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| Questions | RMT | Nautilus Int | Unite | Torrpoint Ferry | **Passenger Boat Assoc** | **CalMac** | **RYA** | **MCA RESPONSE** |
| 1. Travelling personnel

***Should vessel crew who return to the same departure point at the end of each voyage with the same passengers be considered as workers for the purposes of the Regulations (i.e. are they travelling personnel)? If not, should there be a time limit on the length of an individual voyage to which this provision applies?*** | Yes | In the interests of safety of crew, the provisions of this directive should apply since the main working time directive allows for individual opt out. | The ability to return home is a more realistic way of defining travelling. A passenger vessel may make many short trips and finish on a different berth from where they started. It is the ability to return home at the end of the day. In this respect they would be no different from a delivery driver in a van rather than a vessel. Similarly a workboat contractor working away from home may not achieve the same rest in a B&B or aboard as when at home. For this reason the more robust working time regulations should apply.  | No comment | As stated in the opening of this response this working time directive is very much aimed at the EU style inland waterways which are considerably different to our own, the MCA should look to reassess the EU directive as soon as possible and work with industry to create a set of rules more applicable to our own waterways that ensures safety and protection of workers without implementing a massive burden on the industry. | This proposal has some merit but our view is that the criteria for its application needs to be reconsidered. In the text of the consultation document it appears that the following conditions must exist for the Working Time Regulations 1998 to apply:  Operates a voyage with the same passengers throughout;  Voyage caters for leisure travellers and tourists;  Vessel returns to the same point at the end of the voyage;  Crew has the opportunity to go ashore during the working day and will always be able to return home and the end of their working day. We are not clear as to why criterion 1 would be necessary to determine if vessel crew are 'travelling personnel' or otherwise, as opposed to, say, a ferry service. Two vessels could depart the same point, one being a tour vessel which conducts a 60 minute tour and does not make an intermediate stop, thus returning with the same passengers. The other vessel is a ferry service and conducts a 25 minute voyage to an intermediate destination and then returns to the original point at the same time as the tour vessel but with different passengers. Both vessels are the same type of vessel and both have a similar number of crew with similar qualifications and training. Why then would the fact that they have changed passengers affect the working hours regime for the crews on the two otherwise similar vessels? Likewise, we are unclear as to why criterion 2 is a valid reason for determining the crew's working time regime. Whilst tour vessels do primarily cater for leisure and tourist passengers, some ferry services arguably also largely cater for such customers, especially summer months. Criteria 3 and 4 apply equally to pleasure vessels and to the vast majority of domestic ferries in the UK, so are valid factors to bear in mind when considering which working time regime to apply. Therefore, CFL are in favour of applying the Working Time Regulations 1998 on the basis of:  The length of the voyage, and one hour between intermediate stops seems reasonable, perhaps no more than six hours before returning to the original fixed point.  The vessel returns to the same location at the end of the working day, i.e. the crew always start and finish their day from the same location.  The crew are always able to return to their home at the end of the working day.  | Those workers who return to their home berth each day should not be considered to be travelling personnel and should be dealt with under “normal” working time regulations. Common sense would suggest that a time limit for any voyage should coincide with the maximum permissible working time in a given day.  | **On consideration, MCA concluded that seeking to define travelling personnel (which is not defined in the Directive) would risk under implementation of the Directive.** **MCA enforcement will focus on the highest risk situations.** |
| 2. Application ***Are you content with the current pragmatic arrangement as regards selection of a working time regime?*** | **No;**the MCA should only be satisfied and issue certification if the employer and workers or their representatives can show agreement on which regime which applies to them and comply with that set of requirements | In principle yes. However, there are circumstances where the maritime regime is not suitable, for example where there is no provision for live on board. This results in situations where rest breaks are degraded.  | A pragmatic solution is acceptable as long as it is a result of genuine agreement, is endorsed by the MCA and subject to regular review and audit. | No comment | See response to question one, there should be a set of rules more applicable to our own waterways. For seafarers who do operate on the borders of categorised inland waterways and going to sea it is a pragmatic method of working to only apply one set of rules. | Whilst the consultation document appears to make clear that there is a pragmatic approach to this, it is not as clear in the draft MSN, which appears to take a more prescriptive approach. In CFL's operation we operate a fleet of UK Class IV and V ferries in the Category C and D waters of the Clyde Estuary in amongst a wider fleet of seagoing EU/B and EU/C vessels. Most of the Clyde based ferries remain on the same route for the whole year, but there are some that also operate at sea at various stages in the year. We have one vessel that operates at sea in the summer months and in categorised waters in the winter months and indeed one vessel which does the opposite. Most of these vessels have a core crew who remain with the vessel throughout the year but a significant proportion of the crew work in a wider pool of seafarers and can work variously between seagoing vessels and those operating in categorised waters. All of these vessels currently use the Merchant Shipping (Hours of Work) Regulations 2002. Therefore, a pragmatic approach to the application of these new regulations is essential to the efficient operation of our business. If we had to have different ships and seafarers on different working time regimes, or to swap between them on a voyage by voyage basis then this is not, we feel, a tenable position. Our opinion on the matter is that the operator, in consultation with the seafarers concerned, should be able to operate using whichever regulation is most appropriate to their operation, even if some of the vessels do not have seagoing certification. This needs to be made clear in the MSN, we do not feel that the draft MSN currently makes this sufficiently clear.  |  | **Guidance to be reviewed.** **The DSM Code will ensure MCA reviews any such decision in respect of passenger ships.**  |
| 3 Annual health assessment***Is the guidance helpful?***  | **No;** Health assessments left as voluntary allow risks to be overlooked and expose passengers, workers and employers to risks arising from ignorance, negligence, greed and commercial pressure. Changes in medical thinking are not communicated. | It is important that shift workers particularly women working at nights have regular health assessments. We believe the guidance is adequate.  | This clear guidance is welcomed.  | No comment | Health Assessments, day staff, - This cost is an unacceptable additional cost for operators. We estimate the physical cost of the assessment will be £150 per assessment, for a medium sized operator who employs around 80 staff the yearly cost could be as high as £12,000.00. This does not take into consideration the lost day for the assessment. Under the current wording “at no cost themselves” (talking about the employee) then it stands to reason this assessment will have to be done during working hours which would affectively double the costs listed above.No this is not helpful, this will be a significant cost to the industry – see the PBA’s initial response. 3.1) Yes it makes it clear, but the private medical assessment should be removed particularly to non-essential operational staff such as baristas and service personnel.  | The draft MSN does make it clear that workers are entitled to an annual health assessment so the guidance is helpful in that respect although there is no guidance as to what aspects of a worker's health should be assessed. I am sure that we can make a fair assumption as to what ought to be assessed, but from the point of view of 'guidance' in this respect, there is none.  |  | **Guidance states that all workers are entitled to health surveillance (S.I. 1997/2962 reg 11), and all workers to have health assessment when transferred from day work to night work (as per 2003 regulations unamended).****Guidance on health surveillance has been amended to be consistent with HSE’s.** |
| ***3.1 Does it make clear that a health assessment is not the same as a medical fitness examination?***  | **NO;** Crew expecting a medical are told that having returned a questionnaire no medical is necessary, this causes confusion and uncertainty with the process. We require greater clarity. | Yes | The health assessment should identify symptoms of disturbed or unpredictable rest patterns as suffered on standby or callout systems. Reg 7(3): rather than (i) OR (ii) should this be AND? If the assessment is to confirm fitness to work, this should be incorporated into any medical certificate. The concern is that the employer could seek confirmation without the knowledge or agreement of the employee. It must be made clear that medical confidentiality must be respected at all times. Regarding all workers being entitled to annual free health assessment, the regulation is silent on who will pay for this. Whilst in principle we have no objection to the employer paying for it, our members have expressed concerns that small employers may feel this is a step too far financially and there is a risk of lay-offs to balance the books.  | No comment | It does make it clear but the guidance is not specific. In paragraph 5.3 it says that a health assessment is separate from any requirement for a medical examination to establish a person's fitness to do the job. In the case of many workers on inland waterways, especially those with a BML, this is a ML5 or an ENG1, why not make this specific and clear?  |  | **Guidance has been amended to be consistent with HSE’s guidance on health surveillance.** |
| ***3.2 Would a suggested proforma for health assessment, which operators could adapt as necessary, be useful?*** | **YES;** for the reasons stated above. | No. The health assessment should be undertaken by a suitably qualified medical practitioner. | A pro-forma may be helpful but we would be concerned if that was interpreted as being the standard rather than the minimum. | No comment | 3.2) N/A | Yes, it certainly would be.  |  | **Guidance has been amended to be consistent with HSE’s guidance on health surveillance. Proforma to be considered.** |
| 4. Safety and health protection for those working at night ***Are there any particular measures which should be prescribed for workers on inland waterways?*** | **YES;** Enhanced medicals that research fatigue, sleep patterns and with an awareness of circadian rhythms and an understanding of the human metabolism.  | Yes. This should include limitation of the number of continuous nights in addition to weekly night hours worked. | No comment | No comment | No | We are in favour of a non-prescriptive approach. Each individual worker is affected by shift work in different ways and will have different coping mechanisms. It is right that any guidance is of a more general nature, however some guidance that is tailored to a maritime working environment would be welcomed too, especially for those who live aboard the vessel and for whom some of the guidance in the HSE document is not pertinent.  |  | **HSE guidance has been reviewed and extracts included in the MSN with a reference to the HSE website for more detail.** |
| 5. Young persons***The draft MSN lists at section 6.6.2 those training courses which MCA recognises in the context of inland waterway vessels. Are there others which should be listed?***  | No comment | In addition to MCA Boatmasters’ Licence, any other courses leading to MCA certification including Certificates of Competency. | NO comment. | No comment | The draft MSN does not have a section 6.6.2 we assume you mean 9.2.3, it might be worth adding STCW training. | The draft MSN only lists one such course, Boatmaster Licence (which isn't really a course at all). However, we would suggest that the following should be considered in a similar manner:  Restricted STCW Certificate of Competency;  Watch Rating Certificates;  BML Endorsements, e.g. Local Knowledge which may require night hours to complete;  Requirements imposed by a Competent Harbour Authority with respect to service time for a Pilot Exemption Certificate.  |  | **The MSN no longer contains the prohibition of night work for young persons. Implementation of Directive 94/33/EC is through the Merchant Shipping and Fishing Vessels (Health and Safety) (Employment of Young Persons) Regulations 1998.****There is no scope under the Directive for a collective or workforce agreement in respect of the limit on night work.** |
| ***6. Do you have a preference between the two options for “night” in this context [11pm to 7am OR 10pm to 6am)?*** | **YES. 10pm – 6am.** | No preference | Reg 7C – Length of night work: Our members observe that they may be working longer than 42 hours in a week, but this would immediately be offset by compensatory rest of a full week following this. They request the MCA’s views on this point regarding the need to make an agreement with the employer on this issue.  | No comment | The PBA does not hold a view on this, different operators have different preferences  | Yes, of the two choices we would prefer 'night' to be classified as 2200 to 0600 as this aligns more closely with peak commuter hours, thus those starting work in the morning in time for AM services will not be considered as working at ‘night’ for part of their shift.  |  |
| 7 Storage of records***7.1 Do you agree this guidance is needed?*** | **YES.** |  | We agree this guidance is needed. We agree with the proposed arrangements for storage of records so long as the MCA is happy that if they make an unannounced visit there is the possibility that the crew’s records will not be on board the vessel, though if the records are stored electronically space is not an issue, and they can be readily shared even if the vessel is unavailable for inspection.  | No comment | Yes its needed  | Yes, whilst retention of working hours records is common place for seafarers it is less common for inland waterways workers to do the same.  |  | **Reg 9(2) amended to “available on board a ship” so that copies can be accessible on board electronically.****Guidance for surveyors will include what considerations should be applied where space constraints restrict the ability to keep records on board.** |
| ***7.2 Do you agree with the proposed arrangements for the storage of records*** | **YES.** |  |  | No comment | Yes this is fine  | Yes, it is reasonable. However, whilst many inland waterways vessels may not have the space to store such records we suggest that the size of the vessel should not be the sole arbiter of whether the records should be stowed on board or otherwise. Many larger vessels are operated where crews move between ships on a shift by shift basis from a fixed point and therefore the storage of records ashore may be the most appropriate solution, even if there was adequate space for storage on the vessel.  |  | **Reg 9(2) amended to “available on board a ship” so that copies can be accessible on board electronically.** |
| 8. Adequate rest ***Do you agree that removing the provision for “adequate rest” would result in a reduction in the protection of workers, in view of the prescriptive requirements in the proposed Regulations governing rest?*** | No comment  | Nautilus believes that the provision for “adequate rest” should be retained.  | See answer to Question 3 | In the context of a chain ferry running a 24 hour/day service the shift pattern of 8 hour shifts works effectively and efficiently.  It should be noted that within that shift pattern some crew members will do a number of 3.5 and 4.75 hour shifts. As the deck crews have an opportunity on each return crossing to rest for approximately 5-10 minutes and it is considered that this mitigates the requirement for a full 20 minute rest break.  To provide reliefs for both the ferry Controller (driver) and the Mechanical Assistant we would have to employ a significant number of additional staff or change the shift patterns and allowances for those in post with potential consequent labour relations issues.   | As stated in the opening of this response it is not seen there is an issue with staff rest periods being abused as it stands so we do not agree that it would result in a reduction in the protection of workers. | We suggest that it 'could' result in a reduction of protection, not necessarily that it 'would'. There is no explanation we can see to justify why there is an increase in minimum rest time in these regulations of 7 hours per week as compared to the previous regulations or as compared to the minimum hours of rest required for seafarers. In terms of the calculation of rest days the regulations, in general, and the draft MSN in particular, do not explain the requirements very well at all. To take one example, paragraph 4.4.2 of the draft MSN has an explanation of what 'B' is for the calculation of working time: 'B is the aggregate number of hours comprised in his working time during the course of the period beginning immediately after the end of the reference period and ending when the number of days in that subsequent period on which he has worked equals the number of excluded days during the reference period'. Another example, paragraph 14.4 to explain the calculation of rest days: 'However, if the schedule of work provides for at least as many rest days as working days, in addition to the immediate rest days that they are entitled to, the worker should be able to take a number of rest days equal to the number of working days they have just worked minus the number of rest days they were immediately entitled to'. Whilst such phraseology may be appropriate in legislation, the use of impenetrable language such as this in a guidance document does nothing to assist workers or operators understanding of the regulations. We suggest that MCA embrace the principles of Plain English and have another go at writing explanations for the regulations that can be easily understood by the intended audience.  |  | **Provision for “adequate rest” retained in the Regulations.**  |
| 9. Entitlement to paid leave***Do you agree that the paid leave entitlements for workers on inland waterways should be extended, in line with the entitlement of other workers in the UK, to 5.6 weeks per annum or pro-rata for periods of less than one year? If not, please give reasons*** | **Yes.** | Yes, Nautilus believes that all seafarers should be treated equally.  | Annual leave should be defined clearly as being in addition to a shift or working pattern.Paid leave should be extended to at least 5.6 weeks. Shore workers do not have weekends classified as annual leave – why should shore workers have shift patterns included? | No comment  | No - please see above to how damaging this already is to the industry and the fact this will result in a lot of staff being paid less. | Working on inland waterway vessels can present a very different working regime from other workers in the UK, hence the requirement for a different set of working time regulations. We believe that the current and proposed regulations adequately deal with leave and rest time and hence there is no requirement for further regulation in respect of public holidays.  |  | **Additional annual leave entitlement of 1.6 weeks in line with Working Time Regs for shore-based workers has been adopted.**  |
| 10. Offences and penalties***Please let us have your views on the proposed offences and remedies.*** | Workers should have the right to take a case to an employment tribunal. Time limits should be extended to allow for cases to be brought during employment or in one subsequent season to prevent operators removing applicants from justice by the passage of time.  | Nautilus acknowledges that penalties and remedies are directed towards the employer and should not be aimed at the master where they are not the employer.  | We agree with the proposals. Waterway workers should not be treated differently from other workers.  | No comment  | 10.1 10.2 and 10.3 no we do not believe any of this to be true, the shore based staff are allowed (an indeed is common practice) to opt out of the directive through the cont[r]acts which would eliminate the fines and offences and will benefit both the employees and the operators. | In general terms these appear consistent with the offences, remedies and penalties already described in the existing legislation and therefore we have no specific comment to make on this section.  |  | Choice of enforcement provisions (criminal offences/penalties or remedies for workers) is in line with similar provisions under the Working Time Regulations.  |
| ***10.1 Do you think we have the right balance between offence and remedies*** | **NO; E**mployers seem convinced that by choosing what ever option from the regulations, all other parts and controls are removed and therefore they are absolved of any responsibility. In to many occasions the measurement of fatigue is passed to the individual or his superior on board rather than them having to adopt limits on working time. This is particularly apparent in cases of reliefs not being available due to unforeseen problems that can cover any number of scenario’s. |  |  | No comment  |  |  |  |
| ***10.2 Do you think the penalties are at an appropriate level?*** | **NO;** There is no indication of any escalation for repeated offending by the employer. This is not in the best interests of change or best practice, fines (or more) should be increased with repeat breach of the regulations. |  |  | No comment  |  |  |  |
| ***10.3 Do you think that the offences/remedies are consistent with shorebased workers under the Working Time Regulations 1998?*** |  |  |  |  |  |  |  |
| *General Comments*  |  | The MSN needs to be made gender neutral | To ensure a level playing field in a competitive environment, any modification - even by agreement – should have clearly stated justification. Pressure would simply be brought to bear for workforces to agree a modified agreement leading to effective deregulation. Rest should be identified in accordance with MS Regulations, that is, no more than two periods, one of which must be at least 6 hrs.Rest Breaks: For consistency we suggest that the guidance is expanded in line with the HSE advice:*“A worker is entitled to an uninterrupted break of 20 minutes when daily working time is more than six hours. It should be a break in working time and should not be taken either at the start, or at the end, of a working day.*  | At para 10A (3) you refer to applicable collective agreements associated with rest breaks. Can this be interpreted that existing arrangements would remain legal in the event of a new version of SI 2003/3049 being implemented? We would also seek clarification of the definition of “workstation”. In our context does that mean each individual would be required to leave the ferry and spend the 20 minutes ashore? | There is no evidence to show the existing working time directive is insufficient in ensuring operational safety or is detrimental to workers health which would lead to this directive needing to be implemented. The Directive is applicable to the main European inland waterways where crew on vessels may work and rest on the vessels for weeks at a time and where cruises and cargo is transited long distances, this does not compare with UK inland waterways where the majority of workers, once completion of their work shift, leave the vessel and go home, which allows for a good work/life balance. Members advise that this directive will cost operators a significant amount, AND in many circumstances lead to a decrease in wages for many staff. It is the PBA’s recommendation that the MCA reassess the implementation of the directive in a way that better suits the U.K.’s national operations. The PBA are happy for a working time directive to be implemented, but one that is created with industry and one that is more applicable to the UK’s waterways. |  | Experience of managing working time suggests that it is only as effective as the participants wish it to be. However, that is not a reason to forgo a sensible framework.  | These points have been addressed in final version of MSN where possible. |

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| *Passenger Boat Association Issues*  | IssuesWorking days and rest days – This particular part of the regulation will mean that both the operator and a significant percentage of working crew will be worse off. It is common particularly in peak season for workers to work 6 days a week with one day off. This will no longer be possible due to them having to have two consecutive days off. The operator will either have to employ additional crew and skipper’s to deal with this or as several operators pointed out as they will not be able to employ someone for only a day’s work the more likely outcome for smaller operators is they will have to stop operating for that day. The cost per vessel per year based on one skipper and two crew is £100,000. If losing a day of operation per week is the option taken, then it equates to approximately 12% of turnover per year loss. As a secondary issue, there is already a shortage of qualified skippers in the UK, therefore if all passenger vessels in the UK will be required to employ more qualified skippers/crew with BML’s or equivalent statutory licenses, there will be a problem with supply. There is also a significant training cost to each company in addition to the figures listed above. The maximum working hours in a year is also low, with the average set at 48 hours per week when it is stating above that on certain weeks the number of hours can be double this this seems a contradiction in terms to say that it is safe to operate an 84 hour week but the average has to be half this. When current shift patterns in the industry are looked at again this will result in nearly every company having to recruit more staff and as stated above these staff do not currently exist. A location specific issue, is on the Thames where over the next few years with the Thames Tideway Tunnel (TTT) and other projects it is known that there will be a short fall in qualified skippers, this directive is only going to exacerbate the situation with the TTT being able offer higher wages we can foresee many operators having to lay vessels up for periods of time ultimately putting some out of business.Night staff – Little change from current night workers regulations but further definition of what regular is should be included. |
| *Passenger boat association Overall costs to operators*  | **Overall Costs to operators:**We spoke to several larger operators with set sailing schedules who will ultimately be less effected then smaller operators due to the higher amount of staff already employed, a number of these operators have been pre-emptively trying to bring staff in line with the new regulations and they do not have a ‘peak season’. They estimated they would have to take on between 4-6 more staff (not including ‘service staff such as barista etc) so a minimum cost of £130,000 to £210,000 per operator. The larger operators will more than likely have to take on an additional office staff member to deal with the records this will be a further £20,000 to £30,000.An additional issue for those operating ‘bus’ type services is if there is a delay due to traffic etc in the area of operation then staff may end up exceeding hours which will lead to further delays as staff are changed over or the cancellations in some services to ensure compliance to the regulations.Medium size operators, this is more difficult to calculate as it will more than likely either mean an increase in staff of about three (so £100K per year per operator) or ongoing downtime for the vessels resulting in a 12% decrease in turnover.Small operators, these are unlikely to be able to take on staff to cover the shortfall in hours so downtime for the vessel is more inevitable with the 12% decrease in turnover.None of the above figures include the additional training costs of the staff, the down time in the vessels to allow for the training or the health assessment costs. |
| *Passenger boat association Recommendations*  | PBA recommendations 1. Reduce or eliminate the minimum number of consecutive days staff need to take off after working set periods of time, this will benefit both operators and staff (the staff often need/want to work the additional days for wages).
2. Remove the Health assessments for staff, this is a potential large cost and burden to operators.
3. Increase the total number of hours allowed to work in a year.

(4) As with shore based employees the employee should be able to opt out of the directive if they so choose. |