



Maritime and Coastguard Agency

FATIGUE: DUTIES OF OWNERS AND OPERATORS UNDER MERCHANT SHIPPING LEGISLATION

Notice to Ship Owners, Ship Operators and Managers, Ship Masters; Skippers of Domestic Passenger Ships; all Seafarers, and Marine Surveyors.

Summary

The purpose of this Marine Guidance Note is to remind owners and operators of their responsibility for ensuring that masters and crews are adequately rested to perform their duties safely. It is relevant to seafarers on both seagoing and non-seagoing ships and follows up a specific recommendation of the Marchioness Formal Investigation. It also draws attention to Guidance on Fatigue Mitigation and Management issued by the International Maritime Organization.

Introduction

1. Increasingly, governments and industry are recognising the importance in terms of preventing accidents on board ship of the human element. In this context one of the most significant factors is the need to avoid fatigue.
2. In his report of the Marchioness Formal Investigation Lord Justice Clarke wrote:

"It is well known that fatigue can affect a person's ability to make rational decisions and judgements. Much has changed since 1989 with regard to working routines, but we feel that it is right to remind shipowners and operators of the need to monitor and review the hours worked by crew members on their vessels. (37.16)"
3. He also recommended that certain of the regulations applying to seagoing ships, which place duties on owners, operators and masters to ensure that fatigue does not adversely affect the safety of those at sea, should be adopted by owners and operators on non-seagoing ships.

4. The Chief Inspector of Marine Accidents has also highlighted the part which fatigue has to play in accidents at sea. This was particularly noted as an issue in the Marine Accident Investigation Branch Annual Report for 2000. Reflecting the clear concern about the implications of fatigue, this Marine Guidance Note summarises the current statutory provisions relating to hours of work and, as recommended by Lord Justice Clarke, reminds owners and operators of the need to monitor and review crew hours of work.

Statutory Duties – Seagoing and Non-Seagoing Ships : Health and Safety

5. Under the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (SI 1997/2962 as amended by SI 2001/54), all employers have a duty to "ensure the health and safety of workers and other persons, so far as is reasonably practicable" (Regulation 5). These regulations apply to both sea-going and non-sea going ships.

6. The regulations set out the principles of risk identification and assessment, risk avoidance, and reduction. One of these principles is

“the adoption of work patterns and procedures which take account of the capacity of the individual, especially in respect of the design of the workplace and the choice of work equipment, with a view in particular to alleviating monotonous work and to reducing any consequent adverse effect on workers’ health and safety;”(reg 5(1)(c))

7. In particular, that duty encompasses

“the provision and maintenance of...systems of work that are, so far as is reasonably practicable, safe and without risk to health;”(reg 5(2)(a)).

8. The same regulations require the employer to carry out –

“a suitable and sufficient assessment of the risks of the health and safety of workers arising in the normal course of their activities or duties” (reg 7(1)).

That risk assessment must be reviewed if there is a significant change to the matters to which it relates. In particular, a risk assessment for fatigue should be carried out when workers are affected by any significant change in their working hours, for example as a result of a change in the trading pattern of the ship.

Statutory Duties – Manning and Hours of work – Domestic passenger ships

9. The statutory provisions relating to the hours of work of the master of a domestic passenger ship and minimum manning levels are contained in the **Merchant Shipping (Local Passenger Vessels) (Master’s Licences and Hours, Manning and Training) Regulations (SI 1993/1213)**.

10. These regulations apply only to the master of the ship. Masters must ensure that they are properly rested before beginning work(regulation 12). It is an offence for the master to go on duty when not properly rested. Specific requirements are that :

- The working day of the master must not exceed 16 hours
- The master must not con a vessel for periods amounting in total to more than 10 hours

- After 6 hours work the master must have a break of at least 30 minutes.

11. There is no equivalent duty in respect of the crew. The onus is on the owner to assess the number of crew needed to navigate the vessel safely given its area of operation. Consideration of manning levels should allow for adequate rest periods for all crew members, particularly where vessels operate both daytime and evening cruises. Time spent preparing the vessel before sailing should be included as working time.

Statutory Duties – Manning and Hours of Work – Seagoing Ships

12. The **Merchant Shipping (Safety Manning, Hours of Work and Watchkeeping) Regulations 1997 (SI 1997/1320)** currently apply to all sea-going United Kingdom ships and other ships in United Kingdom waters.

13. Regulations 7 and 8 provide as follows:

General duty of company, employers and masters

7(1) *Subject to regulation 10 [which allows for exceptions in emergencies], it shall be the duty of every company in respect of a ship, and of every employer, to ensure, so far as is reasonably practicable, that the master and seamen do not work more hours than is safe in relation to the safety of the ship and the master’s and the seamen’s performance of their duties.*

(2) *Subject to regulation 10, it shall be the duty of every master of a ship to ensure, so far as is reasonably practicable, that seamen do not work more hours than is safe in relation to the safety of the ship and seamen’s performance of their duties.*

Duties of master and seamen

8. *Every master and seaman shall, so far as is reasonably practicable, ensure that he is properly rested when commencing duty on a ship and that he obtains adequate rest during periods when he is off duty.*

14. In terms of specific provisions, which are applicable to masters and to seafarers whose work includes regular watchkeeping duties or shiphandling, the regulations stipulate a minimum of ten hours of rest in any 24-hour period, which may be divided into no more than two periods, one of which shall be at least six hours in length.

Guidance on Fatigue

Recommendation of Marchioness Formal Investigation

15. Lord Justice Clarke recommended that owners and operators of Class V passenger vessels should adopt regulations 7 and 8 of the Merchant Shipping (Safety Manning, Hours of Work and Watchkeeping) Regulations 1997 (SI 1997/1320), quoted in paragraph 12 above, as guidelines. He also drew attention to the requirement in the International Convention on Standards of Training, Certification and Watchkeeping (STCW95) on the fitness for duty for watchkeepers. MCA fully endorses the principles that –
 - (a) the owner/operator and skipper have a responsibility to ensure that fatigue of the skipper or crew does not create a risk to the safety of the vessel; and that
 - (b) any crew member should ensure that they are well-rested before going on duty, particularly where they have responsibilities for the navigation of the vessel.

Guidance from the International Maritime Organization

16. The Maritime Safety Committee of the International Maritime Organization has produced comprehensive guidance on Fatigue Mitigation and Management (MSC Circular 1014). The guidance is addressed to all those who may have an impact on ship safety, including naval architects, owners and operators, masters, officers, ratings, training institutions and administrations. It covers the nature of fatigue, its causes, preventive measures and countermeasures.
17. One of the aims of the guidance is to provide a basis for developing various types of tools for dissemination of the information in the guidelines (such as pamphlets, video training modules, seminars and workshops). The full guidance is lengthy and not all of it will be relevant to all operators. Owners and operators are encouraged to refer to the guidance and to use it selectively as suggested, for the development of guidance appropriate to their own areas of operation. The IMO guidance should be taken into consideration when determining minimum safe manning, and when developing, implementing and improving safety management systems under the ISM Code.

18. In particular the guidance was prepared for international shipping, and refers to some factors, such as living on board ship, which are not relevant to domestic operations. However, many of the principles apply equally to any workplace.
19. The Guidance is available on MCA's web site www.mcga.gov.uk under Publications.

Looking ahead: European Working Time Directives

20. Although Lord Justice Clarke is currently recommending that the hours of work provisions are adopted as guidance by operators of domestic passenger ships, European Directives governing working time for all sectors of industry have been adopted by the European Parliament, and will come into force in the UK in 2002 and 2003. There are three directives of relevance to the shipping industry. These provide for maximum hours of work or minimum hours of rest for all those working on board ships.
21. The **Maritime Working Time Directive (Council Directive 1999/63/EC)** is a social partners agreement and is based on accepted watchkeeping patterns. UK regulations to implement the directive will apply to ships, other than fishing vessels, which are certificated for navigation at sea. **Directive 1999/95/EC** on the enforcement of working time restrictions on ships will, once ILO 180 has been ratified, ensure that non-UK ships in UK ports are subject to the same hours of work rules as those applying to seafarers on UK ships. These two directives are due to come into force by June 2002 and consultation on implementation is already underway.
22. The third directive (**93/104/EC as amended by 2000/34/EC**) covers all other sectors, and includes specific provisions for "**mobile workers**" engaged in inland waterway transport. The rules are based on a 48-hour week, but allow for this to be calculated as an average over a 17 week reference period. The amending Directive is due to come into force by August 2003, and there will be consultation with industry in due course.
23. The directives can be viewed on the Euro-Lex Web-site (<http://europa.eu.int/eur-lex/en/search>)

24. Any questions about this Notice should be referred, in the first instance, to Mary Martyn on 023 8032 9216 (e-mail: mary_martyn@mca.gov.uk).
25. Any general enquiries relating to other areas of MCA's work or the supply and content of other Merchant Shipping Notices, Marine Guidance Notes and Marine Information Notes should be addressed to the:

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