



Maritime &
Coastguard
Agency

Consultation Document: Maritime Civil Sanctions Provisions

November 2021

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Section 1: Overview of this consultation

Aim

- 1.1. This consultation seeks your views on the proposed extension of enforcement powers used for maritime legislation to enable a comprehensive suite of civil sanctions (including powers to impose stop notices, fixed and variable monetary penalties). The powers would be exercised by the Maritime & Coastguard Agency (“the MCA”) as part of the United Kingdom’s maritime enforcement regime. The aim is to modernise maritime enforcement policy. More broadly, the Government seeks to avoid creating unnecessary criminal offences, and civil sanctions are often preferable for regulatory enforcement, in line with the Macrory principles.
- 1.2. The MCA is the government agency responsible for maritime regulation and enforcement. At the present time, the MCA has more limited powers to impose civil sanctions than other national enforcement bodies. Consequently, the MCA is mostly reliant on the use of informal warnings (notices of concern), prohibition and improvement notices, and criminal sanctions (alongside some existing limited civil sanctions) to punish both minor and serious offences, and breaches of merchant shipping legislation. This creates a situation where a person in breach of a legislative requirement could end up with a criminal record for committing a minor offence, or, alternatively, offenders might receive an informal warning in cases where it is not in the public interest to prosecute, giving no incentive to encourage compliance.

Views sought

- 1.3. Consultees are invited to respond to this consultation and in particular to the consultation questions in Section 5. Section 2 of the document, together with the three annexes, gives a more in-depth explanation of the proposal.
- 1.4. It should be noted that this is a brief, high level consultation, aimed at gathering stakeholder feedback on improvements that could be made to the maritime enforcement regime in the event that primary legislation were amended to provide the necessary powers. There will be further opportunities to comment in the event that primary legislation is taken forward to implement these changes.
- 1.5. A full list of consultation questions is contained in Section 5 of this consultation.

Deadline for responses

- 1.6. Responses are welcomed from 6 December 2021 Until 16 January 2022

Section 2: Areas for consideration

Background

- 2.1 The MCA is the United Kingdom's regulator for the maritime sector, acting on behalf of the Secretary of State. The MCA's powers to use civil sanctions are mostly contained in primary legislation, namely the Merchant Shipping Act 1995 ("the MSA"). These sanctions include improvement, prohibition and detention notices. These are limited in their effectiveness because although a failure to comply with these notices carries a criminal penalty, this necessarily means that enforcement can become a significantly drawn out process. Unlike other competent UK enforcement bodies (for example, Home Office, Police Forces, non-ministerial bodies such as OFWAT and OFGEM, and local authorities), the MCA does not have powers to impose sanctions that have an immediate impact, such as financial fixed and variable monetary penalties.
- 2.2 Consequently, the MCA is mostly reliant on the use of informal warnings and criminal sanctions to enforce both minor and serious contraventions of merchant shipping legislation. Informal warnings are intended to inform the operator that they may have breached a regulatory requirement and should rectify the breach to avoid further enforcement action being taken. The MCA does not have sufficient powers to incentivise operators to correct the problem until further action is taken and the possibility of criminal proceedings does not appear to be effective in encouraging compliance.
- 2.3 Prosecution to pursue criminal sanctions is time-consuming and costly to both the MCA and the operators or individuals. A prosecution requires legal representation for all parties 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 available for breaches that are deemed sufficiently serious.
- 2.4 While criminal proceedings are underway, operators may continue business as usual, even when their vessel or operation represents a continuing safety risk due to an identified breach of merchant shipping legislation. Such offending may continue until the criminal proceedings are completed. In this situation, the only option open to the MCA is to issue informal warnings, or improvement or prohibition notices (breach of which may already be the subject of criminal proceedings), which may have little or no deterrent effect. The MCA therefore needs sufficient powers to disincentivise or penalise non-compliant operators proportionately and expeditiously.

Proposed Changes

- 2.5 We would like to amend the MSA to make powers available to the MCA to use civil sanctions more widely as an alternative to the prosecution of offences where the MCA is satisfied that a significant breach of Merchant Shipping Legislation has been committed.

- 2.6 Having wider powers would enable the MCA to (amongst other things) impose both fixed and variable monetary penalties as an alternative to criminal sanctions, where the MCA considers it appropriate to do so in accordance with guidance it will publish. The new civil sanctions will be available in respect of all offences, although in the case of serious offences prosecution will remain the likeliest outcome. Our research detailed in **Annex A** suggests that 70% – 80% of criminal prosecutions could be replaced with a financial penalty instead.
- 2.7 This is a high-level consultation looking at the creation of powers to enable wider use of civil sanctions, including proposed fines ranging from £250 to £50,000 breaches of merchant shipping legislation. Such fines would only be imposed once the MCA is satisfied to the requisite standard of proof that the breach has occurred. The recipient of a notice of intent to issue a fine would always have a right to make written representations to the MCA. The MCA would consider these, and the recipient of the notice would have a right of appeal in cases where the MCA rejected the representations.

Summary of Options and Recommendations

- 2.8 The costs and benefits of this proposal have been set out in a regulatory impact assessment at **Annex A**. The impact assessment identifies two options to take in addition to the baseline of doing nothing.
- Option 1 – Amend primary legislation to enable the Secretary of State (in practice, the MCA) to enforce existing offences in primary and secondary legislation by way of civil sanctions. This scenario would see the Merchant Shipping Act 1995 being amended to give the MCA power to impose (amongst other things) monetary penalties, ranging from £250 to £50,000, for breaches of merchant shipping legislation.
 - Option 2 - Extend the application of existing MCA civil sanction powers (i.e. detention, improvement and prohibition notices). This more limited proposal would still require new legislation to make the new civil sanctions available to the MCA (alongside its existing power to bring a prosecution) for breaches of requirements in those notices.
- 2.9 Option 1 is our preferred option. It provides 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. Although using option 2 might have the effect of increasing compliance (in some cases), we consider this extension of the use of detention, improvement and prohibition notices disproportionate in respect of many minor breaches of regulations; the potentially long drawn out processes this would introduce through first having to give a notice to an operator before imposing on that operator civil sanctions for breach of that notice potentially placing unnecessary burdens on industry.
- 2.10 The key monetised benefits identified within the impact assessment are savings to Government in the form of 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.

- 2.11 In addition, we believe that the implementation and use of new civil sanctions such as fixed and variable monetary penalties will act as a suitable deterrent for industry, seeing an increase in compliance and safety, lowering the number of incidents and associated costs. Additionally, the number of appeals in respect of the new civil sanctions are not expected to outweigh the overall savings from a reduction in criminal sanctions. The number of cases which result in sanctions being used are expected to remain similar to the present day. Value Per Fatality of £2.1m (2021) applied to benefits of lives saved¹

Supporting Information

- 2.12 Section 2 of the impact assessment (**Annex A**) sets out the rationale for intervention including evidence from the MCA's Regulatory Compliance Investigations Team (RCIT) relating to the current use of warnings and legal investigations. The MCA has listened to informal feedback from industry relating to the use of criminal sanctions summarised during informal consultation with Queen's Counsel and senior lawyers (Jan 2020). During this consultation it was suggested that relying solely on criminal sanctions to enforce breaches of merchant shipping legislation is disproportionate and inappropriate, particularly for breaches that are relatively minor.

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

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 and operators, fishermen and seafarers.

Duration

- 3.3. This consultation is open for 6 weeks from 6 December 2021. The deadline for responses is 16 January 2022

Submitting your response

- 3.4. The preference is for consultation responses to be emailed to MCA.Investigations@mcga.gov.uk . Any questions should also be sent to this email address. You can also send in your response by post.
- 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 to inform the development and implementation of policy and legislation. This consultation and the processing of personal data that it entails is necessary for the exercise of our functions as a government department. If your answers contain information that allows you to be identified, under data protection law, the MCA, as an Executive Agency of the Department for Transport, will be the Controller for this information.
- 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. You do not have to give us this personal information but if you do choose to provide it, it will not be used for any other purpose without your permission.
- 3.12. Details about how the MCA looks after personal data, your rights, how to complain, and how to contact our Data Protection Manager can be found on gov.uk at:

<https://www.gov.uk/government/organisations/maritime-and-coastguard-agency/about/personal-information-charter>
- 3.13. Your information will be kept securely on the MCA's IT system and any written responses will be held in a secure file and cabinet and kept for up to five years
- 3.14. If you do not wish to remain on this list, please let us know at MCA.Investigations@mcga.gov.uk

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 January 2022. Our aim is to publish an overview of the responses and the MCA's comments by March 2022, which will be available on www.gov.uk along with the consultation papers.
- 4.3. The timescales for implementation of any proposal to extend civil sanctions is dependent on availability and passage of suitable primary legislation through Parliament. The earliest that it could come into force is 2023.
- 4.5. We will consult on guidance for industry ahead of the policy coming into force.

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

- Classification Society
- Government Agency/Department
- Individual
- Legal representative
- Protection & Indemnity
- Seafarer
- Ship Operator
- Ship Owner
- Trade Union
- Other

(please describe) _____

Size of Organisation

- Large business (over 250 staff)
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)

Section 5.1 Consultation Questions

1. Do you agree with the cost assessment set out within Annex A, concluding there are no additional costs being placed on industry as a result of the proposed extension of civil sanctions? Please supply any additional evidence that you may have relating to potential costs.
2. Which of the options from Annex A would you support? i.e. (i) make civil sanctions available for all offences; or (ii) extend application of existing civil sanctions powers; or (iii) do nothing?
3. Monetary penalties are being considered in the range of £250 to £50 000. Do you think that the levels of monetary penalties proposed are appropriate as an alternative to a criminal prosecution and potential criminal conviction for an individual or organisation?
4. Do you consider that these measures would support and encourage compliance within the maritime industry, setting out reasons why you think they would or would not have this effect?

Section 5.2

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

Please return completed response forms to MCA.Investigations@mcga.gov.uk

Alternatively, responses may be posted to:

Regulatory Compliance Investigations Team
Maritime and Coastguard Agency
Spring Place
105 Commercial Road
Southampton
SO15 1EG

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 [Consultation Principles 2018](#)

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) _____

2b. If you are representing a company, please indicate the size of your company:

- Micro (1-9 employees)
- Small (10-49 employees)
- Medium (50-249 employees)
- Large (250+ employees)

2c. 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.