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Your ref: **Consultation for PS & FS**  
Our ref: **PIRs**

22 April 2016

Dear Consultee

**Statutory review of the Merchant Shipping (Port State Control)  
Regulations 2011 and the Merchant Shipping (Flag State Directive)  
Regulations 2011 – Request for Information**

I am writing on behalf of the Maritime and Coastguard Agency regarding the statutory review of the Merchant Shipping (Port State Control) Regulations 2011 and the Merchant Shipping (Flag State Directive) Regulations 2011. You have been included in this consultation as a stakeholder. Please find enclosed a short questionnaire attached to this letter to reply by Friday 20<sup>th</sup> May 2016.

**Port State Control Regulations**

In 2011, the Government implemented regulations where the policy objectives are to strengthen control of foreign flagged ships calling at UK ports and to comply with the UK's commitments under Directive 2009/16/EC. The Regulations have focussed inspection effort on high risk ships; they require owners and masters of ships due for expanded inspection to allow time for the inspection to be completed; introduce measures to permanently exclude persistently substandard ships; and require ports to provide actual times of ships calls so that the EC may monitor inspection activity.

The intended effects are to reduce the risks to health, safety or the environment from substandard foreign ships calling at UK ports, to prevent persistently substandard ships from trading to ports of member States in order to limit the competitive advantage of non-compliance and to use the system for risk based inspections to reduce the frequency and therefore the burden of inspections on low risk ships. Please see below the link to the Port State Control Regulations.

[http://www.legislation.gov.uk/uksi/2011/2601/pdfs/uksi\\_20112601\\_en.pdf](http://www.legislation.gov.uk/uksi/2011/2601/pdfs/uksi_20112601_en.pdf)

### **Flag State Control Regulations**

In 2011, the Government implement regulation where the policy objectives are to ensure the application by the UK of robust safety standards relating to seafarers, shipping and damage to the marine and coastal environment emanating from shipping, in the manner outlined in the Directive. Also, to ensure the implementation of effective management systems in the UK's safety administration structure to underpin and enable the above objectives. The effect of this Directive EU-wide, being addressed to all member states, will be to raise standards of all EU shipping registers to a common standard, providing greater assurance that any EU vessel visiting the UK will be of an acceptable standard of safety relating to seafarers and interaction with other vessel traffic, and mitigation of the risk of environmental damage of the kind caused by shipping. Please see below link to the Flag State Regulations.

[http://www.legislation.gov.uk/uksi/2011/2667/pdfs/uksi\\_20112667\\_en.pdf](http://www.legislation.gov.uk/uksi/2011/2667/pdfs/uksi_20112667_en.pdf)

### **Statutory Review Requirement**

There is a statutory requirement to review both sets of 2011 regulations to assess if they are working and if any improvements could be made. A report of the review must be published by 31st December 2016 and we are conducting this stakeholder engagement exercise as part of this review. As you are an important stakeholder affected by one or both sets of the regulations, we would be keen to get your views.

Please see attached the following items:

- i) Covering Letter
- ii) Summary of the regulations
- iii) Questionnaire
- iv) Freedom of Information Act Summary
- Annex A**
- v) PDF copy of the Port State Control Regulations
- Annex B**
- vi) PDF Copy of the Flag State Regulations

## **Period of stakeholder engagement**

The stakeholder engagement exercise will last for a period of 4 weeks and all comments should be provided in email or writing, **no later than 20<sup>th</sup> May 2016**, to:

[Suzanne.Landolfi@mcga.gov.uk](mailto:Suzanne.Landolfi@mcga.gov.uk)

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Hampshire

Information provided will be handled in line with the DfT commitments under the Freedom of Information Act, Environmental Information Regulations and the Data Protection Act – further information is annexed to this letter.

Following completion of this stakeholder engagement exercise the post-implementation reviews for the Merchant Shipping (Port State Control) Regulations 2011, and the Merchant Shipping (Flag State Control) Regulations 2011, the final version of the review will be published in 2016, as an annex to a Command Paper.

If you have any questions or concerns about this process please contact the MCA on 023 8032 9223

Yours sincerely,

**Suzanne Landolfi**

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## **Details of the Merchant Shipping (Port State Control) Regulations 2011**

### Summary

The Merchant Shipping (Port State Control) Regulations 2011 came into force on the 24<sup>th</sup> November 2011. The regulations are underpinned by EU Directive 2009/16/EC which introduced a risk based inspection regime for the control of foreign flagged ships and strengthened sanctions that may be applied to substandard foreign flagged ships. It also allows the European Commission to set and monitor inspection commitments of member States and monitor ship calls at ports of member States. Please see below link to the regulations.

[http://www.legislation.gov.uk/ukxi/2011/2601/pdfs/ukxi\\_20112601\\_en.pdf](http://www.legislation.gov.uk/ukxi/2011/2601/pdfs/ukxi_20112601_en.pdf)

### Background

Port State control is a defence against ships registered with flag States which fail to enforce compliance with international standards for safety, pollution prevention and crew working and living conditions on ships on their register. The standards to be enforced are contained in relevant Conventions of the International Maritime Organization and the International Labour Organization.

The responsibility for compliance lies, in the first instance, with the ship owner or operator. The duty of the flag State, or classification society working on behalf of the flag State, is to enforce standards by a regime of regular surveys and certification. A failure on the part of a number of flag States to fulfil this duty, requires a second line of defence by States whose ports are visited by ships that are registered with other flag States. A port State may require ships registered with other flag States to rectify deficiencies revealed during inspection and may detain ships in port for this purpose if necessary. Port State Control inspections do not substitute for flag State surveys and responsibility for substandard ships lies with the flag State.

Following the grounding of the Amoco Cadiz in 1978, the European Council called on the European Commission to prepare proposals to reduce oil spills. A subsequent grounding of a fully laden oil tanker the Braer off the Shetland Islands in 1993 led to the adoption of a European Council resolution setting an objective of stricter inspections to reduce or eliminate substandard ships from waters of member States. As a result, Directive 95/21/EC on Port State Control was adopted in July 1995. Further incidents, in particular the severe sea and coastal pollution associated with the structural failure and loss of single hull oil tankers the Erika off the coast of France in 1999 and the Prestige off the coast of Spain in 2002, led to a programme of European legislation. Measures that have been introduced in the European Union include changes in port State control. A package of 8 measures which is known as the Third Maritime Safety Package was also introduced. The Third Maritime Safety Package includes Directive 2009/16/EC on Port State Control and replaces Directive 95/21/EC.

It was proposed in particular that the Regulations would introduce the following changes:

- To replace the requirement to inspect 25% of individual foreign flagged ships calling at UK ports each year, by an annual inspection commitment to contribute a 'share' of risk based inspections due in the Paris MoU region as a whole.
- Expanded (in depth) inspections of ships with a high risk profile will be carried out at 6 month intervals, in addition to the existing regime of expanded inspections of ships of certain types and age, which will be inspected at intervals determined by their risk profile.
- Owners and masters of ships due for expanded inspections were already required to give 72 hours' notice of arrival in port. The Regulations introduced a requirement to allow sufficient time in the operating schedule for the inspection to be carried out and an obligation on the ship to remain in port until the inspection is completed.
- Rules for refusal of access (banning) were extended to ships of any type which are repeatedly detained. The period of the ban increases on each occasion and results in permanent refusal of access to ports and anchorages of member States on the third or fourth occasion.
- Pilot reporting obligations were extended to UK pilots on foreign ships in transit in UK waters (deep sea pilots). They already applied to UK harbour pilots on foreign ships engaged in berthing or unberthing the ship or bound for a UK port.
- Port authorities were required to provide the MCA with actual times of arrival and departure of ships calling at their ports and anchorages, in a form that may be transferred electronically to EC data systems. This new requirement allows the European Commission to set and monitor member States' inspection activity in more detail.

## **Details of the Merchant Shipping (Flag State Directive) Regulations 2011**

### Summary

The Merchant Shipping (Flag State Directive) Regulations 2011 came in to force on 10<sup>th</sup> December 2011. The regulations are underpinned by the EU Flag State Directive 2009/21/EC, which is designed to ensure that member states effectively and consistently discharge their obligations as Flag States, to enhance safety and prevent pollution from ships flying the flag of a member state. Please see below link to the regulations:

[http://www.legislation.gov.uk/uksi/2011/2667/pdfs/uksi\\_20112667\\_en.pdf](http://www.legislation.gov.uk/uksi/2011/2667/pdfs/uksi_20112667_en.pdf)

### Background

Directive 2009/21/EC is part of the Third Maritime Safety Package which completes a programme of European legislation as mentioned above. The Directive seeks to ensure all European Union Member States carry out their responsibilities as flag States in a consistent manner. As this Directive imposes obligations only on the UK as a Member State, none of the obligations in the Directive fall on UK individuals or other UK legal entities, e.g., private companies. All the obligations relevant to the UK fall on the UK government as duties of an EU member state. Moreover, the UK already fulfils all of the obligations laid out in these proposed Regulations on a voluntary basis.

The main policy objective of these Regulations is to provide safety related information in relation to a ship which has ceased to be a United Kingdom ship and which is to fly the flag of another country in future, where that country requests it. The policy behind the Directive requirement which this regulation implements is that the system of regulating international merchant shipping will be improved if there is better communication between the relevant competent authorities as to safety issues which require attention when a ship leaves one country's register for another. The regulations will also enhance maritime safety by ensuring the application by the UK of robust safety standards relating to seafarers, shipping and damage to the marine and coastal environment emanating from shipping, in the manner outlined in the Directive and to ensure the implementation of effective management systems in the UK's safety administration structure to underpin and enable the above objectives.

The intended effect of implementation of the Directive will be to raise standards of all EU shipping registers to a common standard, providing greater assurance that any EU vessel visiting the UK will be of an acceptable standard of safety relating to seafarers and interaction with other vessel traffic, and mitigation of the risk of environmental damage of the kind caused by shipping.

## **QUESTIONS TO BE RESPONDED TO FOR THE PORT STATE CONTROL REGULATIONS**

[http://www.legislation.gov.uk/uksi/2011/2601/pdfs/uksi\\_20112601\\_en.pdf](http://www.legislation.gov.uk/uksi/2011/2601/pdfs/uksi_20112601_en.pdf)

### **Question 1**

The PSC regulations replaced the requirement to inspect 25% of individual foreign flagged ships calling at UK ports each year, by an annual inspection commitment to contribute a 'share' of risk based inspections due in the Paris MoU region as a whole.

Question 1a) Has the **frequency** of PSC inspections in the UK between 2011 – 2015:

- i) Increased
- ii) Decreased
- iii) Not changed
- iv) Don't know

Question 1b) Has **confidence** in the UK inspection regime been impacted by these changes:

- i) Increased
- ii) Decreased
- iii) Not changed
- iv) Don't know

Question 1c) What are the reasons for any changes? Please provide any data or information you have:

The number of PSC inspections that we have experienced over the period 2011-2015 has reduced slightly. This may be due to a number of factors – including the risk factor calculations as carried out by PSC, and the relatively young age of our vessels visiting the UK.

### **Question 2**

In addition to the existing regime of expanded inspections of ships of certain types and age, the PSC regulations required expanded (in depth) inspections of ships with a high risk profile to be carried out at 6 month intervals,

Question 2a) Has the **frequency** of expanded inspections in the UK between 2011 – 2015:

- i) Increased
- ii) Decreased
- iii) Not changed
- iv) Don't know

Question 2b) Has the **length** of an expanded inspection in the UK between 2011 - 2015:

- i) Increased
- ii) Decreased
- iii) Not changed
- iv) Don't know

Question 2c) What are the reasons for any changes? Please provide any data or information you have:

Not able to comment as we have not undergone any expanded PSC inspections.

### **Question 3**

Owners and masters of ships due for PSC Expanded inspections were already required to give 72 hours' notice of arrival in port. The Regulations introduced a requirement to allow sufficient time in the operating schedule for the inspection to be carried out and an obligation on the ship to remain in port until the inspection is completed.

Question 3a) Has the **length of time in port for** expanded inspections in the UK between 2011 – 2015:

- i) Increased
- ii) Decreased
- iii) Not changed
- iv) Don't know

Question 3b) Have the costs for notifying expanded inspections being undertaken in the UK, between 2011 - 2015:

- i) Increased
- ii) Decreased

- iii) Not changed
- iv) Don't know

Question 3c) Have there been cost changes to owners for fewer expanded inspections?

- i) Yes
- ii) No
- iii) Don't know

What are the reasons for any changes? Please provide any data or information you have:

Not able to comment as we have not undergone any expanded PSC inspections.

Question 3d) Have there been cost changes for an increased number of expanded inspections?

- i) Yes
- ii) No
- iii) Don't know

What are the reasons for any changes? Please provide any data or information you have:

Not able to comment as we have not undergone any expanded PSC inspections.

Question 3e) Have there been any additional or unexpected costs for ship owners relating to this change?

- i) Yes
- ii) No
- iii) Don't know

What are the reasons for any changes? Please provide any data or information you have:

Not able to comment as we have not undergone any expanded PSC inspections.

Question 3f) Have ships owners had to make changes to their policies or ways of working as a result of these changes?

- i) Yes
- ii) No
- iii) Don't know

What are the reasons for any changes? Please provide any data or information you have:

Not able to comment as we have not undergone any expanded PSC inspections.

Question 3g) Have there been any particular impacts on small businesses?

- i) Yes
- ii) No
- iii) Don't know

What are the reasons for any changes? Please provide any data or information you have:

Not able to comment as we have not undergone any expanded PSC inspections.

#### **Question 4**

Port authorities are required to provide the MCA with actual times of arrival and departure of ships calling at their ports and anchorages in a form that may be transferred electronically to EC data systems.

Question 4a) What changes have been made to port IT systems between 2011 – 2015? Please provide any data or information you have:

Not in a position to comment on Port Authorities.

Question 4b) Have there been changes to the Ports' ways of working?

- i) Yes
- ii) No
- iii) Don't know

What are the reasons for any changes? Please provide any data or information you have:

Not in a position to comment on Port Authorities.

Question 4b) Have there been any costs to the ports of making these changes?

- i) Yes
- ii) No
- iii) Don't know

What are the reasons for these costs? Please provide any data or information you have:

Not in a position to comment on Port Authorities.

Question 4c) Have there been any costs to the Ports of making these changes?

- i) Yes
- ii) No
- iii) Don't know

What are the reasons for these costs? Please provide any data or information you have:

Not in a position to comment on Port Authorities.

### **Question 5**

Pilot reporting obligations were extended to UK pilots on foreign ships in transit in UK waters (deep sea pilots). They already applied to UK harbour pilots on foreign ships engaged in berthing or unberthing the ship or bound for a UK port.

Question 5a) Has the **number** of deep sea pilots being used on foreign vessels in transit in UK waters between 2011 – 2015:

- i) Increased
- i) Decreased
- ii) Not changed
- iii) Don't know

Question 5b) Has the **number** of deficiencies reported by deep sea pilots on foreign vessels in transit in UK waters between 2011 – 2015:

- i) Increased
- i) Decreased
- ii) Not changed
- iii) Don't know

Question 5c) What are the reasons for any changes? Please provide any data or information you have:

Not able to comment on deep sea pilots.

### **Question 6**

Question 6a) How could the MCA have improved our implementation of the Port State Regulations, including minimising familiarisation costs for stakeholders? Please provide any data or information you have:

Question 6b) Are there any ways the regulations could be improved?

- i) Yes
- ii) No
- iii) Don't know

Please provide any data or information you have:

Question 6c) Have there been any unintended impacts of the regulations?

- i) Yes
- ii) No
- iii) Don't know

If so what are the impacts? Please provide any data or information you have:

Question 6d) Have there been any unexpected costs for business?

- i) Yes
- ii) No
- iii) Don't know

What have those costs been? Please provide any data or information you have:

## **QUESTIONS TO BE RESPONDED TO FOR THE FLAG STATE DIRECTIVE**

[http://www.legislation.gov.uk/uksi/2011/2667/pdfs/uksi\\_20112667\\_en.pdf](http://www.legislation.gov.uk/uksi/2011/2667/pdfs/uksi_20112667_en.pdf)

### **Question 7**

Question 7a) How could the MCA have improved our implementation of the Flag State Regulations? Please provide any data or information you have:

Question 7b) Are there any ways the regulations could be improved?

- i) Yes
- ii) No
- iii) Don't know

Please provide any data or information you have:

Question 7c) Have there been any unintended impacts of the Regulations?

- i) Yes
- ii) No
- iii) Don't know

If so what are the impacts? Please provide any data or information you have:

Question 7d) Have there been any unexpected costs for business?

- i) Yes

- ii) No
- iii) Don't know

What have those costs been? Please provide any data or information you have:

### **FREEDOM OF INFORMATION ACT**

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

If you would like 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. 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.

The DfT will process your personal data in accordance with the Data Protection Act and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

### **Conduct of this information gathering process**

If you have any comments on the conduct of this process please email the stakeholder engagement exercise Coordinator.