

Briefing Note

Maritime and Coastguard Agency: Small Boats

Maritime and Coastguard Agency (HM Coastguard) operational duties in the context small boat migrant incidents

- The fundamental role of HM Coastguard (HMCG) is to prevent loss of life at sea by coordinating Search & Rescue (*SAR) in a region covering approximately 2 million square miles. **HM Coastguard is also an emergency service as defined within the Civil Contingencies Act 2004**
- The UK organisation for SAR is derived from the UK Government's adherence to the following international Conventions:
 - Convention on the High Seas (1958)
 - Convention on the Law of the Sea (UNCLOS) (1982)
 - Convention on Safety of Life at Sea (SOLAS) (1974)
 - International Convention on Maritime Search and Rescue (1979)
 - Convention on International Civil Aviation (Chicago 1944) (Annex 12)
- MCA is therefore under legal obligation to comply with SOLAS and UNCLOS
- **MCA has primacy as the coordinating party for Search and Rescue under the SOLAS convention.** The service which Coastguard deliver is mandated through the Coastguard Act 1925, and any other duties as determined by the Secretary of State for Transport and the most important of those "determinations" was laid down before Parliament in 1992 and stated:
 - **HMCG is responsible for the initiation and coordination of civil maritime search and rescue within the UK SAR area. This includes the mobilisation, organisation and tasking of adequate resources to respond to persons in distress.**
 - **HMCG class all suspected migrant incidents as vessels in distress (not an enforcement activity) given identified factors such as: vessel overloaded; no maritime experience onboard; transiting second busiest waterway in the world – often at night with no navigation lights – risk to migrants themselves and other mariners; 50% of those on migrant vessels not wearing any lifejackets; with no other life-saving apparatus onboard; communications is usually limited to a mobile phone – often this is discarded once they believe they are going to be rescued given the phone has usually been supplied by an agent; no ability to determine position and general channel sea conditions. HMCG then coordinate the response using 'declared assets' such as the Royal National Lifeboat Institution (RNLI) and independent lifeboats, HMCG air assets and 'additional assets', which include Border Force vessels who make themselves available to HMCG for SAR purposes due to their ability to help, their proximity to the incident, or the information they may be able to provide which could lead to a successful outcome of the SAR operation. As such, the tasking of Border Force vessels to migrant incidents is considered against any other asset availability and suitability based on HMCG's professional assessment of the incident against issues such as - risk, rescue asset capability and asset location.**

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Legal considerations of enforcement and return at sea of the occupants of small boats

- It is understandable, and entirely proper, that Home Office is generally motivated by concerns around border security.

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Maritime and Coastguard Agency operational concerns and comments:

- Were legislation created that introduced the ability of law enforcement officers to interdict migrant vessels at sea, this would likely **conflict with UK's obligations under SOLAS. Of particular concern is the fact that a UK Act of Parliament is Supreme and would take precedence over international obligations, therefore taking primacy over MCA obligations under UNCLOS and SOLAS. As such HMCG require absolute assurance that they retain complete primacy for the coordination and response to all SAR incidents and that existing legislation applicable to HMCG is also amended to reflect retention on that primacy in UK law.**
- If more than one tasking authority oversees the response to small boats (i.e. under SOLAS and enforcement), this introduces risk **and ambiguity** to the HMCG standard operating procedures underpinning SAR. **Consequently, competing agency processes could increase delay, assumption and risk to life, potentially removing an additional facility capability for HMCG to task UK Border Force to a SAR response.**
- **It is counter-intuitive to SAR principles to introduce tactics at sea that would increase risk to the safety and welfare of persons onboard small boats. As the coordinating authority in the UK for SAR, HMCG believe that they may be forced to accept a vicarious liability for activity, injury or even fatalities as a result of a tactic delivered by another authority which is not part of recognised SAR response procedures internationally. This is not accepted by the MCA/HMCG.**
- The delivery of any enforcement tactics at sea undermines the role of the trained Coastguard Search Mission Coordinator (international requirement), when responding to a SAR incident.
- The proposed tactical and legal framework considered by the Home Office makes no reference to the support of casualties that require urgent medical assistance. A return to France would increase time and subsequently may have an impact on the casualty. As such HMCG believe that all incidents in the UK Search and Rescue region that require medical intervention must not permit the return of the casualty to France if HMCG determine that the UK is the quickest and safest option.

- HMCG must retain absolute autonomy to declare and agree the most appropriate Place of Safety¹ given the requirements of international law. The Place of Safety will not be declared by any vessels master.
- Essentially in a SAR incident the casualty wants to be rescued. **Deploying a direct and aggressive tactic makes it a law enforcement issue (not SAR) but with the added risk that this intervention could turn into SAR to which HMCG take over.** This again creates delay with the most appropriate assets then needing to be deployed post law enforcement activity, creating additional and unnecessary risk to life.
- It is vital going forward for all parties to maintain dialogue with MCA and DfT.

¹ [Annex 34 Resolution MSC.167 \(78\) guidelines on the treatment of persons rescued at sea, paragraph 6.1.2](#)