

Message

From: [Name] [Personal Data]@mcga.gov.uk
Sent: 05/04/2022 15:41:05
To: [Name] [Personal Data]@dft.gov.uk
CC: brian johnson (MCGA Mail Contact) [Personal Data]@mcga.gov.uk; PetraWilkinson [Personal Data]@dft.gov.uk; [Name] (MCGA Mail Contact) [Personal Data]@mcga.gov.uk; [Name]s [Personal Data]s@dft.gov.uk
Subject: RE: Commission of MCA process review

Good afternoon [Name]

Further to the Secretary of State's task to MCA, and [Name]s email below, I would advise as follows:

The Secretary of State has tasked the MCA to review its processes to ensure that they are fit for purpose, specifically as regards the enforcement of national and international requirements for ferry operators. The MCA has completed a four-year programme of root-and-branch review of all operating procedures culminating in the IMO's mandatory audit of the maritime administration of the UK in October 2021.

To expand, the MCA has led the UK's preparations and assessment of compliance with the IMO Instruments Implementation Code (III Code). This is a mandatory code for all IMO Member States and sets out the requirements by which a Member State must demonstrate compliance with, and enforcement of, the international maritime Conventions that it is signatory to. The Code covers the State's obligations and functions as a Flag State, Port State, and Coastal State.

- Flag State relates to the implementation, oversight and enforcement of UK domestic and international Convention requirements on vessels, crews and operators of vessels on the UK flag. The MCA, as the entity responsible for discharging the functional responsibility of the UK Flag State, sets out requirements for compliance and provides guidance to industry, and has the regulatory authority to direct and enforce necessary improvements with compliance. Although the Flag State, under the UN Convention of the Law of the Sea (UNCLOS), holds ultimate accountability for the safety of vessels and their crews registered with that State, the responsibility for the safe operation of vessel, environmental protection, and demonstrating competence and welfare of the crew sits with the vessel operator.
- Port State relates to the implementation and enforcement of international Convention requirements for foreign flagged vessels and their crews operating to and from, or within, UK territorial waters. Within this is the MCA's role under Port State Control which is one of the few exceptions permitted by the provisions of UNCLOS for the preservation of sovereignty of a foreign flagged vessel. Enforcement is limited to the extent of the international Conventions in place and implemented by the Flag State concerned and the Port State.
- Coastal State relates to protection of UK territorial waters and the provision of international obligations as regards search and rescue, navigational safety and pollution prevention and clean-up.

The IMO audited the MCA and other UK III Code delivery entities in October 2021. The IMO identified just two Findings – non-compliances with the Code. Finding no. 1 was in respect of two amendments to SOLAS which, although had been given equivalent effect by the MCA and was being complied with, had not yet entered UK domestic law. Finding no. 2 was in respect of two Overseas Territories that had not engaged with cruise operators to assess local search and rescue plans. Necessary corrective action is in place. It may be noted that, to date, the UK is the highest performer under the III Code with the fewest Findings of any Member State audited by IMO.

Preparation for the III Code audit was carried out continuously over a period of four years which commenced with a full gap analysis review of all functions of the MCA against the obligations of maritime Conventions. Any identified gaps or required operational procedure revisions were dealt with via a programme of corrective actions. All corrective actions were completed before the III Code audit commenced with the exception of the UK legislative backlog which is subject to an ongoing prioritisation programme with the agreement of the Shipping Minister. This gap analysis and gap closure

process tied in with the MCA's existing ISO 9000 Quality Management System that mandates a process of continuous critical self-examination through internal and external, third party, audit processes. All identified ISO 9000 non-conformities were included in the III Code gap analysis and corrective action programme. The MCA maintains full ISO 9000 certification.

Further, as mentioned above, the MCA, under the Paris Memorandum of Understanding for Port State Control, undertakes Port State Control for the UK. The Paris MoU is overseen by the Paris MoU administration and the European Maritime Safety Agency (EMSA) and the MCA's procedures, training and quality of delivery of Port State Control, is under continuous surveillance by EMSA in addition to IMO's audit of our Port State obligations. Any enforcement action undertaken by the MCA is scrutinised by the Paris MoU administration and EMSA to ensure that the MCA has not exceeded its authority under Port State provisions and that it has applied the Convention requirements correctly. Enforcement action may be subject to legal challenge by the Flag State and the owner of the vessel if the MCA has not followed Paris MoU procedures or gone beyond Convention requirements.

The combination of III Code obligations, which is audited on a 7-year cycle, oversight by EMSA for Port State Control, and the MCA's ISO 9000 certification means that the MCA's operational processes and ability to enforce statutory requirements of domestic and international law remain under continuous review. Although the evidence of IMO's audit in 2021 is a strong indicator that the MCA's processes are fit for purpose and delivery of its III Code obligations is effective, there is always the opportunity for improvement. Therefore the MCA will maintain continuous review of its processes and operational delivery through its internal Quality Management System and external audit stakeholders.

The MCA will rigorously enforce its existing statutory obligations under international and domestic law and will discharge any additional authority it has in order to support new measures.

Specific to crew welfare and conditions, the MCA will maintain its oversight of Maritime Labour Convention requirements onboard UK and visiting foreign vessels and will follow-up on any complaint or failure to the full extent of its legal authority. The MCA will also continue to provide guidance to the vessel operators and seafarers.

I hope that the above is helpful and is able to show that the MCA has conducted the full review requested albeit for the slightly different driver of III Code and PSC obligations.

With kind regards,

Richard

Name
Assistant Director and Superintendent for Deaths

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From: [Name]
Sent: 01 April 2022 14:20
To: [Name]
Cc: Brian Johnson ; Petra Wilkinson ; [Name]
Subject: Commission of MCA process review

Good afternoon [Name]

I hope you are well and wanted to quickly follow up on the Secretary of State's announcement earlier this week; specifically his task to review MCA processes and ensure they are fit for purpose.

With this in mind, could you please take this email as formal commissioning for this review.

In terms of an initial response I've attached a copy of how HMRC had responded which I hope gives a helpful steer, and I wonder if the excellent work from the IIC Audit would be a good direction of travel to feed into this?

It'll be [Name] as the person to respond to in the first instance please, and thank you in advance for your support.

Many thanks and best regards as always

[Name]



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