on fishing vessels across 3 areas – Aberdeen, Glasgow, and Plymouth. This resulted in 212 vessels being surveyed with 1249 deficiencies being identified on them. The deficiencies related to Fire Fighting Equipment (FFE), Life Saving Appliances (LSA), Navigation (Nav), Vessel documents, Work in Fishing Convention (ILO188) and other non-compliance.

Figure 1 – Number of deficiencies



- 2.12 Enforcement action was taken against 45 vessels with 22 detentions, 22 prohibition notices and one improvement notice being issued. The rest were given warnings to rectify the deficiency before leaving. Only 14 of the 212 vessels had zero deficiencies, representing 7% of the total vessels surveyed.
- 2.13 Between 9th September 2020 and 11th August 2021, 1722 reports have been sent to the MCA from other government departments which have recorded sightings of fishing vessels at sea and whether fishermen were wearing their Personal Flotation Devices (PFDs) as required under merchant shipping regulations. Only 9% of the vessels showed positive signs of fishermen wearing them. If the power to issue monetary penalties was available each of these may have been subject to a fixed penalty of £250.
- 2.14 These examples demonstrate the level of minor non-compliances found within the fishing industry. These types of non-compliance are found in all sectors across the maritime industry. These minor non-compliances are difficult to address with the current suite of powers. The introduction of monetary penalties should help drive behaviour towards compliance.

Number of Criminal sanctions and cost

- 2.15 As discussed within Section 1, criminal sanctions are costly for both the Government and the operator with both parties needing to spend days in court, dealing with legal documents and pay for legal representation. The UK Government through the legal aid scheme pay for some prosecutions of individuals.
- 2.16 In the past three years (2019 – July 2021) the MCA has conducted 554 investigations of which 26 resulted in criminal prosecutions. Over the past 5 years the MCA has incurred around £2.3m in legal costs with an average annual cost of £450,000 across the five-year period. If we discount 2019 – 20 due to the large departure from the trend in costs, the average annual cost is £330,000⁴. The significant increase in costs faced in 2019 – 20 is the result of one specific case explained within section 2.18.

⁴ Data on investigations and legal costs was sourced from the MCA administrative database ABW

Table 1 – MCA legal costs (£)

<i>Cat7 (T)</i>	<i>2016 - 17</i>	<i>2017 – 18</i>	<i>2018 - 19</i>	<i>2019 - 20</i>	<i>2020 - 2021</i>	<i>Total</i>
<i>Government Legal Department - Defence</i>	1720	0	80	0	0	1800
<i>Other Legal Fees Defence</i>	0	230	27000	0	270	27230
<i>Government Legal Department - Prosecution</i>	0	0	285	1260	0	1545
<i>Other Prosecution Costs</i>	355000	446800	274000	940000	230260	2250000
Total	356000	447000	302000	950000	230530	2300000

Figures rounded so may not sum

2.17 Based upon policy expertise the MCA assume 70-80% can be dealt with by fines. This would represent a large cost saving for the MCA, **see section ‘Reduction in legal costs – MCA’ for further details.**

2.18 Furthermore, to the overall costs, the criminal justice system has an extremely high caseload placed upon it whereby the length of time between an incident occurring and a court hearing taking place is increasing. This may mean an operator continues offending whilst waiting for a first court hearing. The MCA has examples of cases taking two years for final hearings for summary only offences.

2.19 In 2011 the MCA conducted a fatal accident investigation which lasted six years. This investigation took three years from the conclusion of the investigation to have a trial listed, the trial lasted 9 weeks. A jury returned a not guilty verdict on all operators as it was an extremely complex towing arrangement to which all four defendants admitted errors in their processes. Both prosecution and defence counsel stated in open court that the limited sanctions available to the MCA left them with no alternative but to enter an extremely costly prosecution (MCA Costs £900K) when a variable monetary penalty may have been a proportionate sanction.

2.20 December 2018 a party boat was involved in a collision on the river Thames. The investigation concluded with the skipper and the operator being prosecuted and convicted. Both skipper and operator pleaded guilty at the first hearing and gave mitigation at the sentencing hearing. The skipper admitted falling asleep at the helm due to fatigue. He had recently become a father and was working long hours to provide for his young family. The operator admitted to failing to have additional crew in the bridge as a look out as required. The skipper was fined and received a criminal conviction which will not be spent for 10 years and now may affect any future employment opportunities. The operators were also fined.⁵

⁵ Case - <https://www.gov.uk/government/publications/mca-enforcement-unit-prosecutions-2020/prosecutions-report-2020>

Policy objectives

2.21 The key policy objectives are to:

- Modernising the Maritime Enforcement Policy and align the MCA with other UK enforcement bodies by amending the Merchant Shipping Act 1995 to give the necessary civil sanction powers to issue fixed and variable monetary penalties
- Provide the MCA with greater flexibility in its choice of sanction to instances of non-compliance
- Increase compliance with existing UK maritime Regulations by having and issuing civil sanctions to act as a deterrent.
- Reduce the MCAs reliance on criminal sanctions.
- Reduce the number of criminal court cases, thereby saving Government money and reducing the burden on the criminal justice system.

3. Options appraisal

3.1 This section details the options considered and evaluates the potential costs and benefits associated with our preferred option.

Option 0 - "Do nothing"

3.2 This option would see the status quo maintained with no changes to the existing civil sanction powers. This is not seen as a viable option since the existing suite of civil and criminal sanctions is not deemed appropriate or proportionate for many breaches leaving a gap within the MCA's enforcement powers.

3.3 Not giving the MCA the powers to impose additional civil sanctions would have little to no impact on the level of breaches and deficiencies being committed. This would leave the MCA as the Regulator which cannot effectively address all known risks to vessels, crew and the environment.

Option 1 - Expand civil sanction powers to include the ability to issue fixed and variable financial penalties

3.4 The proposed policy is designed to address the 'compliance deficit' while ensuring that any additional sanctions available are proportionate and justified on a case-by-case basis. The primary legislation (which is what is assessed here) would empower the MCA to use civil sanctions to assist in enforcing UK merchant shipping legislation.

3.5 Our approach, in line with the MCA's published enforcement policy⁶, is to use available civil sanctions whenever possible before using criminal sanctions. The MCA wants to extend the range of available civil sanctions to bring it into line with other enforcement bodies and meet wider Government enforcement expectations by avoiding over reliance on criminal sanctions except where necessary, in the main to encourage compliance and deter non-compliance.

3.6 The aim is to establish for the MCA a flexible suite of sanctions that can tackle the full range of non-compliance in a proportionate and targeted manner. The MCA requires power to impose fixed and variable monetary penalties to be added to its existing enforcement functions. These will be used where it is deemed a criminal sanction is not appropriate.

3.7 Additional enforcement powers would provide the MCA with greater flexibility in its choice of response to instances of non-compliance. It is not intended that the MCA would change its current practice of prosecuting serious safety breaches in the criminal courts. Nor is the policy

⁶ Maritime & Coastguard Agency Enforcement Policy - <https://www.gov.uk/government/publications/mca-enforcement-policy-statement>

designed to tackle disproportionate use of criminal sanctions by the MCA: there is no evidence to suggest that the MCA currently uses its criminal prosecution powers to penalise less serious non-compliance offences in a disproportionate manner.

- 3.8 The aim is to put in place a modern enforcement regime for the maritime industry taking account of the cross-Government approach to regulation by making available a wider range of civil sanctions to avoid unnecessary criminalisation of seafarers and operators. Amending primary legislation, the MSA 1995, is the most effective way of introducing a new civil sanctions regime which is both tailored precisely to the MCA's current needs and is futureproofed. The MSA 1995 contains the majority of the powers required to make and enforce the maritime regulatory framework. The proposed powers to make (amongst other things) fixed and variable monetary penalties available to the MCA as civil sanctions will sit within the MSA 1995 alongside the existing civil sanctions of improvement, detention and prohibition and will be available in respect of offences both in the MSA 1995 and those in statutory instruments made under the MSA 1995. The ability to be adaptable with greater transparency and identify failings which may be deemed to be a lesser offence that is not so serious as to justify criminal prosecution. The ability to offer a civil fixed penalty fine in circumstances where it is proportionate and justified to do so.
- 3.9 The benefits in the main are a faster more robust enforcement regime which fits a modern progressive regulator. This will allow for a better use of public money, a more pragmatic approach to encouraging industry compliance and deterring non-compliance that is fair, transparent and adaptable for an ever-changing maritime world.
- 3.10 To have the ability to be quicker and slicker from failure to compliance. This will reduce the burden on the criminal justice system (see section 'Number of Criminal sanctions and cost' for more details).
- 3.11 Other benefits include reducing the public spend on legal fees.

Option 2 – Expand the application of existing MCA civil sanction powers (improvement, prohibition and detention notices)

- 3.12 This scenario would see the extension of the MCA's existing civil sanction powers so as to facilitate enforcement of those powers. This is seen as an unviable option due to these notices not being seen as a proportionate response for all low-level breaches, potentially placing disproportionate costs on industry.

Preferred option – Option 1

- 3.13 **Option 1 is our preferred way forward as it will provide an expedient and more proportionate way for the MCA to enforce regulations, reducing the reliance on criminal sanctions, while providing an adequate deterrent which is currently lacking.** Under Option 0 'Do Nothing' and Option 2 the key policy objectives would not be achieved – Increase safety and compliance of operators/vessels, bring the MCA in line with other UK enforcement bodies and close the gap in current powers to provide the cover and flexibility needed to punish breaches efficiently. Doing nothing would result in no or little change with existing civil and criminal sanctions remaining costly, time consuming and disproportionate for many breaches. Expanding the application of existing civil sanctions might have the effect of increasing compliance but is considered disproportionate to punish many smaller breaches, potentially harming industry.

Analytical Overview

- 3.14 We have undertaken a quantitative and qualitative assessment of the costs and benefits that the proposed policy options could have across industry i.e., operators which are found to be non-compliant under UK shipping regulations. All costs and benefits are assessed here relative to the "Do Nothing" counterfactual.
- 3.15 The costs include the potential administrative and legal costs from appeals. The benefits are a decreased burden on the criminal justice system, increased compliance and safety (deterrent) and potential benefit to insurance premiums.
- 3.16 Throughout our analysis we have encountered data gaps and uncertainty around the data that we have managed to obtain. To mitigate these risks, we have used assumptions and sensitivity analysis where needed.
- 3.17 We will be using the standard 10-year appraisal period for costs and benefits. Consistent with HM Treasury Green book⁷, we have applied a 3.5% per annum discount rate, unless otherwise stated.
- 3.18 All figures are presented in 2021 prices and 2021 present values, except where stated otherwise.
- 3.19 The MCA plans to conduct a six week consultation, this will look to fill in any evidence gaps and check our assumptions past industry.

Application of Civil Sanctions

- 3.20 The new civil sanctions will apply to the whole of the UK maritime industry including both domestic and international vessels which operate within UK waters. There are no specific exemptions and can potentially be applied to any operator which is found in breach of Merchant Shipping Regulations.

Costs

- 3.21 This section looks at the costs of our preferred policy option against our counterfactual of a "Do Nothing" scenario. We have not monetised any of the costs within this assessment but have provided qualitative assessments. There are two costs which have been identified at this time.

- Administrative burden placed on the MCA – Process and Appeals
- Fixed and variable monetary penalties

Administrative burden placed on the MCA – Process and Appeals

- 3.22 Currently, before any civil or criminal sanctions are used, an investigation is conducted into the alleged breach. Based on the investigation's findings proportionate recommendations are considered. This process will remain the same before any fixed or variable monetary penalties are issued. This results in little to no extra burden being placed onto the MCA.
- 3.23 Operators issued with a monetary penalty will have the opportunity to appeal the decision. Attending proceedings in court will incur costs on the MCA from legal fees and time spent away from business as usual activities (opportunity cost). However, if the MCA is found successful in the appeals process the prosecution costs faced by the MCA will be recovered, with the costs being added to the defendant's qualifying debt by the court. It should be noted, over the past 5 years the MCA has only lost three out of forty-five prosecutions.

⁷ HM Treasury Green book - <https://www.gov.uk/government/publications/the-green-book-appraisal-and-evaluation-in-central-government>

3.24 It is difficult to predict how many operators will appeal the monetary penalties issued and it is not deemed proportionate to quantify, as it is assumed to be low impact with costs recovered if successful.

Fixed and variable monetary penalties

3.25 The main costs placed on industry would be the cost of the financial fine issued against operators found in breach of Merchant Shipping Regulations, based on HMT Green Book standards these costs are not to be counted as they are costs only applied to those operators found to be non-compliant and are not considered additional requirements or costs.

Benefits

3.26 This section looks at the benefits of our preferred policy option against our counterfactual of a “Do Nothing” scenario. We have identified one monetisable benefit and two non-monetised benefits within this assessment, at this time;

- Increase in revenue
- Reduction in legal costs – MCA
- Increased compliance, safety and competition
- UK Reputation

Monetised benefits

Reduction in legal costs – MCA

3.27 Based upon MCA policy expertise the MCA assume 70-80% of current and past criminal prosecutions can be dealt with by fines fixed or variable monetary penalty issued to the operator instead. This would represent a large cost saving for the MCA and taxpayer with the avoided legal costs.

3.28 To quantify the potential cost saving this represents we have taken an average annual legal fee based upon the past five years legal costs faced by the MCA (see table 1) resulting in an annual cost of £0.45m. Due to the uncertainty around the actual number of criminal prosecutions which could be resolved via a fixed penalty notice, we have employed sensitivity analysis to present a range of potential savings.

3.29 Our central scenario sees 70% of the annual legal costs being saved with this being decreased/increased by 10% in our low and high case scenarios, respectively.

$$\text{Formula} = (\text{Average Annual legal cost (£0.45m)} \times \text{appraisal period (10 years)}) \times \text{percentage saving (60, 70 and 80\%)}$$

Table 3 – Potential legal cost saving (undiscounted)

	<i>£m</i>	<i>Low (60%)</i>	<i>Central (70%)</i>	<i>High (80%)</i>
<i>Total legal cost saving</i>		2.7	3.2	3.6

MCA estimates

3.30 Under our central scenario assumptions, the potential saving is estimated at £3.2m over the 10-year appraisal period, ranging from £2.7 - £3.6m in our low and high-cost scenarios, respectively.

- 3.31 Potential savings could be impacted by the number of operators which choose to appeal the penalty decision, this could see legal costs incurred, however, it is not known at this point how many appeals will be heard (**see section ‘Administrative burden placed on the MCA – Process and Appeals’ for further details**).
- 3.32 It should also be noted each case is not equal in the time and costs incurred, as discussed, within section 2.15. This could see the actual savings varying depending on the nature of the prosecution, however, due to the level of impact it is not deemed proportionate to investigate further. With the estimates provided be considered a good representation of the potential savings.

Non-Monetised benefits

Increase in revenue

- 3.33 Monetary penalties placed on industry and the savings in legal costs will increase the available revenue for the MCA. The revenue raised is planned to be reinvested in the maritime sector to help drive safety via schemes, guidance etc. It is not known at this time where and how this additional funding will be used and the benefits which could arise from these activities. For these reasons it is deemed non-quantifiable.

Increased compliance, safety and competition

- 3.34 Implementing the ability for the MCA to issue fixed and variable monetary penalties to operators in response to breaches of merchant shipping regulations should act as a deterrent within the maritime sector. This approach supports those within the maritime industry who operate safely and with complete compliance with additional costs to those who fall below the standard of the reasonable, prudent and competent maritime operator(s).
- 3.35 Currently, the MCA is reliant on limited civil sanctions which are only applicable for certain breaches and criminal sanctions which are disproportionate for minor/low-level offences. A quicker and all-encompassing penalty should see operators incentivised to be compliant, or otherwise be fined. The increase in compliance with merchant shipping regulations will result in higher safety within the maritime sector helping reduce the number of accidents, injuries, fatalities and environmental damages.
- 3.36 It is difficult to quantify or forecast the exact impact these powers will have on the overall level of compliance and safety within industry. However, it is assumed that it will help drive industry in the right direction with the overall benefit having scope to be large with the value of preventing one fatality valued at £2.1m (2021 price)⁸.

UK Reputation

- 3.37 By expanding the existing civil sanctions, the MCA will be able to utilise fixed and variable monetary penalties. The MCA will align itself with other enforcement bodies and meet the wider Government enforcement expectations by avoiding over reliance on criminal sanctions unless necessary. This will encourage compliance and deter non-compliance.
- 3.38 This demonstrates the MCA is making strides to help reduce the number of deficiencies and breaches found within industry, helping ensure the safety of vessels, crew, and the environment. This will assist in avoiding any negative reputational damage from industry seeing unscrupulous operators not receiving the punishment deserved and putting profit before compliance.

⁸ Source: Department for Transport – Transport Appraisal Guidance (TAG) Table A4 1.1 <https://www.gov.uk/government/publications/tag-data-book>

Business Impact Target Calculations

- 3.39 The proposed Regulations are non-qualifying in regard to the Business Impact Test, with the introduction of fixed and variable monetary penalties civil sanctions estimated to have a zero Equivalent Annual Net Direct Cost to Business (EANDCB) score in line with HMT Green book guidance. This places it below the de-minimis threshold of £5m annual cost/benefit placed on industry based on Better Regulation Guidance⁹.
- 3.40 Civil sanctions and the use of financial penalties will only be used in response to instances of non-compliance with merchant shipping regulations. The introduction of civil sanctions is not placing any additional requirements on industry, only being another form of enforcement to ensure compliance and safety onboard vessels.

Risks, Assumption and unintended consequences

- 3.41 Throughout our costs and benefits we have needed to make assumptions due to a lack of applicable data; these assumptions have a lot of uncertainty around them as they are dependent on many factors. To take into account this uncertainty, we have employed sensitivity testing for many assumptions used throughout to present a range of different possibilities that could arise, consultation responses will be sought to check the accuracy of these assumption and ranges presented.

Appeals – Number and Administrative burden

- 3.42 Once a fine/penalty has been issued at the end of an investigation, the operator may wish to appeal the opinion for his/her own reason finding the verdict to be unwarranted. Based on this they will have their standard day in court to and if still contested could result in similar legal proceedings and costs as those already faced.

Disproportionate fines and inappropriate use

- 3.43 The introduction of fixed/variable financial penalties has the inherent risk that certain disproportionate fines could be given compared to the breach or a fine is used where criminal sanctions are necessary. To mitigate the risk of this happening the same regimes will be conducted at the conclusion of any investigation and is aligned to the Code for Crown Prosecutors Evidential and Public Interest Test which is already in place before any criminal sanctions are taken.
- 3.44 Under the current regime, full investigations are carried out before any formal criminal prosecutions are conducted, this process will still be carried out before any fines/civil sanctions are given to determine the correct response limiting the risk that they are used inappropriately. All fines will be based on a scale ranging from £250 - £50,000, within this range specific criteria and breaches will be assessed ensuring that the fine is proportionate to the breach and similar offences are treated equally.

Increase in compliance and safety

- 3.45 It is assumed the introduction of monetary penalties will result in the number of deficiencies and level of compliance increasing by acting as a deterrent for industry. It is not known how much of an impact this will have, if any. However, it is assumed to help push industry in the right direction enhancing overall safety within the maritime sector.

⁹ Better regulation Framework - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/735587/better-regulation-framework-guidance-2018.pdf

Wider impacts

3.46 The wider impacts of the proposed Regulations have been assessed below including Small and micro business, Equalities impact, Justice impact and Competition assessments.

Small and Micro Business Assessment

3.47 Small and Micro Businesses are classified as companies with 49 or fewer employees. This proposal will apply to all businesses, regardless of size. The policy proposal (option 1) applies to individuals and operators who have committed offences in breach of existing maritime legislation and are subject to penalties. The fine applied will be proportionate to the breach and is considered to not disproportionately affect any small and micro businesses.

Equalities Impact Assessment

3.48 The MCA considers that the proposal (Option 1) would have no effect, positive or negative, on outcomes for persons in relation to their age, gender reassignment, pregnancy and maternity, race, religion or belief, sex, or sexual orientation; and that it does not affect or contravene any measures contained in the Human Rights Act 1998. The changes affect those who have committed offences in breach of existing maritime legislation and are subject to penalties.

3.49 The MCA will complete an equalities impact Assessment for this policy.

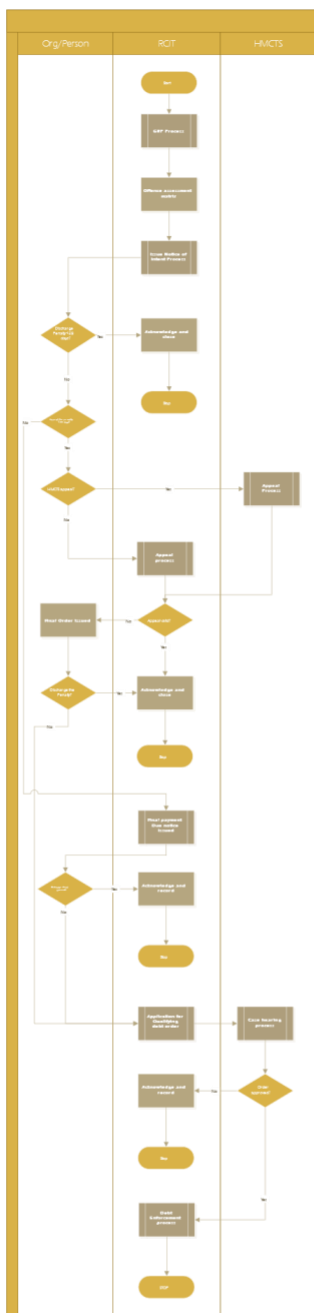
Justice Impact Test

3.50 A full Justice Impact Test (JIT) will be completed for the final stage impact assessment.

Competition Assessment

3.51 This Regulation is assumed to have a positive effect upon competition within maritime sectors, non-compliant operators can be seen as having a cost advantage over their compliant peers by not fully adhering to the regulatory standards set. Issuing monetary fines to those non-compliant operators and incentivising industry to be compliant will increase the costs faced by these operators and eliminate this cost advantage, levelling the playing field.

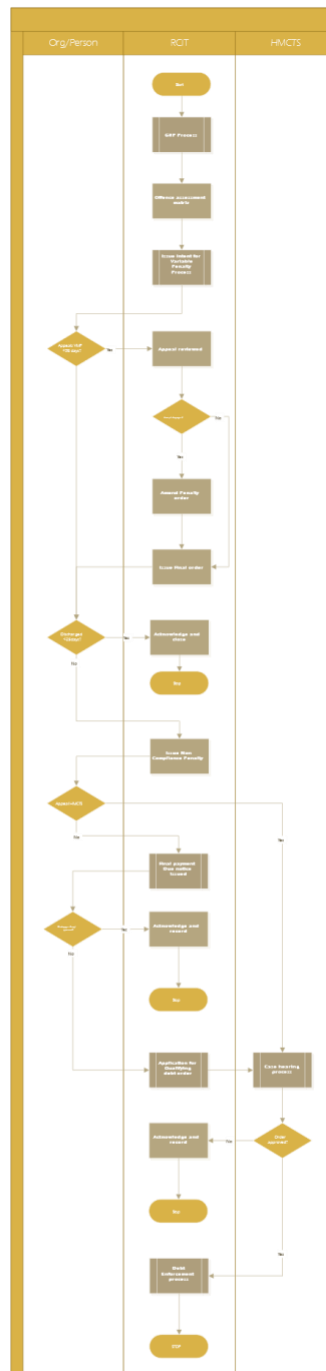
Annex 1



Maritime & Coastguard Agency

Fixed Penalty Process

Version: 1.0
 Date: 15/01/2015
 Author: [Redacted]



Maritime & Coastguard Agency

Variable Monetary Penalty Process

Version: 1.0
 Date: 15/01/2015
 Author: [Redacted]