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## **Maritime Labour Convention, 2006: Hours of Work and Entitlement to Leave Application of the Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018**

**Notice to all shipowners, ship operators and ship managers; employers of seafarers; masters, officers and seafarers on sea-going ships ordinarily engaged in commercial operations**

*This notice should be read with the Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018 and replaces MSN 1842(M)*

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### **Summary**

This Merchant Shipping Notice contains the detailed mandatory requirements specified by the Secretary of State under the Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018 ("the Regulations"). It also gives guidance on the application of the Regulations.

### **Key Points**

The Regulations:

- apply to all seafarers, including masters, employed, engaged or working in any capacity on board a seagoing ship, and whose normal place of work is on a ship;
- do not apply to seafarers on fishing vessels, pleasure vessels, warships or naval auxiliaries, or vessels which are not ordinarily engaged in commercial activities; or seafarers subject to the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003;

As they apply to UK ships and non-UK ships with no maritime labour certificate, the Regulations

- provide for a minimum of 77 hours of rest in any 7-day period and 10 hours rest in any 24-hour period;
- require a schedule of hours of rest to be posted up on board the ship (Annex A);
- require records of hours of rest to be maintained (Annex B);



- provide for employed seafarers (as defined) 2.5 days of paid annual leave per month of employment, and an additional 8 days of paid leave per year in respect of public holidays (both pro-rated for shorter periods);
- give employed seafarers (as defined) the right to take a case regarding their entitlements to paid leave to an employment tribunal;
- require shipowners to grant shore leave to benefit seafarers' health and well-being, where compatible with their operational duties (not applicable to ships of traditional build);
- provide for inspection and enforcement by the MCA.

#### Application of regulations to non-UK ships with a maritime labour certificate

- Regulations 8, 10, 13 16 and 17 apply the standards of the MLC standard A2.3, Regulation 2.4 and Standard A2.4 to non-UK ships with a maritime labour certificate;
- Regulations 20 and 21 provide for the inspection and, if appropriate, the detention of the ship by MCA.

#### Relationship with the Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018

- The Regulations need to be read together with this Merchant Shipping Notice (MSN), as this MSN sets out some of the details, standards and formalities which must be observed in order to comply with the legal obligations under the Regulations.
- Failure to comply with those obligations may be a criminal offence under the Regulations.
- In order to assist with this, paragraph 17 contains an index which identifies the provisions in this Notice which relate to the relevant provision in the Regulations.

## **1. Introduction**

1.1 The Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018, (referred to in this Notice as “the Regulations”), implement for the UK:

- a. Regulations 2.3 and 2.4 of the Maritime Labour Convention on hours of work and rest and entitlement to leave
- b. Clauses 1- 5, 7 – 10, 12 and 16 of the Annex (the Social Partners' agreement) to Council Directive 1999/63/EC of 21 June 1999 (the Maritime Working Time Directive), as amended by Council Directive 2009/13/EC
- c. Regulations 2.3 and 2.4 of the Annex (the Social Partners' Agreement) to Council Directive 2009/13/EC
- d. Regulation VIII/1 of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW, including 2010 Manila amendments)
- e. Article 15 paragraphs 1 – 13 of Directive 2008/106/EC as amended by Directive 2012/35/EU.

1.2 The Regulations also provide for penalties in the event of non-compliance.

## **2. Application**

2.1 The Regulations apply to seafarers on board a UK seagoing ship wherever it may be, and on non-UK ships in UK waters. They do not apply to seafarers working on a fishing vessel,



pleasure vessel, warship or naval auxiliary, or any vessel not ordinarily engaged in commercial activities, nor to any seafarer who is subject to the Merchant Shipping (Working Time: Inland Waterways) Regulations 2003. The entitlements to paid leave apply to employed seafarers and this term is defined in a way that includes seafarers who are contractors engaged under a contract for services (see paragraph 2.5).

2.2 The Regulations therefore apply to government ships which are ordinarily engaged in commercial maritime operations. Government ships such as those operated by the Royal Fleet Auxiliary, which are not ordinarily engaged in commercial maritime operations are not covered by the Regulations.

2.3 All vessels engaged in trade, carrying cargo or fare-paying passengers, are covered as are charter yachts and sail training vessels, including vessels certificated under MCA Codes of Practice for small commercial vessels, and harbour tugs (other than those operating exclusively in Category A to D waters as defined in MSN 1837(M)).

## 2.4 Seafarer

2.4.1 A seafarer is defined in the Regulations as any person, including a master, who is employed or engaged or who works in any capacity on board a (seagoing) ship, whose normal place of work is on a ship. Boatmaster's licence holders operating on seagoing vessels, and those working in the harbour towage industry are subject to these Regulations.

2.4.2 A person whose normal place of work is ashore but who is working on a ship on a temporary or one-off basis for the duration of a voyage is excluded. These workers are covered by the requirements of the Working Time Regulations 1998<sup>1</sup>. For guidance on how the MCA applies the meaning of seafarer in its enforcement activities, see MGN 471(M).

2.4.3 There are separate working time regimes for workers on fishing vessels (MSN 1769(F) and mobile workers on inland waterways (MSN 1878(M)).

2.5 **Employed seafarer** is defined in the Regulations as -

a seafarer who is employed under a contract of employment or engaged (or where the employment has ceased, was employed or engaged) and "employer" in relation to an employed seafarer means the person by whom the employed seafarer was or is employed or engaged and "employment" in relation to an employed seafarer is to be construed accordingly.

"Engaged" in the application of the Regulations to a seafarer, means engaged under a contract, whether express or implied and (if it is express) whether oral or in writing, whereby the seafarer undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried out by the seafarer.

The definition of employed seafarer is based on the definition of "worker" in the Working Time Regulations 1998. A person who is considered "self-employed" for tax purposes by HMRC may nevertheless be an "employed seafarer" under this definition. A seafarer is not an "employed seafarer" if they are working as part of their own business in an arrangement

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<sup>1</sup> S.I. No 1998/1833



where the shipowner is actually a customer or client – for example, a contractor providing technical support to ships, who spends extended periods at sea.

### 3. General Duties (Regulation 5)

3.1 The Regulations require that the shipowner<sup>2</sup>, the employer (in the case of an employed seafarer) and the master must ensure that seafarers are provided with at least the minimum hours of rest.

#### Additional guidance

3.2 It is the responsibility of all seafarers to ensure that they are properly rested when they begin duty on a ship and that they obtain adequate rest when not on duty.

3.3 Day to day monitoring of compliance with minimum hours of rest is likely to be part of the duties of the Masr. However, on ships with many different departments, the master may delegate the monitoring of hours of rest to department managers, including the managers of franchises, who are responsible for the personnel working for the franchise, and any employer of a seafarer working on board the vessel. However, the legal responsibility remains with the shipowner, employer and the master to ensure that the Regulations are complied with.

### 4. Minimum Hours of Rest (Regulation 6)

#### Definition of Hours of Work

4.1 For the purposes of the Regulations, hours of work are when seafarers are required to do work on the business of the ship.

**On-Call Time** – On-call time is not counted as “hours of work” unless the seafarer is required to work during that time. The Regulations provide that a seafarer whose normal period of rest on board ship is disturbed by a call-out, should have compensatory rest. An example is where a seafarer, having set the alarms in an unattended machinery space, retires to his bunk but has his rest disturbed by a call-out to work. In such circumstances, the seafarer is entitled to compensatory rest to make up for the rest time lost because he was called out to work.

#### Definition of Hours of Rest

4.2 For the purposes of the Regulations, hours of rest means time outside hours of work, and does not include short breaks.

4.3 The minimum hours of rest shall be not less than:

- (a) ten hours in any 24-hour period; and
- (b) 77 hours in any seven-day period.

4.4 Subject to exceptions authorised by the MCA (see paragraph 5 below), the daily hours of rest may be divided into no more than two periods, one of which must be at least 6 hours long. Those two periods must in total provide at least 10 hours rest.

4.5 The regulations provide that a seafarer must have 10 hours of rest in any 24-hour period. This means that the interval between periods of rest must be no more than 14 hours.

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<sup>2</sup> See regulation 2(1) of the Regulations for the definition of shipowner. Additional guidance as to the MCA's application of the definition is in MGN 471(M).



4.6 Additional guidance: Any periods of rest of one hour or more additional to the one or two periods making up the minimum of 10 hours of rest in a 24-hour period may be counted towards the weekly rest total. A 24-hour period is normally counted from the start of the main period of work, but may be counted from the start of any period of work.

## 5. Authorised exceptions to the limits on Hours of Rest (Regulation 7)

5.1 Exceptions to the limits on the hours of rest may be authorised by the MCA provided that they are the result of an agreement between employers and seafarers, have due regard to the general principles of health and safety of workers, and comply with certain limits.

5.2 Those limits are:

- a) The 10 hours daily rest are divided into (no more than) three periods;
- b) One of the periods is at least 6 hours long, and neither of the others is less than one hour long;
- c) Intervals between consecutive periods are no more than 14 hours;
- d) The exceptions may not apply to more than two 24-hour periods in a seven day period;
- e) There are at least 70 hours rest in any seven day period;
- f) The exceptions authorised do not apply for a period of more than two consecutive weeks; and
- g) Where the exception applies in relation to two periods separated by an interval, the interval shall be at least twice the duration of the longest of the two periods.

The conditions in (a) to (g) above apply to the hours of work and rest of individual seafarers.

MCA may consider applications falling outside these limits in relation to seafarers working on ships which operate only within 60 miles of a safe haven in the UK on domestic voyages, and which are not engaged in the transport of cargo or passengers. Applications relating to such ships are not subject to the conditions in (a) to (g) above. (*Regulation 7(4) and (5)*).

5.3 Agreements can be either a “collective agreement” (between the employer and an independent trade union) or a “workforce agreement” (between the employer and the employees or their elected representatives and meeting the conditions in Schedule 1 to the Regulations). Exceptions may take account of more frequent or longer leave periods or the granting of compensatory leave for watchkeeping seafarers or seafarers working on board ships on short voyages.

5.4 A workforce agreement is made with elected representatives of the workforce in most cases (see below). It can apply to the whole workforce or to a group of workers. A workforce agreement must:

- be in writing
- have been circulated in draft to all workers to whom it applies together with guidance to assist their understanding of it;
- be signed before it comes into effect:
  - by the elected representatives of the members of the workforce or group of workers; or
  - if there are 20 or fewer employed by a company, either by the elected representatives of a workforce or by a majority of the workforce;
- have effect for a specified period of no more than five years.

5.5 Applications for authorization of exceptions should be made in writing to any MCA Marine Office (listed on our website at



<https://www.gov.uk/government/organisations/maritime-and-coastguard-agency/about/access-and-opening> )

## 6. Posting-up of Table of Duties (Regulation 9 and 10)

- 6.1 Shipowners must ensure that a table of scheduled watchkeeping duties and hours of rest is produced, setting out the hours of work and rest periods. The table must be in English and in the working language of the ship, if that is not English.
- 6.2 The table must be in the same format as Annex A(i) and (ii) to this Notice, or in a format substantially like it. The table must contain at least the following information for every seafarer:
- (a) the daily schedule of duties at sea and duties in port; and
  - (b) the daily minimum hours of rest as required by the Regulations (see para 4.3 above) or any collective or workforce agreements in force.
- 6.3 The master or a person authorised by the master must ensure that the table is posted in a prominent and easily accessible place in the ship. Where there is more than one table, the master or authorised person is responsible for ensuring that all tables are posted in a suitable place.

### Additional guidance

- 6.4 In devising the schedule, shipowners should take account of factors such as:
- a) trade and type of operation;
  - b) type and size of ship;
  - c) construction and technical equipment of the ship;
  - d) manning levels and changes in crew numbers due to crew changes and sickness;
  - e) the maximum period of continuous watchkeeping;
  - f) minimum rest periods;
  - g) total workload;
  - h) the seriousness of irregular working hours and their contribution to causing fatigue and the importance of scheduling reasonably stable working hours over a voyage.
- 6.5 Changes should not be made to the schedule of duties unless they can be justified by substantially altered work patterns made necessary, for example, by a change in trading pattern or other significant factor. Where it is known that a ship engages in an irregular working pattern or that working hours are unlikely to be uniform, this can be taken into account and recorded in the schedule.
- 6.6 It is not necessary to draw up a new schedule of duties for each voyage, so long as the schedule used is applicable to the voyage in question and the composition of the crew for whom it was originally intended has not changed.
- 6.7 When first drawing up the schedule of duties for a ship, shipowners should seek the views of the master, who should in turn seek the views of the officers, the ship's safety committee (if applicable) or the seafarers or their representatives or a trade union as appropriate. The final decision on the schedule lies with the shipowner who will be responsible for ensuring that it is appropriate in relation to the safety of the ship and the performance of duties.



## **7. Exceptions for Emergencies (Regulation 11)**

7.1 The Regulations recognise that situations may arise in which a seafarer may be required by the master to work during scheduled hours of rest. These include emergencies which threaten the safety of the ship, persons on board or the cargo or where another ship or person in distress requires assistance. In these circumstances, hours of rest schedules may be suspended until the normal situation is restored. The master shall ensure that any affected seafarer is then given an adequate rest period to avoid fatigue.

## **8. Records (Regulation 12)**

8.1 The master or authorised person must maintain records of hours of rest for all seafarers serving on the ship. *(Reg 12(1))*

8.2 The records must be completed at least monthly in arrears and must be in the format at Annex B to this Notice or an equivalent format containing the same information. The records, once endorsed in accordance with regulation 12(4) (see paragraph 8.4), must be retained for at least one year. Records must be available for inspection by MCA surveyors at any time. *(Reg 12(2))*.

8.3 The records must be in English, and in the working language of the ship if that is not English. *(Reg 12(3))*

8.4 Each record must be endorsed by the master or authorised person and the seafarer to whom it relates. *(Reg 12(4))*. A copy must be given to the seafarer. *(Reg 12(5))*

### Additional guidance

8.5 When an unforeseen emergency occurs (as described in paragraph 7) changes may be unavoidable. In these cases, records should reflect all deviations from the schedule.

8.6 If during the period when the records are being retained, a company ceases to operate, the duty to retain the records remains with that company.

8.7 Checking the ship's documentation will be carried out by the MCA as part of the MLC survey or inspection, and may be carried out at any other time as part of the routine of ship inspection. This will include a check that the appropriate schedules are posted and records maintained. Following examination, the records will be endorsed as part of the process.

## **9. Power to require information (Regulation 14)**

9.1 The MCA may require the shipowner to provide information on watchkeepers and other seafarers who are working at night. This may include the records of their hours of rest, any health assessment requested or carried out, and any measures taken to protect their safety and health. A requirement for information is most likely to occur in the event of a seafarer complaint to MCA or following a report of an incident or accident.

## **10. Entitlement to Annual and Additional Leave (Regulation 15)**

10.1 This section deals with the annual and additional leave entitlements under the Regulations, which are together referred to in this guidance for convenience as "paid statutory leave".

10.2 Under the Regulations, an employed seafarer (as defined – see para 2.5) is entitled to paid annual leave of two and a half days for each month of employment in the leave year (which over a full year totals 30 days). Seafarers cannot be paid in lieu of their



annual leave entitlement under the Regulations, unless their contract is terminated. The 2.5 days' paid leave for each month of employment is referred to as "paid annual leave" in this guidance.

10.3 In addition, an employed seafarer is entitled to 8 days' paid leave in each leave year in respect of public holidays.

10.4 In either case, leave may be taken in instalments and where an employed seafarer works for a shorter period than a month or a leave year, the paid leave entitlement must be calculated pro-rata. This is likely to apply not only to seafarers employed for short periods, but also to seafarers whose period of employment includes part of a leave year or month. Part time employed seafarers will also receive pro-rated leave entitlements under general principles.

10.5 Justified absences from work must not be counted as paid annual leave.

10.6 Justified absences include an absence authorised by any enactment, contract between the seafarer's employer and the seafarer, collective agreement or workplace agreement or by custom and practice. Examples are given at paragraph 10.10.

10.7 It is the employer's responsibility to comply with regulation 15. Paid annual leave is an entitlement for seafarers. However, in view of the welfare benefits of leave and its beneficial impact on fatigue, seafarers should be encouraged to take the leave to which they are entitled in the year in which it is earned, unless there are exceptional circumstances. If seafarers wish to defer leave, that is a matter for agreement between the seafarer and the employer.

10.8 The practical arrangements for the taking of leave are a matter for agreement between the employer and the seafarer.

#### Additional Guidance on paid statutory leave entitlement

10.9 The level of pay during paid statutory leave should be at the seafarer's normal level of remuneration.

10.10 The following are examples of justified absences which should not be counted as part of paid annual leave:

- absence from work to attend an approved maritime vocational training course, or any course which the employer requires to be undertaken;

"approved maritime vocational training course" means any training course approved by the MCA (or another competent authority) for seafarer training required for the role currently undertaken or, in the case of a cadet, for the completion of a cadetship or for the seafarer's next certificate of competency;

- periods of absence as a result of sickness or injury (unless, in the case of a seafarer on sick leave, the seafarer chooses to take paid annual leave);
- leave arising as a result of any statutory entitlement applicable to the individual seafarer, such as maternity or paternity leave
- temporary shore leave, other than in cases where the seafarer requests annual leave while the ship is in port;



- compensatory leave;
- 10.11 Paid periods off work which form part of an employed seafarer's agreed pattern of work (e.g. one month on, one month off) may include paid leave, as well as leave in recognition of long hours worked while the seafarer is on board ship. The nature of this leave should be made clear in the seafarer's employment agreement.
- 10.12 Entitlement to paid statutory leave continues to accrue during periods of employment off articles (e.g. during a scheduled period ashore as part of the agreed pattern of work).
- 10.13 The time at which leave is to be taken is a matter to be determined between the employed seafarer and the employer.
- 10.14 Employed seafarers should in principle be able to take paid annual leave in the place with which they have a substantial connection, which would normally be the same as the place to which they are entitled to be repatriated. This should be specified in the seafarer's employment agreement. Except with their consent or as provided for in the seafarer's employment agreement, seafarers should not be required to take paid annual leave due to them in another place. If seafarers are required by the shipowner to take their paid annual leave from a place other than the place with which they have a substantial connection, they should be entitled to the costs of transport to the place where they were engaged or recruited, whichever is nearer their home, and subsistence for the journey. The travel time involved should not be deducted from the paid annual leave due to the seafarer. The divisions of paid leave into parts, and the carry-over of any paid leave from one year to another, are matters to be agreed between the employed seafarer and employer.
- 10.15 Particular regard should be had to the need to facilitate leave for young seafarers under the age of 18 years who have served for 6 months (or other shorter agreed period) on foreign-going ships that have not returned to their country of residence in that time and will not return in the subsequent 3 months of the voyage. It may, for example, be appropriate to provide for a paid home visit to take any leave earned during the voyage.
- 10.16 Emergency recall from leave  
A seafarer taking paid annual leave should be recalled only in cases of extreme emergency and with the seafarer's consent.
- 10.17 When the employed seafarer's leave year begins and ends is determined by agreement between employee and employer. However if there is no such agreement and the seafarer's employment began before 30 June 2002 then the leave year should be treated as beginning on that date and each 30 June thereafter. If there is no agreement and the seafarer's employment begins after 30 June 2002 then the leave year begins on the date on which employment begins and each subsequent anniversary of that date.

## **11. Shore leave (Regulation 17)**

- 11.1 The shipowner and the master must ensure that shore leave is granted to seafarers to benefit their health and well-being where consistent with the operational requirements of their positions.
- 11.2 There is no absolute duty to give seafarers shore leave in all circumstances, but it must be given where such leave is compatible with the seafarer's operational duties, and benefits the seafarer's health and wellbeing. An example of where shore leave may



not benefit the seafarer's health and well-being is where there is public disorder or a security risk in the port.

11.3 The duty is placed on the shipowner (which has responsibility for the operation of the ship) and the master (who has day to day control of operations).

11.4 The statutory duty to give shore leave does not apply to ships of traditional build, because the MLC (and therefore Directive 2009/13/EC) does not apply to such ships. However, allowing seafarers shore leave where practicable is recognised good practice on any ship.

## **12. Entitlements under other provisions (Regulation 18)**

12.1 Statutory entitlements to hours of rest or statutory paid leave under the Regulations and their rights under their contracts of employment or other arrangements are not cumulative. The seafarer may opt for whichever entitlement is the most favourable.

## **13. Release of information (Regulation 24)**

13.1 MCA is required to ensure the publication of information about all ships detained under regulation 21 of these Regulations. This is done through reporting procedures to the Paris Memorandum of Understanding and publication by the European Commission of information that has been reported on the THETIS database. The information to be reported and published is specified at Annex C.

## **14. Offences/Remedies (Regulations 25, 26 and 27)**

14.1 MCA is the enforcement authority for employer/master duties. Breaches of these duties are criminal offences and may be prosecuted. More detail of these offences is set out in Annex D. It is a defence for the defendant to show that all reasonable steps had been taken to ensure compliance with the Regulations.

14.2 An employed seafarer may bring a claim before an employment tribunal (or industrial tribunal in Northern Ireland) to enforce his entitlement to paid leave or to payment in lieu of paid leave when the seafarer's employment ends.

14.3 As with shore-based workers, a claim should normally only be made where in-house dispute resolution procedures have been followed and failed to reach a resolution. The Maritime Labour Convention introduces complaints procedures both on board ship and ashore (see MSN 1849(M) and MGN 487(M)), and these procedures are in line with the ACAS procedures. In considering a case, the Employment Tribunal is likely to consider whether efforts have been made to resolve the case between the employer and the employed seafarer at a company level. Evidence that the MLC procedures have been followed will demonstrate that this is the case.

14.4 There is a 3-month time limit for bringing a case to an Employment Tribunal, but the Tribunal has discretion to extend this limit where it is not reasonably practicable to present the claim within the time limit. Claims may be submitted by post or e-mail and being out of the country is not on its own likely to be a sufficient reason for not meeting the deadline.

14.5 For further information on making a claim to an Employment Tribunal see <https://www.gov.uk/employment-tribunals/taking-a-case-to-an-employment-tribunal>



## **15. Protection for seafarers' rights under these Regulations (Regulation 31 and Schedule 2 to the Regulations)**

15.1 By amending other employment legislation, regulation 31 and Schedule 2 to the Regulations ensure that seafarers exercising their rights under these Regulations, and seafarers bringing a complaint to an employment tribunal in respect of their entitlement to paid leave, are protected in the same way as those working in other sectors, for example against dismissal or detrimental treatment.

## **16. Restriction on contracting out (Regulation 28)**

16.1 Regulation 28 provides that provisions in agreements that purport to exclude or limit the operation of the Regulations, or preclude a person from bringing proceedings under the Regulations are void.

16.2 However, the Regulations make an exception for certain specified agreements (reg 28(2)).

16.3 In order for an agreement to preclude a person from bringing proceedings before an employment tribunal, certain conditions must be met. Any agreement not listed cannot limit or exclude the operation of those provisions.

## **17. References to this Notice in the Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018**

17.1 The references to this Notice in the Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018 are indexed below. This is the version of Merchant Shipping Notice 1877(M) which is considered to be relevant until further notice.

Regulation 9(2)(a) and (b) : The information to be contained in a table of scheduled hours of rest, and the standard format of such a table, are set out in paragraph 6.2 and in Annex A.

Regulation 12(2) : The procedures for keeping records of hours of rest, and the format for such records, are set out in paragraph 8.2 and in Annex B.

Regulation 24: The information to be published by the MCA each month concerning ships other than UK ships which have been inspected under regulation 19 or 20 or detained under regulation 21 (detention of ships), is specified at paragraph 13 and Annex C.

Any further queries relating to this Notice should be addressed to the MCA at the address below:

### **More Information**

Seafarer Safety and Health Branch  
Maritime and Coastguard Agency  
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Spring Place  
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