# MCA_3298_AW

**Consultation on the implementation of Directive 2013/35/EU on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents - electromagnetic fields (EMF)**

Purpose of this consultation

1. This consultation relates to implementation of Directive 2013/35/EU on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields). The Directive is referred to as the EMF Directive within the rest of this document.

2. The Directive will be implemented for the UK by regulations from three bodies: The Health and Safety Executive (HSE) and the Health and Safety Executive (Northern Ireland) (HSE(NI)) will implement for land-based industry in Great Britain and Northern Ireland respectively, and the Maritime and Coastguard Agency (MCA) for the maritime sector. This consultation considers only the regulations MCA proposes to introduce, which are applicable in the whole of the UK.

3. This consultation does not cover any work on the Directive for land-based industry and workers being taken forward by HSE and HSE(NI). HSE has already consulted on draft regulations for land-based industry, the Control of Electromagnetic Fields at Work Regulations 2016 (CD 276).

Background

4. A Directive covering worker exposure to electromagnetic fields (EMF) was first adopted by the European Parliament and the Council of Ministers in 2004. However, following adoption, the manufacturing sector and the medical MRI community (MRI is widely used in medical diagnostics) raised concerns that it contained disproportionate requirements and was overly burdensome. An extension to the transposition deadline to address these concerns was agreed and the 2004 Directive was not transposed into UK law.

5. Directive 2013/35/EU on the minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields) was adopted on 26 June 2013. It was published in the European Union (EU) Official Journal on 29 June 2013, and must be transposed and implemented (its requirements brought into law) across all Member States by 1 July 2016.

The Electromagnetic Fields (EMF) Directive

6. The EMF Directive lays down minimum requirements for the protection of workers from risks to their health and safety arising, or likely to arise, from exposure to EMF. It covers EMFs with frequencies up to 300 gigahertz (GHz). The Directive requires dutyholders to assess the levels of EMF to which their workers may be exposed against a set of specific thresholds. These are called Action Levels (ALs) and Exposure Limit Values (ELVs). Different frequency ranges have different ALs and ELVs. More information about ALs and ELVs can be found in the draft guidance document at Annex 1.

6. Overall the Directive aims to ensure that:

* minimum standards for EMF safety are introduced across all Member States;
* dutyholders minimise the risks from EMF to which workers may be exposed; and
* risks from EMF are controlled so all workers remain protected.

7. The EMF Directive does not cover:

* suggested long term effects to electromagnetic fields, since there is currently no well-established scientific evidence of a causal relationship.
* risks resulting from contact with live conductors.

What are EMFs?

8. An EMF is a type of non-ionising radiation that occurs naturally in the environment and is created whenever electrical energy is used. The draft guidance document at Annex 1 provides an overview of what EMFs are and highlights the two general types of EMF effects; direct effects on the body and indirect effects caused by the EMF affecting other things in the environment that can create a safety or health hazard.

Current legislative provisions for EMFs in the UK

9. At present, there are no specific regulations covering seafarer exposure to EMFs in UK merchant shipping law (nor for workers on land under health and safety law). EMF risks are managed through the general requirements in the Merchant Shipping (Health and Safety at Work) Regulations 1997 as amended (HSW 1997). The MCA believes that the risks from EMF arising from marine equipment and the shipping environment are generally already well understood and managed on UK ships. Most UK companies will be aware of Public Health England’s recommendation that the International Commission on Non-Ionizing Radiation Protection (ICNIRP) guidelines should be followed.

Transposition approach

10. The HSE developed the UK policy and led for the UK during the negotiation of this Directive, and has experts in the field, and the MCA is proposing to follow the HSE’s approach to transposition. During the policy development process, HSE considered and analysed a number of legislative approaches. HSE proposes to transpose into stand-alone regulations **only the requirements of the Directive which go beyond or are more specific than those covered by existing UK legislation**. The MCA is also following this approach as far as possible, although there are some subtle differences between HSE’s and the MCA’s background legislation.

11. This preferred transposition approach takes account of the Government’s policy on transposing EU Directives and its commitment to regulating only where necessary. The intention is that the proposed regulations –

* do not go beyond the minimum requirements of the Directive;
* align with current merchant shipping legislation, avoiding any overlap or contradiction.
* are proportionate to the risks and take into account existing controls, therefore minimising the impact on shipowners.

12. In order to minimise burdens on business, the regulations introduce the concept of ‘lower risk work activities’. This combines and simplifies the Directive’s various exceptions to the general requirement to ensure the exposure of seafarers is below the exposure limits, and ensures that obligations are not imposed unnecessarily. We expect most seafarers are engaged on in ‘lower risk work activities’.

Why are new regulations needed?

13. Whilst existing legislation covers some requirements, the EMF Directive introduces new, specific responsibilities for dutyholders: most notably the requirement to assess the levels of EMF to which their workers may be exposed against a set of specific thresholds.

14. A draft of Merchant Shipping and Fishing Vessels (Health and Safety) (Electro-magnetic fields) Regulations 2016 is at Annex 2. Please note draft regulations will be subject to legal checks following the consultation which may require amendments to be made.

What will the new regulations mean for stakeholders?

15. Existing legislation used to control the risks from EMFs do not specifically require dutyholders to determine the level of EMFs to which seafarers are being exposed. The regulations will introduce this requirement, and a specific set of levels against which the level of exposure must be assessed. However, many shipowners will not have to significantly add to what they already do. This is either because the places where seafarers work on their ships consist only of low level and safe sources of EMFs or because, in those workplaces where seafarers are exposed to higher levels of EMFs that might cause harm, EMF levels are already effectively managed i.e. effective control measures are in place).

16. By following HSE’s approach to transposition, the regulations for shipping should not require any action to be taken for the protection of seafarers or other workers on ships which is not required on land, or vice versa. This should avoid duplication of effort for those companies which have people working in both the shore-side and marine sectors.

Exceptions from the exposure limit requirements of the regulations

17. The EMF Directive contains three derogations from its exposure limit requirements. The proposed regulations make use of these in the following way:

* disapplying the exposure limits in relation to the use of MRI equipment, where certain conditions are satisfied;
* allowing the use of an equivalent or more specific protection system for certain military premises and activities; and
* allowing MCA to exempt shipowners from the exposure limits in relation to specific work activities, where certain conditions are satisfied.

18. Other requirements in the regulations such as the requirement to assess exposure, are unaffected by the derogations.

19. A list of activities will be published where dutyholders can use the general exemption providing they meet the necessary conditions. This avoids the need for a costly and time consuming permissioning regime. It will not be necessary for dutyholders conducting such activities to measure and prove the ELVs are exceeded before using an exemption.

20. As part of your consultation response, please tell MCA about any situations where an exemption may be appropriate. The exemption list will be developed in such a way that it can be easily and quickly updated when required. A dutyholder will only benefit from the exemption while they are complying with the accompanying conditions.

EMF Guidance

21. The guidance attached is based on that developed by HSE in consultation with their stakeholders, and reflects MCA’s consultation with the National Maritime Health and Safety Committee. This is designed to help shipowners, particularly SMEs, to comply with the regulations, and to ensure that work practices are only changed when necessary. The guidance will complement the EMF Practical Guide being produced by the European Commission and any specific guidance industry chooses to develop. A copy of the draft Guidance is at Annex 1.

Impact of the Directive on the UK

22. A draft Impact Assessment (IA) (Annex 3) has been prepared including estimated costs to the maritime sector associated with implementing the new requirements of the Directive. The IA estimates that implementation imposes a ten-year present value cost on society of less than £0.1m. All of this cost would be borne by industry. The draft IA has been considered by the Regulatory Policy Committee (RPC), an independent body responsible for scrutinising the quality of the analysis and evidence presented in IAs. They have cleared the assessment for consultation.

Consultation questions

23. We are seeking answers to questions in a number of areas. The questions we would like you to consider are listed in the table below:

|  |  |
| --- | --- |
| No.1 | Do you agree or disagree with the transposition approach proposed? Agree/DisagreeIf you disagree please state why? |
| No.2 | Does the guidance make it clear what your responsibilities as an employer are under the Merchant Shipping and Fishing Vessels (Health and Safety) (Electro-magnetic fields) Regulations 2016Yes/NoIf no how can this be improved? |
| No.3 | Does the guidance help you to find the information that you need to help you assess your workers’ potential exposure to EMFs? Yes/No If no how can this be improved? |
| No4 | Is it clear from the guidance that measurement of EMF exposure levels will only be necessary in strictly limited circumstances??Yes/No If no how can this be improved? |
| No.5 | MCA may exempt certain shipboard work activities from the exposure limits stated in these Regulations. Does the guidance clearly explain when an exemption applies and the conditions that have to be met? Yes/NoIf no, how can this be improved? |
| No.6 | Does a work activity take place on your ship(s) in respect of which you may find it difficult to meet the exposure limits?Yes/NoIf yes what activity would this be for? |
| No.7 | Is there any additional information that you would like to see included in the guidance? Yes/NoIf yes what would this be? |
| No.8 | Do you have any comments on the draft Merchant Shipping and Fishing Vessels (Health and Safety) (Electro-magnetic fields) Regulations 2016 at Annex 2? Yes/No.If yes please provide details.  |
| No.9 | Do you agree or disagree with the analysis in the impact assessment at Annex 3?Agree/DisagreePlease state why? |
| No. 10 | Do you have any other comments to make on the impact assessment at Annex 3?Yes/NoIf yes please provide details |
| No.11. | Are there any further comments you would like to make on the issues raised in this consultative document?Free text box |

Please send your responses, marked for the attention of Julie Carlton,

to mlc@mcga.gov.uk or

to Seafarer Safety and Health Branch

Bay 2/19, Spring Place

105 Commercial Road

Southampton

SO15 1EG

By **Friday** **6 May 2016**

About this consultation

This consultation document is issued by the Maritime and Coastguard Agency (MCA) in compliance with its duty to consult under section 86 of the Merchant Shipping Act 1995.

The MCA tries to make its consultation procedures as thorough and open as possible. Responses to this consultation document will be published on [www.gov.uk](http://www.gov.uk) after the close of the consultation period where they can be inspected by members of the public.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004 (EIR)).

If you want us to treat any of the information you provide, including personal information, 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, among other this, with obligations of confidence. It would be helpful if you could explain to us in your response why you regard the information as confidential. If we receive a request for disclosure of the the information you have provided, 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.

The MCA will process all personal data in accordance with the DPA and in the majority of circumstances, this will mean that personal data will not normally be disclosed to third parties.

Code of Practice on Consultation

This consultation is conducted in accordance with the Cabinet Officer Consultation Principles Guidance.

Feedback

If you have any feedback about the way the consultation has been conducted, please address them to:

The Consultation Co-ordinator

Office of the Chief Executive

MCA
Bay 3/29, Spring Place

105 Commercial Rd

Southampton

SO15 1EG

Consultation.coordinator@mcga.gov.uk

We are continually trying to improve the way in which we conduct consultations and appreciate your views, so we would also be grateful if you would complete and return the attached feedback form. These should be returned to the consultation co-ordinator and are not affected by the deadline for this consultation.

**Annex 1: - Draft EMF Guidance**

Draft guidance to support the Merchant Shipping and Fishing Vessels (Health and Safety) (Electro-magnetic fields) Regulations 2016

**Annex 2: – Draft EMF regulations**

Please see the attached draft ‘draft Merchant Shipping and Fishing Vessels (Health and Safety) (Electro-magnetic fields) Regulations 2016’.

**Annex 3:– Draft Impact Assessment**

Please see the draft Impact Assessment document attached.

**Annex 4: Glossary of Acronyms**

ALs Action Levels

DPA Data Protection Act 1998

ELVs Exposure Limit Values

EMF Electromagnetic field

EU European Union

FOIA Freedom of Information Act 2000

GB Great Britain

GHz Gigahertz

HSE Health and Safety Executive

Hz Hertz a unit of frequency (cycles per second)

IA Impact Assessment

ICNIRP International Commission on Non-Ionizing Radiation Protection

kHz Kilohertz

MCA Maritime and Coastguard Agency

HSW Merchant Shipping (Health and Safety at Work) Regulations 1997

MHz Megahertz

MRI Magnetic Resonance Imaging

RPC Regulatory Policy Committee

UK United Kingdom

\* Above glossary currently refers to consultation document only.