

Business and Law

STUDENT STUDY GUIDE AND COURSE NOTES

These notes form a part of a programme of study leading to command qualifications of large commercially and privately operated yachts, in accordance with the UK Maritime and Coastguard Agency (MCA) syllabus for Master (Yachts).

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Purpose of this book

This book is intended to assist those studying for the five day Business and Law course and exam, a module in the Certificate of Competency for the Command of large commercial yachts issued under the Commercial Code for large yachts.

Students should read through the entire book once and then focus on each chapter, reading it again carefully. Then turn to the Sample Questions and attempt to answer them for each topic. You should first attempt to write out an answer without looking at the book. Spend about twenty to twenty five minutes per question at most, (you won't have any longer in the exam!) After this return to the chapter and see if you missed anything. Note any items that you missed and move on to another topic. Return to the question at a later time and see if you can improve on the first attempt. Note any questions raised in your mind and bring with you for class discussion.

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Course syllabus

The syllabus is divided into three sections covering thirteen topics:

Section 1 - Legal Framework

Topic 1 Legal framework
Topic 2 Arrival and departure
Topic 3 International law

Section 2 - Safety Management

Topic 4 Safety certification and documentation
Topic 5 Prevention of marine pollution
Topic 6 Statutory safety duties
Topic 7 Safety organization
Topic 8 Seaworthiness and safe manning
Topic 9 Security

Section 3 – Contracts and Marine Insurance

Topic 10 Salvage
Topic 11 Contracts of employment
Topic 12 Yacht charter agreements
Topic 13 Marine insurance

Course objectives

The aim of the course is to enable the Master to understand the legal obligations for safe, secure and pollution free operation of yachts in the context of statutory obligations and civil law, how different legal jurisdictions apply for a vessel operating in international waters and aspects of English law necessary for the correct administration of a UK-registered commercially or privately operated yacht.

The level of understanding should be that considered necessary for the safe and lawful operation of a commercially and privately operated yacht. The candidate need not display an academic grasp of the legal principles involved beyond that needed for this purpose on a practical level.

The examination

At the end of the course there is a two and a half hour written exam, made up of five questions drawn from the three sections of the syllabus. The pass mark is 60%.

Other reading

Should you wish to do some background reading any introduction to English law or maritime law will be of use. Malcolm Maclachlan's "The Shipmaster's Business Companion" is an excellent reference guide which you may well find useful to keep on your yacht. The UK Maritime and Coastguard Agency publish "A Masters Guide to the UK Flag - Large Yacht Edition" which is essential reading for the master of a UK registered yacht.

SECTION ONE - LEGAL FRAMEWORK

One question in the exam is based on this section. It covers general background information about the law and how the law is administered as it affects the practical work of a master.

Topic 1: Legal Framework

The syllabus for this topic is as follows:

- a) Demonstrates an understanding, in simple terms, of the difference between civil and criminal law and can give examples of civil wrongs and criminal offences in the context of yacht operations.
- b) Can describe in general terms the concepts of 'negligence', 'duty of care', (and specifically 'reasonable care') 'non delegable responsibility' and 'vicarious liability'.
- c) Demonstrates an understanding of the basic criminal law procedure and can describe some of those offences giving rise to fines in excess of the statutory maximum on conviction in the Magistrates Court.
- d) Can describe the role of the MCA and the MAIB and recognize their separate functions.
- e) Demonstrates an understanding of the importance of the Merchant Shipping Acts, Statutory Instruments (SIs), Merchant Shipping Notices (MSNs), Marine Guidance Notes (MGNs), Marine Information Notes (MINs) and Codes of Practice and, in particular, The Large Commercial Yacht Code (LY2) and the role of the MCA within the structure of the UK marine administration.
- f) Demonstrates an understanding of the Role of the Official Log Book (OLB) and is able to;
 - i. state which yachts must keep an OLB,
 - ii. state the rules governing the recording of information, including the practice of annexing documents / information,
 - iii. state when this record must start and when it must be transferred to the Registrar at Cardiff,
 - iv. state, given the considerable amount of information to be recorded, the need to have a copy of the Official Log Book regulations for reference when making entries,
 - v. demonstrate a working knowledge of the information to be recorded in the OLB relevant to the operational management of a yacht and its crew and,
 - vi. state the nature of the entries to be made in the narrative section of the OLB.

1:(a) Difference between civil and criminal wrongs

The English legal system is divided into two main areas; **Criminal** law and **Civil** law.

Criminal law

The **Criminal** law punishes those who commit an act of wrongdoing against a person, or against another's property, which is considered to be harmful not just to an individual victim, but to the whole community. The state (on behalf of the whole community) prosecutes criminals in the criminal court. If the prosecution is successful it results in the conviction of the defendant who can then be punished by the court with either a custodial sentence (prison, detention centre) or a non-custodial sentence (fine, community service etc.) The state also defines what is considered to be criminal behaviour through its law-making procedure (discussed later).

The criminal law seeks to prevent unlawful acts by making laws which state what is a criminal offence and the punishment associated with it. In order to ensure that members of a society obey certain commonly accepted rules it is necessary for the agents of the state to apprehend and punish those who do not behave according to the accepted standard. There are many similarities between the rules of different societies, in most, for example, it is not acceptable to kill someone or to steal from them.

There are also many differences; what constitutes a serious crime in one country could be perfectly acceptable and normal in another, consuming alcoholic drinks, for example. Criminal jurisdiction therefore does not easily cross borders because the 'rules' are set by the population of a state and are greatly influenced by the cultural history and traditions that they share. This is not usually a problem except where two criminal jurisdictions meet at the border between two countries – widely differing social values can be a source of conflict and the agents of one state must be careful how they proceed in the territory of another. Masters of ships, of course, spend their careers in this frontal zone between jurisdictions and this is explored more thoroughly in a later section.

Civil law

The **Civil** law does not punish anyone for their actions (except in certain cases where punitive damages may be ordered), it concerns the rights and obligations of individuals and companies in legal matters which are not criminal matters, such as breach of contract (Contract Law is considered in Section three); disputes about money owed not paid; family disputes (eg divorce settlements or wills and probate) and acts which cause harm or loss to another (also known as a '**Tort**'). In civil cases a private individual or corporate body, (the claimant) "sues" (takes legal proceedings against) a defendant. If the claimant is successful this leads to the court making a judgement order which determines what action the defendant must take, e.g. fulfill obligations of a contract, pay damages, hand over property, pay a debt etc.

There are various courts in the UK civil law structure which specialise in different matters, the Admiralty Court deals with claims and disputes involving shipping matters.

Even in the most law abiding of societies disputes can arise between individuals and / or companies. In times past it was quite acceptable to resolve such matters by fighting but fighting ultimately is a very costly way of resolving a dispute and not a very effective one. Some form of arbitration was often sought even in primitive times, from the local landowner, lord, chieftain, king or whoever was held in respect by both parties. The law of **Tort** (French for 'wrong') grew from these roots – the agents of the state (today the machinery of democratic government, in the past the King and his court) were expected not only to enforce the common standards of behaviour but to resolve disputes. Living side by side in a civilised and ordered society we have a duty to ensure we do not act (or fail to act) in a way that harms the interests of others, this is called the '**duty of care**'. When we feel that our interests have been harmed in some way we might resist the temptation to get revenge if we believe that our dispute can be settled fairly according to a set of established rules. These rules are quite unlike the rules of behaviour enforced by the criminal justice system which come into play if you get caught; these rules are only exercised when someone complains.

Rather than leaving such things to chance, some people prefer to set out their respective duties to each other in a clear and unambiguous way to reduce the chances of having to argue things out in court. This is a 'contract'; it documents the relationship between two individuals and if they do end up in court it makes it easier to decide what action to take in resolution of a dispute. The terms of the contract are examined by the court and, provided they obey the rules for the writing of contracts, can be used as benchmark to judge who was right or wrong. Most relationships bound by contract do NOT end up in court so the system works! Most commercial relationships are bound by contract; the main ones for the master of a yacht are contracts of employment, salvage, charter and insurance, all of which will be examined later.

Civil law, by its very nature, is much more exportable across jurisdictions; individuals have always traded across borders and so it was natural for there to be many more similarities in the way disputes were settled. Rules of trade grew up through custom and through international agreement and became quite harmonised between countries who regularly traded. Whereas a man accused of fraud in France cannot be tried in England (because England has no criminal jurisdiction in France) if he were sued in England in a civil court his case might be heard if the court were able to see some assets that could be seized in settlement should he lose (like a bank account or a house). Shipping disputes are often heard in the Admiralty court (a division of the civil court) in London even if the incident took place around the other side of the world but the ship owned by the accused is in English jurisdiction and can be held pending settlement. France, by contrast, will accept shipping cases only where both parties agree or where one or both are French flagged.

In the context of yacht operations, the **criminal** law could be invoked if there is a failure to comply with any Merchant Shipping or Health and Safety laws required by the state the yacht is registered in (the Flag State) relating to the type and size of yacht, its certification and manning.

Additionally, breaches of regulations which form part of international law (eg causing marine pollution or failing to comply with collision regulations) or particular laws introduced by any country where the yacht may be located (the Port State) could lead to prosecution under the criminal laws of that state.

The **civil** law could be invoked if the yacht breaches a duty of care and is sued for damages after an accident or for cleaning up a fuel spill, for example. Any contractual obligations which are not met in full could also result in a civil law claim for breach of contract.

Any particular incident does not have to be exclusively a criminal or civil law matter, it may involve one or the other or both. When both are involved two separate legal cases would follow, a criminal case in a criminal court and a civil law case in the Admiralty Court or other court of arbitration.

1:(b) Legal concepts

These concepts form part of the civil law requirement to always consider how any action we take (or fail to take!) could affect any other person, and to take responsibilities for the consequences of our actions. In some circumstances (if someone is killed or seriously injured as a result of our action / in-action) these concepts cross over to the criminal law.

Negligence

Negligence occurs if someone fails in their duty of care and somebody else is hurt or suffers loss as a result. The injured person may make a claim, in a civil court, against another individual or company to seek damages to compensate for the loss or harm suffered. If the court agrees the claim it order the amount of damages or compensation to be paid.

Additionally, some failures in the duty of care may lead to a criminal prosecution. If an act of negligence results in a serious injury or death (seen as **gross negligence**), the negligent person may be prosecuted with manslaughter under the criminal law. Companies and other large organisations may also be prosecuted with corporate manslaughter where there has been a gross failing, throughout the organisation, in the management of health and safety with fatal consequences.

Duty of care

Responsibilities for safety are a central part of the duty of the Yacht Master and every crew member. The standard for duty of care is difficult to define, some requirements are specifically laid down in law, others arise as a result of legal precedents set in claims and prosecutions recognised as valid by the civil and criminal courts.

As a minimum it requires every person to take reasonable care to avoid acts or omissions which you could reasonably foresee would be likely to injure persons directly affected by your actions.

For the master of a yacht this is a very high standard indeed as there are many statutory and recognised civil law duties which must be complied with. Failure to meet the required duty of care can result in both civil and criminal law breaches and consequences.

Reasonable care

The idea of 'reasonable care' is intended to be a kind of test to establish whether someone has failed in their duty of care mentioned above. All of us must moderate our behaviour so that we do not harm others, whether we are walking down the street, driving a car or driving a yacht. The more senior we are in an organisation the more responsibility we have in this respect. If something goes wrong and someone suffers as a consequence a civil court will try to establish why it happened. If it was a deliberate act then this is a tort and is relatively simple to judge. If it happened accidentally then the court will try to see if a 'reasonable' person could have foreseen the consequences. If the court decides that the consequences **should** have been foreseen then it may regard the person responsible for managing the organisation as 'negligent' for not taking action. When delegating tasks, or carrying out any function as a Master an individual must exercise reasonable care. Crew members must likewise exercise reasonable care in performing their duties. The nature of reasonable care has been thoroughly explored by the courts. 'Reasonable care' may be defined as the duty of guarding against **reasonably foreseeable dangers**. It is not concerned with dangers that an individual did or did not *actually* foresee but with what the law deems in the circumstances *should* have been foreseeable.

An example of this in practice is carrying out a full risk assessment for a task to identify any foreseeable hazards, then introducing control measures and a written procedure for the task.

Non delegable responsibility

The Master has a responsibility to ensure the safety of the yacht and all those onboard at all times. Obviously the Master cannot personally carry out every task himself, various tasks will be delegated to and performed by crew members. It is important to recognise that when a task is delegated, the responsibility for it remains with the Master. For example he may be held liable for being negligent in choosing to delegate a task to a particular individual not qualified or suited to it or for failing to supervise or arrange supervision for such an individual.

Vicarious liability

A vicarious liability is one which arises through the actions of another. Civil liability for a negligent act can rest not only with the wrongdoer, but with anyone linked to them. For example a yacht owner appoints and employs a Master so is responsible for that appointment, the Master hires and organises the crew so is responsible for them and their actions. Every individual may be held personally liable for the consequences of their actions, additionally anybody with a vicarious link may be held liable.

1:(c) Basic criminal law procedure and offences

Criminal and Civil proceedings take place in different courts and have different procedures. Small value civil claims are heard in the County Court, higher value civil claims in a Civil Division of the High Court such as the Admiralty Court.

Criminal trials take place in the Magistrates Court or in the Crown Court depending upon the severity of the alleged crime. Minor offences are dealt with by Magistrates in the Magistrates Court. Serious offences are subject to trial by jury in the Crown Court.

In the case of a Crown Court hearing there will first be a preliminary hearing in the Magistrates Court to decide upon the seriousness of the crime and whether there is a case to

answer. If it is judged that there is, then a Bill of Indictment will be drawn up which informs the accused of the charges against him. In the Crown court, if the defendant pleads not guilty, a jury will hear the case and decide upon guilt or innocence. The judge acts as a sort of referee. He is not allowed to ask questions like 'did you kill that man?' That is for the prosecution lawyers (on behalf of the state) to prove and the defence lawyers (on behalf of the defendant) to disprove. Then, based on the evidence presented to the court, the jury decide whether the accused is guilty or innocent. They too are not allowed to ask any questions; they must just sit and listen to the evidence presented by the prosecution and the defence. The importance of the jury is a feature of Common Law systems.

Trials in magistrates courts are said to be conducted under 'summary procedure', that is to say the presiding magistrates act as both 'judge and jury', they decide matter of law and matters of fact. Summary procedure is quicker but is normally only used to try relatively minor offences.

An important exception to this is the additional power granted to Magistrates Courts to try more serious offences when Merchant Shipping regulations are breached and to impose much harsher punishments on those who breach Merchant Shipping regulations.

If there are justifiable grounds, an appeal against a conviction in a Criminal Court or ruling in a Civil Court may be made in the relevant Court of Appeal. The Supreme Court is the highest level in the UK court structure. Law Lords make rulings in the Supreme Court on points of law and interpretation of laws referred to them by the Court of Appeal in both Criminal and Civil law matters. While the Supreme Court is not a law making body (Parliament actually makes the law), it does have a significant influence on how the law is interpreted and applied.

There is a scale of punishments for offences under Merchant Shipping law which can be applied under summary procedure in a Magistrate's Court. The statutory scale of punishments is as follows. This can be changed by the secretary of state from time to time.

- Level 1 £ 200
- Level 2 £ 500
- Level 3 £ 1000
- Level 4 £ 2500
- Level 5 £ 5000

Certain offences carry much heavier penalties, including prison sentences of up to two years. These are also upon trial in a magistrate's court and are an example of offences where the additional power of the Magistrates Court could be used against seafarers.

£250 000 offences

- Illegal discharge of oil in UK territorial waters

£50 000 offences

- Concealing British Nationality
- Causing a ship to appear British
- Failure to assist after collision
- Ship dangerously unsafe in UK port
- Disregarding government orders after incident

- Entering or leaving port without an OPIC certificate. (tankers)
- Leaving UK after a detention order
- Carrying passengers in excess of number permitted.
- Proceeding against the flow in a Traffic Separation Scheme

£ 25 000 offences

- Illegal discharge of NLS in UK waters
- Illegal disposal of garbage ANYWHERE on a UK flagged vessel.

Conviction of a criminal offence in the Crown Court can result in a prison sentence, up to a “life” sentence, and / or unlimited fine.

The diagram below summarises the structure of the English legal system. There is a very similar but quite distinct system for Scotland and for Northern Ireland.

1:(d) The role of the MCA and the MAIB

The **Maritime and Coastguard Agency (MCA)** is an Executive Agency within the UK Government Department for Transport, reporting to the Secretary of State for Transport (a senior Government Minister). The Agency's headquarters are in Southampton, with a network of Rescue Co-ordination Centres and Marine Offices throughout the UK. It provides a 24 hour maritime search and rescue service and operates a pollution response unit.

The responsibilities of the MCA include (but are not limited to):

- The safety of all UK registered vessels and any vessel or persons in UK waters
- The enforcement of UK Merchant Shipping law and International Conventions
- Enforce standards for ships and seafarers
- Prosecute through the criminal court those who breach the regulations
- Conduct surveys and issue safety certificates to ships
- Set standards for training and issue certificates of competence in accordance with STCW 95 and hold inquiries into the conduct of certified persons
- Advise the government on legislation and amendments to regulations
- Communicate regulations and information to the shipping industry through M notices and Codes of Practice
- Provide for pollution prevention and response to pollution
- Supervise the administration of the British Red Ensign Group of shipping registers

The **Marine Accident Investigation Branch (MAIB)** is **not** part of the MCA. The sole purpose of the MAIB is to investigate marine accidents on UK registered ships (anywhere in the world) and any ship of any flag in UK waters and report on its findings. It reports directly to the Secretary of State for Transport on its investigations. The MAIB has the primary function of learning lessons from its investigations to improve maritime safety, and not to apportion blame or bring prosecutions.

The MCA may also investigate accidents, and does have an operating agreement with the MAIB on sharing of technical information, but will focus its investigations on any significant breaches of Merchant Shipping legislation and must gather its own evidence to bring criminal prosecutions if necessary. Accident reporting and investigation is covered in Section 2 Topic Statutory Safety Duties.

1:(e) Merchant Shipping Acts, SIs, M-Notices, LY2.

Parliament and Acts of Parliament

The English Parliament sits in two houses, the House of Commons and the House of Lords.

The House of Commons is made up of elected representatives known as Members of Parliament (MPs) and has the greatest political power. The second part of Parliament is the House of Lords, whose unelected members complement the work of the House of Commons. Both Houses must agree, through a debating and voting procedure, for a law to be passed. The third and final part of Parliament is the Queen, a symbolic figurehead, who gives Royal Assent (signs off) the laws that Parliament votes for and passes.

When an Act of Parliament has been passed and comes into force it becomes Law, it is a criminal offence to breach any regulations made by it. Such regulations impose Statutory obligations which we must all comply with. For example the **Merchant Shipping Act** sets out rules and regulations for operating ships (including commercially operated yachts).

Statutory Instruments (SIs)

Acts of Parliament often confer powers on Government Ministers to make more detailed orders, rules or regulations by means of **Statutory Instruments**. The scope of these powers varies greatly, from the technical (e.g. to vary the dates on which different provisions of an Act will come into force, to change the levels of fines or penalties for offences or to make consequential and transitional provisions) to much wider powers such as introducing new regulations. Often, Acts only contain a broad framework and Statutory Instruments are used to provide the necessary detail that would be considered too complex to include in the body of an Act. Secondary legislation can also be used to amend, update or enforce existing primary legislation.

Statutory Instruments are just as much a part of the law of the land as an Act of Parliament. The Large Commercial Yacht Code, for example, was introduced through a Statutory Instrument to add laws onto the existing Merchant Shipping Act.

The role of the MCA

While Parliament makes the law, it is the Government (made up of the political party with a majority of MPs) which runs the country and makes sure that laws are kept up to date and complied with. The Government is divided into various Departments which look after different areas of concern. There is a Department for Transport which includes a division for Shipping. The MCA is an Agency of the Department for Transport and as stated earlier acts on behalf of the Department for Transport to fulfill various roles.

One of those roles is to provide an interpretation of Merchant Shipping laws and to communicate information to the marine industry on relevant rules and regulations, and how to comply with them. This is achieved through the publication of Marine Notices (**M Notices**) and various **Codes of Practice**.

There are three types of M Notices; Merchant Shipping Notices (**MSNs**), Marine Guidance Notes (**MGNs**) and Marine Information Notes (**MINs**). These Notices publicise to the shipping and fishing industries important safety, pollution prevention and other relevant information. Within each series of Marine Notices suffixes are used to indicate whether documents relate to merchant ships or fishing vessels, or to both. The suffixes following the number are: (M) for merchant ships and (F) for fishing vessels, (M & F) would apply to all types.

Merchant Shipping Notices (MSNs)

Merchant Shipping Notices are used to convey **mandatory information that must be complied with** under UK legislation. MSNs relate to Statutory Instruments and often contain the fine detail of UK law and are legally enforceable when referred to by a SI.

Marine Guidance Notes (MGNs)

Marine Guidance Notes give significant advice and guidance relating to the improvement of the safety of shipping and of life at sea, and to prevent or minimise pollution from shipping. MGNs are not legally binding but give guidance and strong recommendations about best practice to industry on interpretation of law and general safety advice. There are frequently MGNs issued which have direct relevance to masters of yachts.

Marine Information Notes (MINs)

Marine Information Notes are intended for a more limited audience e.g. training establishments or equipment manufacturers, or contain information which will only be of use for a short period of time, such as timetables for MCA examinations. MINs are numbered in

sequence and have a cancellation date (which will typically be no more than twelve months after publication).

Any relevant MSNs and MGNs are required to be carried on board (except private pleasure vessels of less than 150gt). They are available to download from the MCA website or by post with a subscription service and the MCA also provide a free electronic subscription service by email update.

The Large Commercial Yacht Code (LY2)

The MCA summarise Merchant Shipping regulations into various Codes of Practice for different classes of vessels, including one for commercially operated yachts.

Following the Statutory Instrument enabling legislation, MSN 1792(M) introduced the latest version of the Large Yacht Code (LY2) and, as an MSN is legally enforceable, all yachts over 24 metres Load Line length, both motor and sail, **must** comply with it if commercially operated (ie offered for charter).

The Code sets down standards for construction, fire prevention, safety equipment, navigation and ancillary equipment, stability criteria, pollution prevention and manning levels. A survey is required to show compliance with the Code, after which a Certificate of Compliance is issued.

The Code incorporates standards required to comply with International Conventions such as Load Line, SOLAS and STCW but has modified these standards, which were originally drawn up for merchant ships, so that yachts can comply with them. As a result, any yacht which must carry an International Convention certificate (in addition to the Certificate of Compliance with the Code) may have it issued on the basis of compliance with the Code. Certification requirements are covered in more detail in Section 2 Topic 4.

Commercial yachts of less than 24 metres must comply with the Small Commercial Vessel Code. Private yachts are recommended to comply with the appropriate Code.

1:(f) The Official Log Book (OLB)

The registration of a ship (or yacht) with a particular country provides for an extension of the legal jurisdiction of that state onto the ship wherever it may be in the world. The Master of a British yacht is responsible for ensuring that British law (the flag state law) is observed on board at all times. This is a general duty but Merchant Shipping regulations require certain specific actions and events to be recorded, in writing, in an **Official Log Book**. One purpose of the logbook is to provide a place to record matters which are required to be recorded ashore such as births and deaths. Another purpose is to provide a public record of the action taken within the vessel to conform to Merchant Shipping legislation. (such as carrying out musters and drills, the draught of the vessel on sailing, inspections of accommodation, food and steering gear – see below). Another section is for recording details of issues relating to crew employment or accidents and incidents which occur onboard. The **Official Log Book Regulations** describe exactly what these circumstances are. The Official Logbook is a public document, which means it does not belong to the owner or to the master but to the Crown (the state). For this reason it must be returned to the Registrar of Shipping and Seamen in Cardiff when finished and may be accessed by the public thereafter.

An Official Log Book is required to be carried on all United Kingdom registered commercial vessels and all other UK vessels over 25 gt. (private pleasure yachts are exempted but charter yachts are regarded as commercial vessels). **All commercially operated yachts of more than 25gt must therefore keep an OLB.**

The Official Log Book Regulations

The Merchant Shipping Act 1995 requires that Official Log Books be kept in accordance with the Merchant Shipping (Official Logbooks) Regulations 1981 (as amended). This means that any failure to keep the OLB or follow the OLB Regulations is a criminal offence.

Making, signing and witnessing of entries

There are over forty occasions listed in the regulations which require an entry in the OLB. Every entry must be made in indelible ink as soon as possible after the event. It must be made by the person specified in the Regulations. (normally the Master but the Master may authorise a senior Officer to make some entries). Every entry must be signed. Most entries must also be witnessed and signed by a person as specified in the Regulations. A Schedule attached to the Regulations lists which persons must make and witness each type of entry.

If an entry requires a lengthy explanation, such as details of an accident, it may be written in a separate document annexed to the OLB by reference number and referred to by an entry in the OLB. The same rules apply to what is written in the annexed document.

It is a criminal offence to fail to make, sign or witness an entry, it is also an offence to delete, amend or cancel anything once it is written. Any correction or amendment must be made by making a new entry giving the correct details and referring to the previous entry as cancelled. Any person mentioned in the original entry must be informed of the amended entry.

A new OLB must be started each time a new Crew Agreement is started. For yachts this is normally once a year. (Crew Agreements are discussed in Section 3 Topic 11). It must be kept onboard at all times and be available for inspection by an authorised official or customs officer. On completion (at the end of or renewal of the Crew Agreement) it must be delivered to the office of the Registrar General of Shipping and Seamen in Cardiff within two days.

As the OLB Regulations are quite detailed and the OLB itself is such an important legal document, it is useful to have a copy of the Regulations for reference when making entries.

The front cover of the OLB must be filled in with; details of the vessel, its port of registry, official number and gross tonnage; name and address of owner or managing company; name of the Master and the number of his certificate of competence; date of opening and closing of the book.

The first section of the of the book has pages with headings dedicated to certain entries such as list of crew, record of births and deaths, records of musters and drills, testing of emergency steering gear, load line details and draught, inspections of crew food, fresh water and accommodation etc. This shows that certain statutory obligations laid down in various Merchant Shipping Regulations have been complied with, for example the Merchant Shipping (Musters, Training and Decision Support Systems) Regulations SI 1999 No. 2722 requires, amongst many other things, that you have a muster drill and a fire drill every month. There is a section in the OLB set aside to record this.

The second part of the OLB comprises the narrative section. There are no specific headings for these pages, the OLB regulations specify the types of entry that must be made here. The first entry is always that the crew agreement has been started and the last that it has been closed. Any seaman joining or leaving the vessel must be recorded here. Any accident or injury, breach of the law, complaint, receipt of a distress message and action taken, a collision, grounding, breach of a contract etc. etc. This is by no means exhaustive and students will encounter many other occasions when an entry in the OLB is required or advisable as they work through this book.

The complete Schedule, detailing what must be entered, when and by whom, as set out in the Official Log Book Regulations (1981) and subsequently amended in 1983, 1985, 1991, and 1997 can be downloaded from www.legislation.gov.uk

Topic 2: Arrival and departure

The syllabus for this topic is as follows:

- w) Demonstrates an understanding of the documentation required for arrival in port. e.g. Customs Declaration, Crew List, Clearance Documents.
- x) Demonstrates an understanding of the circumstances giving rise to a mandatory health report, and the procedure to be followed before arrival, on arrival and until health clearance is obtained.
- y) Demonstrates an understanding of the role of the International Maritime Declaration of Health.

2:(a) Documentation required for arrival in port

The following is not a comprehensive list of documents which may be required to be produced, that will depend on the size of yacht and type of operation. This section covers the basic reporting to Customs and Health authorities which all yachts must comply with.

The United Kingdom Revenue and Customs require the Master (or a shipping agent appointed by the Master to act on his behalf) of a commercially operated vessel which is:

- Carrying goods or cargo which have not been cleared into the European Union
- Carrying duty free stores
- Carrying passengers
- Paying off crew in a UK port

to report to them when arriving from a port outside of the United Kingdom. All vessels arriving from outside the European Union **or** from another European Union country **must** report at a 'designated place' (customs office or customs post box) within:

- **3 hours** of reaching a berth. If the office is closed, within one hour of it opening
- 24 hours if waiting for a berth
- Or when requested by a customs officer visiting the vessel

Vessels operating an 'authorised regular shipping service' within the EU are not required to report but this is unlikely to include yachts.

Standard reporting procedures and forms to use for reporting apply to all European Union member states following the introduction of Directive 20002/6/EC in 2003. Other countries may have slightly different formalities, clearing agents are useful for finding the exact requirements and forms to be filled in, there are standard IMO forms which will normally be used. The same subject areas will always need to be considered for arrival in any country.

Customs Declarations

All vessels required to report must use the following forms as appropriate for both arrival and departure:

- General declaration - IMO FAL form 1 (C94)
- Ship's stores declaration - IMO FAL form 3 (C95)
- Crew's effects declaration - IMO FAL form 4 (C96)
- Crew's list - IMO FAL form (C97)
- Passenger list - IMO FAL form 6 (C98)
- A cargo declaration

Extra copies of some or all of the report forms may be requested. Local customs at your port of arrival will be able to advise you if additional copies are required.

There are heavy penalties for making a false declaration and the person signing the forms is declaring that the particulars entered or accompanying the forms are true and complete.

General declaration – IMO FAL form 1 (C94)

This form is used to provide information relating to the identity and nationality of the yacht, departure and arrival ports, details of voyage, number of persons onboard and whether cargo, livestock or birds are being carried. The form must be signed either by the Master or a person authorised and acting on the Master's authority.

Ship's stores declaration – IMO FAL form 3 (C95)

This form is used to provide information relating to ship's stores on arrival. A separate declaration should be provided for each store-room or location within the vessel that is used to store ship's stores. The person responsible for checking the ship's stores should complete the form and the Master should sign the form. Alternatively the officer who has personal knowledge of the stores, and is authorised by the Master, may sign the form. The number of ships stores declaration forms completed should be included in Box 18 of the general declaration form 1.

Crew's effects declaration – IMO FAL form 4 (C96)

This form is used to provide information relating to crew's effects. Each member of the crew is only required to complete this form in respect of any effects that are in excess of their traveller's allowance or subject to prohibitions or restrictions. The goods declared cannot be landed in the UK unless duty is paid and any licensing requirements are fulfilled. If a crew member is being paid off or going on leave, goods in excess of their allowance must be produced to a customs officer. Each person making a declaration on this form signs their declaration, and when all the individual declarations are complete, the form should be signed by the Master or a person authorised by the Master stating the declaration is complete.

Crew list – IMO FAL form 5 (C97)

This form is used to provide information relating to the number and composition of the crew.

Passenger list – IMO FAL form 6 (C98)

This form is used to provide information relating to passengers on vessels that are certified to carry 12 passengers or less. The form can be used on arrival and departure. Some ports may accept a dual-purpose declaration for arrival and departure, if the passengers are identical and the vessel is in port for only a short stay.

Copies of all the forms used in the ship's reporting formalities are available from the port customs office. They can also be requested by telephone from the National Advice Service on 0845 010 9000 which operates between 8.00am and 8.00pm, Monday to Friday. Copies of the forms are also available on the Customs and Excise website www.hmce.gov.uk. They are under the relevant C form reference.

Safety Certificates

Safety certificate checks are part of the existing Maritime and Coastguard Agency (MCA) Port State Control checks that all vessels must conform to. There is an obligation on Masters to comply with safety conventions that are to an agreed international standard. All safety

certificates must be valid and in date ready to present to customs. Safety certification is covered in Section 2 Topic 4.

Private yachts

Pleasure vessels used for recreational purposes only, which are not commercially operated, do not need to report to UK customs if they are arriving from a port within the European Union **unless** there is something to declare.

There may be immigration issues to address as the UK is **not** party to the Schengen Agreement under which border controls on persons between Schengen members have been abolished. Consequently, travellers from the UK to a Schengen country or those leaving for the UK from one may find that they are subject to additional checks when overseas because of the Schengen commitment to reinforcing frontiers between Schengen members and countries which are not party to the Agreement.

The UK Border Agency is responsible for securing the UK border and controlling immigration in the UK. They work with UK Customs officers enforcing immigration and customs regulations. They have the right to stop, board and search any vessel in UK waters and demand documents to prove identity and status of individuals and the boats papers and tax status.

When arriving in the UK direct from a country outside the EU (the Channel Islands are regarded as outside the EU for this purpose), you must phone the **National Yacht line on 0845 723 1110**.

You will need to inform the Yachtline if **any** of the following apply:

- You are arriving from outside the EU
- VAT has not been paid on the vessel
- You have any goods in excess of the travellers' allowance (alcohol, tobacco etc)
- You have on board goods which are to be treated as duty free stores
- You have any prohibited or restricted goods
- There is any notifiable illness on board
- There are any people on board who need immigration clearance
- Any repairs or modifications, other than running repairs, have been carried out since the vessel last left the EU

You will need to comply with any further instructions that you are given. If departing to or arriving from outside the EU the National Yachtline will ask you to complete form C1331 which can be obtained from the HM Revenue & Customs website at www.hmrc.gov.uk or by calling the VAT, Excise & Customs helpline on 0845 010 9000. The form may also be available from some local yacht clubs and marinas.

Prohibited and restricted goods

The following goods are subject to import prohibitions and restrictions, applicable to both commercially and privately operated yachts:

- Controlled drugs such as opium, heroin, morphine, cocaine, cannabis, etc
- Counterfeit currency
- Firearms, ammunition and explosives. Special licences and declarations are required if carried. The MCA recommend firearms not be carried on British registered vessels
- Flick knives and any knife which has a concealed blade or concealed sharp point and is designed to appear to be an everyday object plus some martial arts type weapons or any offensive weapon

- Indecent or obscene materials featuring children and pornographic material depicting adults (other than that which can be legally purchased in the UK)
- Most animals and birds, whether alive or dead. Health report required, see below
- Certain articles derived from rare species including fur skins, ivory, reptile leather and goods made from them
- Meats, milk (whether fresh or dried), fish and poultry and most of their products (whether or not cooked) from outside the EU
- Plants, bulbs, trees, fruit, potatoes and other vegetables
- Radio transmitters not approved for use in the UK

Cash carried on board of more than 10,000 euros (or equivalent in other currencies) must be notified to customs.

Consolidated European Reporting System (CERS)

Although CERS is outside the scope of the syllabus for this course, it should be noted that there are additional reporting requirements under EU regulations, ships of 300gt or more and recreational yachts of 45 metres or more bound for UK port (or any EEA port) must notify the port 24hrs in advance of arrival of:

- Ship identification (name, call sign, IMO identification number or MMSI number)
- Port of destination
- The estimated time of arrival
- The estimated time of departure
- The total number of persons on board the ship

CERS also contains additional Accident and Dangerous Goods reporting requirements

2:(b) Mandatory health reporting

Port Health Authorities enforce a wide range of international, European and domestic legislation at ports and aboard vessels carrying passengers and freight.

International health controls are in place prevent the spread of infectious disease from vessels, seafarers and passengers into a country. The principal legislation that applies to ships arriving from outside the UK is the Public Health (Ships) Regulations 1979 (as amended) which implement the provisions of the International Health Regulations.

These regulations require that port health is notified of any cases or symptoms of infectious disease aboard a vessel before it arrives in port. This can be done by the submission of a **Maritime Declaration of Health** form to the port health authority. This enables arrangements to be made for a medical officer to visit the ship, assess the patient and initiate controls to stop disease being introduced into the UK. A Maritime Declaration of Health is not required if there are no cases or symptoms of infectious disease.

There are also controls over conditions aboard vessels aimed at preventing public health hazards for crew and passengers. The International Health Regulations require that ships must have a valid **Ship Sanitation Certificate**. This is renewed every six months. Inspections must be carried out at a designated port.

Inspections of all ships that travel internationally are required to ensure that vessels are properly managed, are free from pests and disease and that food is stored and prepared hygienically. Water supplies to ships and aboard vessels are also monitored. In circumstances that pose an imminent risk to health, port health will work with the Maritime and Coastguard Agency to detain the ship until remedial measures have been taken.

Circumstances requiring a health report

It is the responsibility of the master to assess the health status of his vessel before entering a UK port. If there is reason to believe the vessel may be carrying an infectious disease or any of the following circumstances apply to the vessel it is the duty of the Master to report the matter to the Port Health Authority. The report must be made by radio before arrival, not more than 12 hours and not less than 4 hours before the ships ETA in port.

- Any death onboard other than by accident
- An illness involving a temperature in excess of 38° C, diarrhoea, rash, glandular swelling or jaundice persisting more than 48 hours
- The presence onboard of someone suffering from an infectious disease or who has symptoms which indicate an infectious disease. [Infectious Diseases are defined for the purpose of these rules as Bubonic Plague, Rabies, Cholera, Yellow Fever, Smallpox, Lassa Fever, Viral Hemorrhagic Fever, Marburg Disease or any infectious or contagious life threatening or notifiable disease other than Venereal Diseases or Tuberculosis]
- Any animal or captive birds onboard or mortality or sickness amongst such, including rodents
- Any other notifiable condition or circumstance likely to cause the spread of an infectious disease

Further advice can be found in the Ship Captain's Medical Guide.

2:(c) International Maritime Declaration of Health

If one or more of the above circumstances apply then health clearance will be required before any person can embark or disembark with the exception of the pilot, Customs Officer, health official etc. The vessel will be boarded by a Port Health Official who will require the Master to complete the International Maritime Declaration of Health form. This is a formal declaration of the condition of the ship. It is a serious offence for the master to fail to declare a reportable condition under the health rules.

The Maritime Declaration of Health contains basic data relating to the state of health of crew and passengers during the voyage and on arrival at the port, and provides information on:

- Identification of the ship
- Ports of call within past 30 days
- All crew members and travellers within past 30 days
- Validity of the existing Ship Sanitation Certificate and whether re-inspection is required
- Affected areas visited
- Details of any reportable problem

The vessel will also need a valid Ship Sanitation certificate. On the basis of his examination the Port Health Official will either issue a certificate of *Free Pratique* or place the vessel in quarantine. A vessel which has to request health clearance must enter port flying international code QQ in the daytime or a red over white all round light at night time.

Ship Sanitation Certificate

International Health Regulations require all vessels to have a Ship Sanitation Certificate. This verifies that the vessel is free from infestation by rodents and insects etc, free from harmful bacteria which could contaminate food and water or cause illness or disease and that good hygiene standards are maintained so there is no threat to health onboard and no risk of carrying a health problem into port which could spread ashore.

The certificate is issued by an official authorised by the Port Health Authority. It is valid for six months but may be extended by not more than one month in order to reach a port for inspection. There are two types of Ship Sanitation Certificate:

Ship Sanitation Control Exemption Certificate: issued when no evidence of a public health risk is found on board and the competent authority is satisfied that the ship is free of infection and contamination.

Ship Sanitation Control Certificate: issued when evidence of a public health risk, including sources of infection and contamination, is detected on board and after required control measures have been satisfactorily completed, the SSC must record the evidence found and the control measures taken.

Areas subject to control include:

- Galley
- Pantry and stores
- Food and drinking water
- Waste
- Holds
- Quarters, crew members and officers
- Sewage
- Ballast tanks
- Standing water
- Engine rooms
- Swimming pools and spas
- Medical facilities
- Medical waste

Topic 3: International Law

The syllabus for this topic is as follows:

- a) Can define territorial waters, inland waters and high seas as defined in UNCLOS.
- b) Can describe what is meant by 'freedom of the high seas'.
- c) Demonstrates an understanding of the rights and obligations of Flag State and Port State.
- d) Demonstrates an understanding of the importance of the geographical position of the yacht, the nationality of the crew and of the flag of the yacht in determining criminal jurisdiction.
- e) Demonstrates an understanding of the way international conventions can be policed, the nature of 'innocent passage' and when this may be denied.
- f) Can describe in general terms the role of Port State Control organisations.
- g) Demonstrates an understanding of the role of the UK Register in Cardiff and how to apply for a Certificate of Registry.
- h) Can distinguish between a United Kingdom registered yacht and a British yacht. Has a general understanding of the relationship between the United Kingdom and the Crown Dependencies and British Overseas Territories with reference to the statutory regulation of British yachts.
- i) Demonstrates an understanding of the contents of the MCA publication "A Master's Guide to the UK Flag – Large Yacht Edition".

International Law is a set of standards expected of nations, rather than individuals, which have evolved over time since people began trading goods across borders. Made by custom

and more formally by **International Conventions** these standards lay down rights and obligations of nation states in their dealings with other nations.

The **United Nations Convention on the Law of the Sea (UNCLOS)** comprises 320 articles and nine annexes, governing all aspects of ocean space, such as delimitation of sea areas, environmental control, marine scientific research, economic and commercial activities, transfer of technology and the settlement of disputes relating to ocean matters.

The convention set the limit of various areas, measured from a carefully defined **baseline**. This baseline is normally the low-water line along the coast, but when the coastline is deeply indented, has fringing islands or is highly unstable, straight baselines may be used, for example across bays and estuaries a straight line may be drawn (to a maximum of 24 nautical miles) subject to certain conditions. Where states are composed of many islands there are special provisions for “archipelagic states”.

The base line is often a source of international discord. Waters that many countries would regard as international could be regarded by some as internal! If proceeding to a new area yacht masters are advised to research this in advance. The Annual Summary of Notices to Mariners has a section describing the claims of all nations who have registered a ‘territorial sea’ and other types of claim, which are explored below.

3:(a) Territorial waters, internal waters and high seas

Internal waters

Internal waters are all water and waterways on the landward side of the baseline. The coastal state has complete jurisdiction (ie the right and power to impose the law) and is free to set laws, regulate use, and use any resource. Foreign vessels have no automatic right of passage within internal waters but there are limited rights of innocent passage in cases of distress, breakdown or other emergency.

Such waters are not subject to international conventions so there may be different rules for the conduct of vessels in different places, for example on the US intra coastal waterway or on the river and canal network in Europe where the CEVNI rules apply.

The coastal state’s laws take precedence over (but do not erase) those of the flag state. In practice countries usually limit their intervention in the affairs of foreign flagged vessel within their internal waters to those matters which extend beyond the vessel and affect order or security ashore.

While international conventions do not apply in internal waters, the coastal state has a right (and a duty if part of the Port State Control regime – discussed later) to inspect vessels to ensure minimum safety standards as agreed in various conventions are being complied with.

Territorial waters

Territorial waters extend out to 12 nautical miles from the baseline. The coastal state is free to set laws, regulate use, and use any resource. Vessels have the right of **innocent passage** through any territorial waters. Innocent passage is defined by convention as passing through waters in an expeditious and continuous manner, which is not “prejudicial to the peace, good order or the security” of the coastal state. Fishing, polluting, weapons practice, and spying are not “innocent”, and submarines and other underwater vehicles are required to navigate on the surface and to show their flag. Aircraft operations are not permitted without prior authorisation. Some strategic straits are defined as **transit straits** (eg straits of Gibraltar) and allow for the passage of military craft. Nations can also temporarily suspend innocent passage in specific areas of their territorial seas, if doing so is essential for the protection of its security.

High seas

The high seas are all waters outside the territorial waters (unless a nation has claimed a 24 mile Exclusive Economic Zone, see below).

3:(b) Freedom of the high seas

Freedom of Navigation includes the rights of ships of all flags to freely navigate international waters, exercise innocent passage in territorial waters, or conduct transit passage through international straits. It is upon such navigational freedoms that the shipping industry relies in order to conduct international maritime trade.

Freedom to navigate without interference on the high seas is a recognised right under international law. No state may subject any part of the high seas to its exclusive sovereignty - however it is the duty of every state which allocates its nationality to a vessel to ensure that the vessel conforms to international law. In International Waters (the high seas) the law of the flag state is paramount. All states may take action on the high sea against vessels engaged in piracy or slavery and in self-defence. There are also certain measures, made by treaties between nations, against drug trafficking and illegal broadcasting.

There are further sea areas, not part of this course of study, which Masters should be aware of:

Archipelagic waters around an archipelagic state (a group of many islands in a large body of water) can be designated in a slightly different way. A baseline is drawn between the outermost points of the outermost islands, subject to these points being sufficiently close to one another. All waters inside this baseline are designated archipelagic waters. The state has full sovereignty over these waters (like internal waters), but foreign vessels have right of innocent passage through those waters (like territorial waters).

Contiguous zone is a zone that reaches from the territorial sea out to a maximum of 24 miles from the baseline. It permits a limited extension of jurisdiction sanctioning certain enforcement measures where a nation's pollution, taxation, customs or immigrations laws are challenged.

Exclusive economic zone (EEZ) and **Continental shelf** areas allow the coastal state to exercise certain sovereign rights out to 200 to 350 miles from the baseline, with regard to the exploration, exploitation, conservation and management of natural resources, such as fish stocks, oil and gas reserves and coral. Pollution or damage to such natural resources could result in the coastal state jurisdiction extending far beyond the traditional 12 mile limit. The freedom of navigation in these areas is expressly preserved.

The most practical consequence of this for the yacht captain is the jurisdiction that they could be subjected to after a pollution incident.

3:(c) Flag State and Port State obligations

The Flag State

The 'Flag State' is the country with which a yacht is registered. Registration gives a nationality and identity to the yacht and places an obligation upon it to comply with all laws and regulations required by that particular state, at all times and wherever it may be. The flag state also has obligations towards vessels registered with it, protection and assistance overseas for example.

Another important obligation of the flag state under international law is to ensure that if a vessel goes on an international voyage (ie out of it's own territorial waters onto the high seas or into another country's territorial waters) the **flag state** must ensure it is in compliance with not just it's own regulations but any recognised international safety standards and

conventions. The flag state must therefore have a system for surveying vessels to verify that they are properly constructed, equipped and manned then issued with certificates to show compliance with all recognised international safety standards and conventions. (The certificates required are discussed in topic 4).

The flag state is also obliged to investigate and take any necessary legal action against its own vessels if they are involved in collisions or other incidents or illegal acts whilst on international voyages.

The Port State

The 'Port State' is the country within whose waters a yacht or ship is actually positioned. Theoretically all vessels will be properly certified controlled and by the flag state. Some states however are not so strict in their survey and certification regimes (known as flags of convenience) and some ship operators are equally lax in making sure their vessels are properly surveyed and certified (to save money and inconvenience). The port state plays an important role in ensuring that vessels are complying with the required international standards by checking that vessels using their waters do have valid certificates and by conducting inspections and surveys, with the power to detain vessels which are sub standard. Under port state control agreements between nations (set out in a 'memorandum of understanding') ships are checked on an organised and systematic basis, with an obligation for port state authorities to provide authorised inspectors and achieve a certain number of inspections each year, and to share information with other countries. Port state control is discussed further below in point 3(f).

3:(d) Jurisdictions at Sea - Determining factors

Ships operate in an international arena moving from the control and jurisdiction of one country's legal system to that of another so the country whose laws a ship operator and ships crew must comply with at any one time depends upon one or more of the following factors:

Geographical position

As previously mentioned, if the geographical position of the yacht puts it in the territorial waters or internal waters of another state, that state (the port state) may exercise its right of jurisdiction.

Nationality of the yacht

A ship registered in a particular country assumes the nationality of that country (the flag state) and is subject to its control and jurisdiction wherever the ship is located.

Nationality of the crew

Everyone is subject to the laws of their country, wherever they are in the world. With the exception of serious offences such as murder or manslaughter, the *criminal* law will not normally be applied outside the territorial jurisdiction. A Criminal act, taking place on board a UK registered ship, however, is treated as if it occurred on the UK mainland. Where there is some question as to a person's professional competence international law recognises the exclusive right of the flag state to suspend or otherwise any certificate of competence that it has issued to that individual.

3:(e) International conventions and innocent passage

International conventions

An international convention is a meeting of the representatives of sovereign states to discuss policy on a particular matter of universal concern. It could be human rights, medical care, telecommunications standards or merchant shipping. There are various international bodies under whose auspices these conventions usually take place. The World Health Organisation, The International Labour Organisation are examples. Many (but not all) of the conventions that affect shipping are under the aegis of the International Maritime Organisation.

The mechanism for the establishment of an international convention begins when a particular concern is identified and discussed through diplomatic channels. Each concerned nation will work out draft proposals, which will then be negotiated at a meeting of one of the international bodies mentioned above. Particular states will often take the lead at this stage and others will review what they have drafted. The next stage is the adoption of the agreed final draft by states that choose to be members of a convention. Representatives of government sign the final draft. The convention has no force in law until it has been adopted by the member nations. In the text of the agreement it will be made clear the conditions that have to be fulfilled for it to come into force internationally. Typically for shipping conventions when an agreed number of states have ratified the agreement, representing a set percentage of the worlds shipping, it automatically comes into force. Nations which refuse, for whatever reason, to ratify a convention can often effectively be bound by its conditions, for example when their vessels visit the waters of convention states.

Enforcement of Conventions

Some conventions outline policy on a particular matter in very considerable detail (the International Convention for the Prevention of Collision at Sea 1972, as amended, is a good example). Other conventions lay down broad guide-lines and general principles and leave it to individual countries to implement detailed policy. In the latter case the resulting laws can differ widely from state to state. A yacht of one country visiting the territorial waters of another is bound by the laws of that state. Fortunately in most circumstances coastal states will accept the certificates of a particular vessel as evidence of conformity with international conventions.

It is the duty of every flag state, which is a signatory to a convention to ensure its enforcement in the vessels on its register. Where a country discovers that a vessel is in contravention of an international agreement it may take action against it under its own laws or may report the ship to its flag authority, the flag authority is then bound to take corrective action against the ship.

One of the conditions for innocent passage through the waters of another country is compliance with the minimum standards set out in international conventions. Ships which fail to meet these standards may be denied the right of innocent passage or detained in port until they are brought up to standard.

3:(f) Port State Control

A number of international agreements have been enacted around the world aimed at the enforcement of maritime safety. **The Paris Memorandum of Understanding** "a common endeavour against substandard shipping" is one such agreement. It was initially a voluntary agreement signed by 15 European States and Canada and came into force in 1982. In 1996 a new agreement made it mandatory. The aim is for each state (there are now 27 member states) to ensure that foreign flagged vessels are inspected according to a risk profile based on its age, type, flag and record of prior inspections. A yacht is likely to be targeted for inspection if it has had poor results on last inspection, if it flies a flag of convenience from a black-listed state, if it has been involved in an incident on the way into port (such as colregs

infringement, accident, grounding or stranding) or if it has not been inspected in the last 3 years.

Port state control inspectors begin by examining all documentation required to show compliance with international conventions such as certificates and documents for Load-Line, Solas, Marpol, STCW and ILO. A general physical inspection of condition and particularly emergency equipment is then carried out. If there are any deficiencies, in either paperwork or physical condition, a more detailed and expanded inspection may be conducted.

A central computer in Brittany keeps track of which vessels have been inspected and when. The aim is to find unsafe ships and render them safe, punishing the owner/master if required. Vessels which fall short of the required standards will be subject to sanctions depending on the seriousness of the deficiencies found. These include the detention of the vessel in port, the suspension of its certificate(s), or the issue of improvement and prohibition notices which prevent the use of a specific practice/equipment until defects are rectified.

Port state control officers inspecting yachts which are below the size at which compliance with a particular regulation is required under international law will be guided by any flag state certification or documentation plus a review of the type of yacht, the type of voyages it undertakes, its condition, strength, watertight and weathertight arrangements, pollution prevention arrangements, stability, navigation & safety equipment and manning, following the same principles as above.

3:(g) The registration of ships

Registration is the means by which a nation extends its nationality to a vessel. Ships began to be registered in British law as a result of the first Navigation Act of 1660. These were designed to ensure that only vessels owned by British subjects were able to trade in certain British colonies. It became necessary to 'prove' that you were a British vessel and so a certificate of registry was born. Holders of these certificates are still entitled to certain privileges under the law (most notably the protection of the Royal Navy) but the function of the certificate now is also to impose some degree of control over the ship; certain conditions are required to be met before British nationality is extended to a vessel. The nature of conditions such as these varies considerably from country to country.

In International Law there is a requirement for there to be a genuine link between the vessel and the Flag state to facilitate proper control. In British Law the owners of the ship provide the link - they must be under British jurisdiction or have a representative in Britain.

Ships may not be registered under two flags at the same time.

Originally British Citizens were *obliged* to register their vessel as British. This is no longer the case, owners can register their vessels wherever they like. Consequently the Secretary of State, under the 1995 act, is no longer obliged to issue a certificate of British registry when one is applied for. He has the power to suspend or refuse the registration of a vessel on grounds concerning the condition of the ship and its safe operation. Once a ship has achieved British registration all foreign registrations must be terminated.

The Registrar may terminate a ship's registration if any of the following circumstances arise:-

- on application by the owner
- if the ship is no longer eligible to be registered as a British ship
- if the ship is lost or destroyed
- if the ship is unsafe or is a pollution risk
- if any penalty is imposed on the owner for an offence under the MS Act and has remained unpaid for three months and no appeal is pending
- if a summons has been served for an offence under an MS Act and the owner has failed to appear for the trial and three months has passed since he should have appeared.

Whenever the Registrar terminates a ship's registration he will notify the owners who must then return the Certificate of Registration.

The UK ship register

In UK law this is a title register and permanent **public** record showing:

- **A description of every ship.** Name, Length, Depth, Beam etc. type and construction, propulsion system among other things.
- **All registered owners of a ship** Only certain persons may own a British Ship (see below) and therefore be entered on the register. They will be listed together with their address.
- **All registered mortgages against a ship.** Shares in a ship may be used as security for a loan. The owner must complete and sign a special mortgage form issued by the Registrar General of Shipping and Seaman, the loan will then be registered.

The UK register is in four parts:

- Part I for merchant ships and pleasure vessels
- Part II for fishing vessels
- Part III for small ships (under 24 m in length)
- Part IV for bareboat charter ships

The UK shipping register (and the other British registers) are seen as 'open' registers which allows for registration by owners, both individuals and companies, who are not necessarily British, provided they meet certain criteria on where they are resident or the company is incorporated, provided there is an office or nominated representative in the UK (or other British territory where the yacht might be registered).

The following are qualified to be the owners of ships which are to be registered on the UK Ship Register:

- a British citizen or company
- a British Crown or Overseas Territories citizen
- Companies incorporated in one of the EEA countries
- Citizens of an EU member state
- Companies incorporated in any British Crown or Overseas Territories which have their principal place of business in the UK or those possessions
- European Economic Interest Groupings

When none of the qualified owners are resident in the UK, a representative person must be appointed who may be either an individual resident in the UK or a Company incorporated in one of the EEA countries with a place of business in the UK. Ownership of a British ship is divided into 64 shares (for historical reasons) and each share can be held by up to 5 owners. Not all of the owners have to meet the qualifying criteria but a majority of shares (at least 33) must be held by qualified owners.

The Certificate of Registry

The Certificate of Registry is a formal copy of the entry in the Register of British Ships either in Cardiff for UK registered vessels or in the relevant territory for other British vessels. It is a very important legal document which identifies the ship and gives it nationality. Unlike the Register itself, which is a public record, this document is a 'private' one and provides no proof of ownership nor does it provide any information concerning mortgages. If evidence comes to light that the owner(s) of the vessel are not qualified persons as defined above then this rebuts the assumption of lawful British registration. For most practical purposes the certificate is accepted on face value as evidence of the information written on it; so it can be used for effecting any operations of the ship where the vessel's tonnage or dimensions are of concern.

How to apply for a UK Certificate of Registry

The following summary is taken directly from the ship register website guide to registration:

Your first step will be to complete a ship registration proforma, which provides us with the necessary information to check your ship qualifies for UK registration.

If your ship does qualify, you will then be assigned a Customer Account Manager (CAM), who will be your dedicated point of contact for administration and general policy matters, and will guide you through the transfer of your ship on to the Register. In addition, you will also be assigned a Customer Service Manager (CSM) who will deal with the technical issues regarding the survey and inspection of your ship during the 'Flag-In' process.

Required documents for Part I registration

The following documents are required for Part I registration and can be obtained from the ship register website. Any documents used to support the application which are in a foreign language must be accompanied by a translation and must be certified as correct by a Public Notary.

Forms

- Application to Register
- Declaration of Eligibility

An Application Form must be filled out first which will invite the owner/s to propose a name (and alternatives), nominate a port of choice, give the approximate dimensions of the vessel and any details of previous registration and mortgages. A vessel's name is very important, the name chosen must be approved by the Registrar General of Shipping and Seamen. Two ships on the same register may not have the same name and the name must not be calculated to deceive or offend.

A Declaration of Eligibility form must be passed to the Registrar with the application form. This will contain the following items; a list of the owner(s) qualified to own a British registered ship and the number of legal shares possessed by each, a list of unqualified owners (if any), the representative person if the owners are not UK resident or the managing owner if any of them are and a series of declarations affirming the qualification of the majority of the owners to British registration.

Supporting Documentation

- Bill of Sale
- Copy of Certificate of Incorporation (if owner is a company)
- Certificate of Survey for Tonnage & Measurement
- International Tonnage Certificate (ITC69)
- Builders Certificate (for new builds)
- Deletion certificate/transcript from the current register or a written undertaking to provide one within six weeks
- Copy of the ship's current Continuous Synopsis Record
- Mortgage registration forms (if appropriate)

The vessel must undergo a measurement survey in accordance with the tonnage regulations. This survey must be conducted by a surveyor from an approved classification society e.g. Lloyd's Register of Shipping, the British Committee of Bureau Veritas, ABS, Det Norske Veritas, GERMANSHER LLOYD and RIINA. The certificate produced by the survey is required to provide the tonnage and dimensions information recorded on the registration document.

The application must be accompanied by the builder's certificate for the vessel. If it is new. If the builder's certificate does not mention the owner then additional proof will be required from the yard to link the owner to the vessel (a bill of sale or other receipts) If the vessel is not new then previous bills of sale showing the ownership of the vessel for the last five years must be produced OR if for any of that period the vessel was fully British registered, evidence supporting the ownership of the vessel when it was not British Registered. Copies are not acceptable unless notarised.

If the yacht is to be commercially operated, further surveys are required to obtain the relevant safety certificates detailed in section 2 topic 4:(b).

Carving and marking

When all this is received by the registrar he will allocate an official number to the vessel. This identifies it within the British register and never changes. If the vessel is registered elsewhere and then returns, the same official number will be re-issued. He will also issue a "carving and marking note" which shows the proper name of the ship, its port of registry, estimated tonnage and official number. The vessel must then be "carved" (or permanently marked) as follows:

- The Name marked on the bow and stern (stern only on yachts)
- The Official number cut into the main beam.
- Draught marks on the bow and stern.
- Port of choice on the stern

When the ship has been "carved" an approved surveyor signs the carving note to verify that it has been done. The owner may sign the carving note where the vessel is less than 24 metres in length. The registrar will then issue the Certificate of Registry.

The Certificate of Registry indicates that the vessel is entitled to 'British' status, protection and duties. British Law will apply within the vessel. The Master is the proper holder of the certificate, he should not surrender it except to an authorised person i.e. an agent of HM Customs and Excise or of an Admiralty Court. **He should not surrender it in the event of any claim upon the boat.**

If the certificate is lost, mislaid or destroyed the Registrar General will issue another one upon application on the usual form (Form ROS 10 2/96) This may be done by post.

If the vessel is outside the UK the British Consul in foreign ports or the Governor or High Commissioner in Commonwealth ports, are empowered to issue a provisional certificate. This must be exchanged for a full certificate within ten days of arriving at a port in the United Kingdom. In the age of the fax machine the registry will, on application from the consul etc, fax a copy for him to endorse.

When a British registered vessel is sold to qualified persons a bill of sale must be completed and given to the buyer. The Registrar General must be notified immediately as to the identity of the buyer and the old certificate of registry must be returned (it should not be given to the buyer). If the sale is to persons not qualified the procedure is the same except that the registrar will terminate the registration.

If a vessel is sold while overseas and as a result of this sale becomes eligible for British registry then a Provisional Certificate of Registry may be issued by a Consular official, or a nominated official Governor or High Commissioner's office. (This is not the same document as the provisional certificate mentioned above - the officer concerned must be satisfied that the new owner intends to apply for full registration within three months.) In practice the vessel can usually be surveyed overseas and the application followed by post to the Registrar. Provisional registration can be very useful if ownership has been transferred to a new owner, it will allow the yacht to sail while waiting for full registration to be completed. It should not engage in commercial activity until full registration is obtained.

The registrar must always be informed of any changes of any of the information on the registry.

If the owner dies, any vessel or shares in a vessel owned jointly will automatically pass to the surviving joint owner (often the case with smaller yachts where a husband and wife own jointly) The surviving partner should send proof of death to the Registrar (Death Certificate, Grant of Probate etc) The entry in the register will be amended and a new certificate issued valid for five years.

Where a vessel or shares in a vessel are owned solely, the administrators of the person's estate must provide proof of death. The new owners of the shares must apply promptly for the transmission of the shares to be registered, the certificate of registry must be returned and a new one issued.

3:(h) UK registered and British registered yachts

The Red Ensign Group

The "British Register" is actually a collection of registries known as the Red Ensign Group (REG) which incorporates the registers of the United Kingdom and of the Crown Dependencies (Isle of Man, Guernsey, Jersey) and of the British Overseas Territories; Anguilla, Bermuda, British Antarctic Territories, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn Islands, St Helena and dependencies (Ascension Island and Tristan da Cunha), South Georgia, South Sandwich Islands and Turks and Caicos Islands.

United Kingdom Ships

A **United Kingdom Registered Ship** is a vessel which is registered in the United Kingdom of Great Britain (England Wales and Scotland) plus Northern Ireland (excludes the Channel Islands and the Isle of Man) under the **Merchant Shipping Act 1995** and **SI 1993. No. 3138**

Such vessels are subject to UK Merchant Shipping Law wherever they are in the world.

Crown Dependencies and British Overseas Territories

Britain is responsible for the defence and foreign policy of the Crown Dependencies and Overseas Territories. Whilst their own shipping law applies within their vessels; where Britain has signed an International Convention it is binding also in the relevant territory: it is effected not by an act of its legislature but by an 'Order in Council'. The Queen issues the order on the advice of the cabinet within the privy council and it then becomes law in the territory concerned. The registration of ships is one such measure; all registration of "British" ship takes place under the powers of the 1995 Merchant Shipping Act. For example in the Cayman Islands have a well-established register under which many yachts are flagged. The Cayman Islands authorities administer this register under powers conferred by the British Merchant Shipping Act 1995 via an Order in Council; not by the Cayman Islands Parliament.

British Ships

British Ships may be defined as:

- all 'United Kingdom Registered Ships'
- all ships registered in the Crown Dependencies
- all ships registered in the British Overseas Territories

Such vessels may fly a red ensign and are subject to the Merchant Shipping Legislation of their own flag state wherever they are in the world are subject to certain UK merchant shipping legislation when in UK waters.

The proper national colours must be hoisted when:

- a signal is being made to her by one of HM ships
- on entering or leaving any foreign port
- on entering or leaving any British port if the ship's tonnage is 50 gross tons or more.

There are severe penalties for improperly flying a ship's colours (flag). It is an offence for the owner or Master of a ship which is not British to cause the ship to appear to be British. This would make the ship liable to forfeiture. A defence to the charge would be to show that the assumption of British character was to avoid capture by an enemy. In the case of a ship removed from the British register there is a period of grace of fourteen days from the date of removal to remove any marks on the ship denoting British registry.

Any attempt by an owner or Master of a British ship to conceal the British character of the ship is an offence and renders the ship liable to forfeiture in addition to fines and/or imprisonment of the owner or Master. Offences of this nature are included in the list of crimes which can occur a £50 000 on summary conviction.

3:(i) A Master's Guide to the UK Flag – Large Yacht Edition

This publication, issued by the MCA Ensign unit, which provides large yacht survey and certification services, summarises the legal and administrative procedures required to comply with UK merchant shipping regulations. It contains chapters on the following topics:

- Manning and STCW requirements
- Hours of work and rest
- Crew agreements
- Official log book
- GMDSS log book
- Health and safety
- Accident reporting
- Medical stores
- Surveys and audits
- Continuous synoptic record
- UK publications required onboard
- Training

UK regulations and procedures and the forms etc to be used may differ from other flag states (even within the British Red Ensign Group) so it is vital to be familiar with the requirements of the particular flag state the yacht is registered with.

SECTION TWO – SAFETY MANAGEMENT

Two questions in the exam will be based on this section. It covers safety certification requirements to ensure seaworthiness of the vessel, ship security, pollution prevention measures and the importance of safe working practices on board for safety of personnel.

Topic 4: Safety Certificates and Documentation

The syllabus for this topic is as follows:

- a) Demonstrates an understanding of which vessels are required to comply with The Large Commercial Yacht Code (LY2) and recognises the benefits of complying with LY2.
 - b) Can describe the certificates listed below that may be issued for compliance with LY2 with regard to;
 - i). period of validity,
 - ii). timing of required surveys,
 - iii). general subject matter of the surveys,
 - iv). purpose of the issuing authority 'conditions of assignment'(where applicable),
 - v). consequences of failure to comply with the conditions of LY2
- Certificates
- 1. International Tonnage certificate for vessels of 24 meters or over.
 - 2. International Load Line certificate for vessels of 24 meters or over.
 - 3. International Safety Construction certificate for vessels of 500 GT or over.
 - 4. International Safety Equipment certificate for vessels of 500 GT or over.
 - 5. International Safety Radio certificate for vessels of 300 GT or over.
 - 6. International Safe Manning certificate for vessels of 500 GT or over.
 - 7. International Oil Pollution Prevention certificate for vessels of 400 GT or over.
 - 8. International Safety Management certificate for vessels of 500 GT or over.
 - 9. International Ship Security certificate for vessels of 500 GT or over.
 - 10. Certificate of Compliance for vessels of 24 metres or over.
 - 11. SOLAS combined safety certificate.
- vi). Can summarise the content of any associated documents such as;
 - .1 SOLAS training manual.
 - .2 Load Line conditions of assignment.
- c) Demonstrates an understanding of the requirement to implement a safety management system on vessels of less than 500 GT as contained in Annex 2 of LY2.
 - d) Demonstrates an understanding of the difference between a 'pleasure vessel' and a vessel 'engaged in trade' as defined in MSN 1802 (or as amended).
 - e) Recognises that UK registered 'private' yachts (pleasure vessels) are subject to minimum safety standards as class XII vessels.
 - f) Demonstrates an understanding of requirement for no yacht can carry more than 12 passengers without special dispensation and can define the word 'passenger' in this context.

4:(a) The Large Commercial Yacht Code

Yachts which undertake international voyages have to conform to the same international rules as merchant ships (the extent of this depends on whether they are privately or commercially operated and the size of the yacht) and may therefore be subject to international conventions such as MARPOL, Loadline, SOLAS, STCW etc. Most yachts however, are not constructed in a way that will conform fully with these rules as the major international conventions were written with merchant ships in mind, not yachts. For this reason the MCA introduced 'codes of practice' written specifically for yachts.

The original code of practice was notified to the International Maritime Organisation as the United Kingdom's equivalent provisions under the equivalence arrangements of the International Convention on **Load Lines** 1966, as amended; The International Convention on the **Safety of Life at Sea** (SOLAS) 1974, as amended; and The International Convention on **Standards of Training, Certification and Watchkeeping for Seafarers** (STCW) 1978, as amended. The IMO disseminated the UK notification of "equivalent" provision in their Circular Letter 1996.

There is a Small Commercial Vessel (SCV) code for yachts under 24 metres and the Large Commercial Yacht Code (LY2) for yachts larger than 24 metres (but less than 3000gt) which are commercially operated (ie charter yachts or any yacht which fails to meet the definition of a 'private' yacht). The distinction between privately operated pleasure yachts and commercially operated yachts is discussed in topic 4:(d) below. The codes are based on international Load Line and SOLAS regulations plus British merchant shipping regulations but modified for yachts. The Codes of Practice applicable to yachts do not permit the carrying of cargo or more than 12 passengers. A passenger yacht code for yachts carrying up to 36 passengers has been introduced, this is however outside the scope of this syllabus as full merchant navy certificates of competence are required for the master and deck officers of such a yacht.

It is a legal requirement for all commercially operated yachts to be surveyed and issued with a Certificate of Compliance with the appropriate code of practice. The Large Yacht Code was introduced via a Statutory Instrument titled 'Merchant Shipping (Vessels in Commercial Use for Sport & Pleasure) Regulations' which was then notified to the large yacht industry in a Merchant Shipping Notice (MSN 1792 is the latest) it has the full force of the criminal law behind it, failure to comply is therefore a criminal offence.

The benefit of compliance with the code is that it gives an assurance as to the structural strength, seaworthiness, stability, fire resistance, general equipment, safety equipment and manning level of the yacht and can add to its re-sale value. With a valid certificate of compliance with the code, the owner may operate the yacht as a charter yacht and there are tax advantages to commercial status. Another very significant advantage of being certified with the code is that any relevant international convention certificates or exemption certificates can be issued on the basis of compliance, this makes it possible for the yacht to undertake international voyages and have the certificates necessary for obtaining clearance in and out and satisfying port state authorities. This also means that if the yacht at any time fails to meet the requirements of the code of practice, then not only does the Certificate of Compliance with the code become invalid but also any international convention certificates issued with it are invalidated.

4:(b) International Convention certificates

The following is a summary of the main international convention certificates which a large yacht might be required to have and can obtain by showing compliance with the code. This is not a comprehensive list of every possible certificate. The master, owner or operator must always ensure what the demands of the flag state are for the type and size of yacht and its area of operation.

For each certificate you should know:

- Which yachts must have it
- Period of validity
- Timing of surveys
- Subject matter of surveys
- Conditions of assignment (where applicable)

International Tonnage certificate

Required by every vessel over 24 metres. Issued by an approved classification society surveyor following a measurement survey to establish the yacht's dimensions and tonnage. It remains valid indefinitely, unless dimensions are altered, ownership is transferred or flag changed. Used for providing registration information and to assess charges based on tonnage or length. Also used to determine size with regard to compliance with regulations. Many yachts, for example, are certified at 23.9 metres, or 199gt or 499gt etc to avoid reaching the next more stringent level of certification.

International Loadline certificate

An International Load Line Certificate is required by every commercially operated vessel of **24 metres** or more unless exempted (any vessel can be exempted as an individual case at the discretion of the flag authority). Private pleasure vessels, warships and fishing vessels are exempt, commercially operated yachts must comply. It is required by every vessel in UK Territorial Waters.

It is valid for **five years**, subject to **annual** surveys, and must be checked at intervals of not more than 15 months (a record of annual surveys must be made on the back) but may be extended at the end of the period of validity for a maximum of five months to allow the vessel to complete the renewal application process provided that the renewal survey has been carried before the end of the period.

To apply for an International Load line Certificate application needs to be made to an 'assigning authority' ie the MCA or one of the approved classification societies. (Lloyd's, DNV, GL, BV, ABS) In practice it will normally be one of the Classification Societies that carry out the survey. The surveyor will carry out a thorough examination of the vessel's structure; in particular he will examine all fittings and appliances that protect openings that lead below the freeboard and superstructure decks: doors, hatches, scuttles, windows, storm shutters etc.

He will also examine guard-rails, freeing ports and the access to the crew quarters; (crew protection was originally the primary purpose of this legislation). The stability of the vessel will be examined and a stability booklet produced along with the load line certificate for the Master to hold. Calculations will be made to determine the freeboard of the vessel. When the vessel has been marked to show this information a load line certificate will be issued.

The rules about how the vessel can be marked are laid out very specifically in the load line regulations. A document called 'a record relating to the conditions of assignment' (usually referred to as the 'conditions of assignment') will be produced along with the certificate and stability booklet. This is a very important document as it makes clear exactly what information was used to calculate the freeboard. It will detail the dimensions of the vessel and specify all the opening and hatches etc which were examined. **If any of the information detailed on the conditions of assignment are not complied with, change or found to be incorrect the vessel must not put to sea.**

An International Loadline certificate may be cancelled:

- when a ship does not comply with the conditions of assignment (see above)
- if the structural strength of the vessel is lowered rendering it unsafe
- if any of the information upon which it is based changes

- if it is not endorsed to show that the annual surveys have taken place
- if it is found that the information upon which the freeboard is based is in fact incorrect

If a ship sails or attempts to sail in contravention of the load line rules the owner and the master are guilty of a criminal offence and the ship may be detained by any convention state.

A vessel that is required to carry a loadline may not put to sea if:

- It has not been surveyed at the required intervals
- It does not comply with the conditions of assignment (in which case it may be “unsafe” (see section)) A vessel which puts to sea in an ‘unsafe’ condition may now be liable to a fine of £50 000 under the terms of the Merchant Shipping Act 1995.
- It is not marked with a deck line and a loadline
- Stability and Loading information is not available to the master
- The master has not produced a copy of the certificate to customs when obtaining clearance to sail.

SOLAS International Safety Construction certificate

An International Safety Construction certificate is required by every commercially operated vessel of **500gt** or more. It is valid for **five years** subject to **annual** and **periodic** surveys, which are recorded on the certificate. The MCA delegate some of the survey work to the approved class society surveyors for construction standards but only the MCA can approve structural fire protection, fire safety and means of escape.

In addition to the annual structural and fire protection surveys, the periodic survey must check the hull, sea cocks, discharges etc. in the dry dock not more than 6 month either side of the halfway stage of the certificates validity, so it can coincide with the 2nd or 3rd year survey. Propeller shafts to be withdrawn and inspected every 5 years. (continuous liners or running in oil) or 2 years (other types).

SOLAS International Safety Equipment certificate

An International Safety Equipment certificate is required by every commercially operated vessel of **500gt** or more. It is valid for **five years** subject to **annual inspection**. The survey must be carried out by an MCA surveyor. It certifies that the following have been checked and are to the required SOLAS standard:

- Life saving appliances
- Fire fighting equipment and control plans
- Navigational equipment and nautical publications
- Lights, sound signalling equipment, distress signals, pilot ladders, rescue boats, lifeboats, liferafts and liferaft radio apparatus

SOLAS International Safety Radio certificate

An International Safety Equipment certificate is required by every commercially operated vessel of **300gt** or more. It is valid for **five years** subject to **annual inspection**. The survey must be carried out by an approved telecommunications company (currently Selex Communications Ltd).

All radio installations must be in accordance with GMDSS requirements for the vessel’s area of operation and licenced with OFCOM, the UK radio licencing authority.

SOLAS International Safe Manning certificate

Required by all commercial vessels of **500gt** or more and **passenger ships of any size**. Issued by the Maritime and Coastguard Agency, it is valid for as long as the criteria upon which it is based do not change. The document is obtained on application to the MCA using a specialised form. The purpose of this document is to ensure that the crew of a vessel includes sufficient officers and ratings so that the following can be accomplished:

- Maintain a safe bridge watch in accordance with the STCW code
- Moor and unmoor the vessel safely and effectively
- Operate and maintain all watertight closing arrangements, including the ability to have an effective damage control party
- Operate and maintain all fire fighting appliances and life saving equipment, including a capability to muster all passengers and non essential personnel
- Manage the safety functions of a vessel at sea when not underway. (To cater for the requirements of vessels such as oil exploration vessels, which spend long periods, held stationary and have personnel on board who are not marine professionals)
- The capability to maintain a safe engineering watch
- Maintain and operate in a safe condition the main propulsion and auxiliary machinery
- Maintain the safety arrangements and cleanliness of machinery spaces to minimise the risk of fire
- Provision of medical care on board
- Maintain a safe radio watch

The Large Yacht Code of Practice includes a minimum manning scale for deck officers, engineers and ratings. An individual assessment may be made of the manning level required to safely operate the vessel taking into account the following:

- The size of the yacht
- Type of construction and level of equipment
- Area of operation
- Type of propulsion and power rating
- Capability to perform all the functions listed in the previous section to satisfy STCW requirements

MARPOL International Oil Pollution Prevention certificate

The MARPOL rules apply to both **privately and commercially** operated yachts and to some degree to all vessels, for instance there is a total prohibition on the discharge of oil into any sea area, from any vessel (except in special circumstances outlined later).

Vessel over **400gt** must be certified with an International Oil Pollution Prevention Certificate. It is valid for **five years** subject to the satisfactory completion of an **Annual Survey** within 3 months either side of the anniversary of the date of issue and the endorsement of the certificate accordingly and an **Intermediate Survey** within six months either side of the half way point in the period of validity.

The survey must be initially carried out by the MCA, the subsequent ones by a class surveyor. He will ask to see the ship's drawings and will examine the manufacturer's data for such machines as the fuel pumps, oil separators, filter, monitors, bilge pumps etc. If all is in order he will visit the vessel to ensure that the equipment is actually as drawn and will also check the condition of the machinery, tanks, tank vents, hull, overboard discharges and sea cocks, bunkering system etc. All vessels of more than 400 gt must carry an **Oil Record Book** this book can be inspected, on demand, by the appropriate officers of any Convention state when the vessel is in their waters. A Shipboard Oil Pollution Emergency Plan (SOPEP) must be drawn up and approved by the MCA. A pack of containment and clean up equipment must also be carried.

There are further pollution control measures which are covered in more detail in Section 2 Topic 5: Prevention of Marine Pollution.

SOLAS International Safety Management certificate

The International Safety Management (**ISM**) Code applies to all commercially operated yachts of **500gt** or more. It is an international standard for the safe management and operation of ships and requires companies to document and implement clear procedures, standards and instructions for safety management ashore and afloat.

ISM is split between the vessel and a supporting shoreside management company. The company must be audited and approved with a Document of Compliance (DOC) issued by the MCA, plus a Designated Person Ashore (DPA) who is on call 24/7 and has expertise to call on to assist the ship.

The yacht must have an International Safety Management Certificate which is issued by the MCA after inspection of its safety management system. It is valid for 5 years with periodic audits and inspections. The vessel must also carry a certified copy of the management company's DOC. Further details are given in Section 2 Topic 7: Safety Organisation.

SOLAS International Ship Security certificate

The International Ship and Port Facility Security Code (**ISPS**) Code applies to all commercially operated yachts of **500gt** or more. This requires both the vessel and its operating company or management company to have appropriate security plans and procedures. The company must be audited and approved by the MCA to provide support to the vessel on security and must have an approved method of tracking and monitoring the vessel's position.

The yacht must have an International Ship Security Certificate which is issued by the MCA after inspection of its security system. It is valid for 5 years with periodic audits and inspections. The vessel must also have a Long Range Tracking Certificate and Continuous Synopsis Record (CSR) which records ownership details throughout the life of a vessel. Further details are given in Section 2 Topic 9: Security.

Certificate of Compliance

Any yacht which is commercially operated **must** have a Certificate of Compliance with either the Large Yacht code (LY2) if it is 24 metres or more, or the Small Commercial Vessel (SCV) code if it is less than 24 metres.

For large yachts the MCA issue the certificate after satisfactory survey, the certificates follow the same pattern as the international convention certificates, being valid for 5 years subject to annual surveys and inspections. Small yacht certificates can be issued by a number of certifying authorities, the MCA publish a list of them.

SOLAS combined safety certificate

All passenger ships (the Solas definition of a passenger ship is one which carries more than 12 passengers on international voyages) must carry a "Passenger and Safety Certificate" which lays down the number of passenger permitted to be carried and certifies that the ship conforms to the safety conventions in respect of its equipment and structure. Additionally, safe manning, ISM and ISPS certification as described above are required. Only the MCA can issue the certificate for a UK registered passenger ship. The certificate is valid for 12 months only. A yacht which carries more than 12 passengers is considered a passenger ship in law and must be certified as a passenger ship.

Non passenger ships to which SOLAS applies must carry **either** three separate certificates as already described above; (the International Safety Construction Certificate, Safety Equipment Certificate and Safety Radio Certificate) **or** one combined Cargo Ship Safety Certificate which combines all of the requirements of the Safety Construction, Safety Equipment and Safety Radio Certificates into one certificate. The period of validity is five years, subject to annual and periodic surveys covering exactly the same requirements as the three individual certificates. In practice the combined certificate is not generally issued to yachts due to difficulty in co-ordinating survey work for the different categories which need to be surveyed and surveyed by different authorities.

Associated documents

To maintain the validity of safety certificates the prescribed survey regimes must be followed and the certificate endorsed to show that they have been done. Additionally there may be associated documents which must be kept and adhered to or the relevant certificate will become invalid, for example the SOLAS training manual or Load Line conditions of assignment.

SOLAS training manual

This is a ship's life-saving appliances training manual which contains instructions and information on the life-saving appliances carried, personal protective equipment and its location, information and instructions on survival, hazards of exposure, methods of retrieval and emergency repair of life-saving appliances. Any part of the information to be included in the training manual may be provided in the form of audio-visual aids. Information provided in lifesaving appliances training manuals should be compatible with, and may reproduce, relevant shipboard safety emergency plans which are required to be provided in accordance with the International Safety Management Code.

The training manual can be used by the officer or officers whose duty it is to give the relevant instructions and it can also be used as a source of reference and information for every member of the crew. A copy of the training manual should be accessible to every crew member and except in certain ships of less than 500gt, a copy must be provided in each messroom and recreation room, or in each cabin.

In ships with significant numbers of non-English speaking crew members, copies of the full training manual or relevant sections should be provided in the appropriate language or languages.

Load Line conditions of assignment

A document called 'a record relating to the conditions of assignment' (usually referred to as the 'conditions of assignment') will be issued along with the Load Line certificate and stability booklet. This is a very important document as it makes clear exactly what information was used to calculate the freeboard and stability criteria. It will detail the dimensions of the vessel and specify all the openings and hatches etc which were examined. It may stipulate certain conditions which must be satisfied before every departure. **If any of the information detailed on the conditions of assignment are not complied with, change or found to be incorrect the vessel must not put to sea.**

4:(c) Safety Management Systems yachts less than 500gt

The requirement to comply fully with the SOLAS International Safety Management (ISM) code applies to commercially operated yachts of 500 gt or more. **Yachts which are less than 500gt must still operate a safety management system** as required by the large commercial yacht code LY2 (this has become known as 'mini ISM'). Safety management systems are covered in more detail in Section 2 Topic 7: Safety Organisation.

4:(d) Difference between Private and Commercial operation

The 'Merchant Shipping (Vessels in Commercial Use for Sport and Pleasure) Regulations - SI 1998 No. 2771' define a pleasure vessel and remove any doubt about what had been considered by some to be a legal grey area. A **pleasure vessel** is:

Any vessel which at the time it is being used is:

- In the case of a vessel wholly owned by an individual or individuals, used only for the sport or pleasure of the owner or the immediate family or friends of the owner; or In the case of a vessel owned by a body corporate, used only for sport or pleasure and on which the persons on board are employees or officers of the body corporate, or their immediate family or friends; and
- on a voyage or excursion which is one for which the owner does not receive money for or in connection with operating the vessel or carrying any person, other than as a contribution to the direct expenses of the operation of the vessel incurred during the voyage or excursion; or
- any vessel wholly owned by or on behalf of a members' club formed for the purpose of sport or pleasure which, at the time it is being used, is used only for the sport or pleasure of members of that club or their immediate family, and for the use of which any charges levied are paid into club funds and applied for the general use of the club;
- in the case of any vessel referred to in paragraphs (a) or (b) above no other payments are made by or on behalf of users of the vessel, other than by the owner.

In this definition "immediate family" means in relation to an individual, the husband or wife of the individual, and a relative of the individual or the individual's husband or wife; and "relative" means brother, sister, ancestor or lineal descendant;

This makes clear that if the owner receives any monies in excess of the running costs then the vessel is not a pleasure vessel and is therefore a commercial vessel. If it is a commercial vessel then it is subject to the law that pertains to merchant ships. It is for this reason that the codes of practice were introduced; to make such laws applicable to yachts.

4:(e) Class XII pleasure vessels

This is not to say that there are no regulations that apply to pleasure vessels. Some SOLAS regulations apply, pleasure vessels are identified in SOLAS as Class XII vessels (private yachts of 13.7m or more come under this category). Also the IRPCS (colregs), UNCLOS, and MARPOL rules apply equally to a private pleasure vessel. Other British regulations may also apply, depending on the size of the yacht. The MCA publish a guide entitled '**Information on the Regulations Applicable to Pleasure Vessels**' which details the regulations which must be complied with. The following is a summary of the general points covered:

- Life saving equipment
- Fire protection and fire fighting appliances
- Voyage planning
- Life saving signals, assistance to other craft and misuse of distress signals
- Navigation and Colregs
- Manning and crew agreements
- Health and safety
- Medical first aid kit requirements
- Pollution prevention

4:(f) Definition of a passenger

It is made clear in the UK shipping regulations that yachts, whether privately or commercially operated, must not carry cargo and not carry more than 12 passengers, unless they are certified as a passenger ship.

Under British Law a person in a ship at sea is a passenger unless:

- They are employed on board on the business of the ship
- They have been rescued from the water or another ship in distress
- They are stowaways (though there are other ramifications of this)
- They have been ordered to be transported by the authorities of another nation
- They are a child under one year of age

The definition of 'passenger' takes no account of whether the vessel is chartering or private. A private yacht (i.e. normally a 'pleasure vessel') at sea with more than twelve persons who do not fit into one of the above categories is a *de facto* passenger ship and if not certified correctly is committing a very serious offence punishable by a maximum fine of £50,000 on summary trial.

Topic 5: Prevention of Marine Pollution

The syllabus for this topic is as follows:

- a) Demonstrates an understanding of the principle constraints of the MARPOL convention, specifically:
- i). that it applies to all yachts and,
 - ii). is able to identify the Annexes in force and the particular pollutants covered by each of these Annexes as relevant to yacht operations and,
 - iii). can state that MARPOL prohibits the discharge of Annex 1 substances into any sea area and,
 - iv). can explain the circumstances in which certain discharges of Annex 1 substances may be permitted and,
 - v). can recognise that all yachts must be constructed and equipped so as to prevent pollution by Annex 1 substances and that certain yachts must carry certificates to prove this and,
 - vi). can identify which yachts must carry an International Oil Pollution Prevention Certificate and a SOPEP and,
 - vii). can state the structure and function of the SOPEP and,
 - viii). can state which yachts must maintain an Oil Record Book in an approved form and describe its content and,
 - ix). can describe an Annex IV substance and,
 - x). can describe an Annex V substance and,
 - xi). can explain the rules governing the disposal of Annex V substances and,
 - xii). can state which yachts must maintain a Garbage Record Book and have a Garbage Management Plan and,
 - xiii). can describe an Annex VI substance and have a knowledge of certificates to be held and the equipment to be carried.

5:(a) The MARPOL convention

In 1973 a convention known as the **Marine Pollution Convention (MARPOL)** convened and agreed certain measures to protect the environment. In the text of the convention various measures are laid out in different annexes. The original 1973 convention was revised by a protocol in 1978 (a protocol does not require the same degree of ratification by governments), which clarified some ambiguities and stiffened enforcement measures and thus the convention is now referred to as MARPOL 73/78. The convention was given force of law in the UK by various acts and regulations such as the Merchant Shipping (Prevention of Pollution by Garbage Regulations) 1988. No.2292 and the Merchant Shipping Orders and Regulations concerning Oil Pollution.

The MARPOL regulations apply to all yachts, both private and commercially operated.

The annexes of the MARPOL convention

Various types of polluting substances are subject to MARPOL regulations, different annexes cover the different substances. This enabled ratification of each annex individually which could then be introduced into legislation without waiting for every annex to be fully ratified internationally. (In fact all annexes are now fully ratified and in force).

Annex I	Petroleum oil
Annex II	Bulk chemicals (not applicable to yachts)
Annex III	Packaged chemicals (not applicable to yachts)
Annex IV	Ship sewage
Annex V	Ship garbage
Annex VI	Air pollution

The annexes set out rules in each of the different areas of concern. Annexes I, IV, V and VI apply to yachts.

Total prohibition on discharge of oil

The MARPOL rules apply in some degree to all vessels, for instance there is a total prohibition on the discharge of oil into any sea area, from any vessel including yachts. Criminal prosecution and civil law liability may arise if oil is discharged (except in special circumstances outlined below). Liability for oil pollution is a 'strict' liability, meaning that it is not necessary to prove that negligence occurred nor that a duty of care existed and was breached (as is normally the case for a civil law claim), the mere fact that pollution was caused creates a liability on the polluter.

An incident of pollution counts as an 'accident' (see Section 2 Topic 6: Statutory Safety Duties) and must be reported to the UK Marine Accident Investigation Branch (MAIB).

Permitted discharges

The MARPOL Convention and UK legislation prohibit the discharge of oil or any mixture containing oil, into any sea. Certain discharges of treated oily water may be made if the following conditions are complied with.

All discharges are prohibited from a vessel at anchor or in harbour. Ports are now required to provide oil disposal facilities. At sea no discharge is only permitted when:

- The ship is proceeding on a voyage
- The oil content of the effluent does not exceed 15 ppm
- The ship has approved filtering or oily water separating equipment and an oil discharge monitoring and control system

Additionally, in **special areas**, there must be in operation approved filtering or oily water separating equipment and an oil discharge monitoring and control system **with alarm and an automatic stop if the level exceeds 15 ppm**.

Special areas under annex I include; the Mediterranean, Baltic, Black and Red seas, Gulf areas, Antarctic area, North West European waters, the Arabian sea and Southern South African waters.

An accidental discharge while carrying out pumping operations is a criminal offence and can only be excused if the above conditions were being complied with and any discharge is reported immediately to the appropriate authority and recorded in the oil record book.

IOPPC

Yachts of 400gt or more **must** be certified with an **International Oil Pollution Prevention Certificate (IOPPC)** which is issued after a survey of all installations related to oil, plans for oil pollution prevention and emergency response and equipment for use if a discharge occurs.

The survey must be carried out by the MCA or (more usually) by a class surveyor. He will ask to see the ship's drawings and will examine the manufacturer's data for such machines as the fuel pumps, oil separators, filter, monitors, bilge pumps etc. If all is in order he will visit the vessel to ensure that the equipment is actually as drawn and will also check the condition of the machinery, tanks, tank vents, hull, overboard discharges and sea cocks, bunkering system etc.

The certificate is valid for five years subject to:

- The satisfactory completion of an **Annual Survey** within 3 months either side of the anniversary of the date of issue and the endorsement of the certificate accordingly
- The satisfactory completion of an **Intermediate Survey** within six months either side of the half way point in the period of validity
- No material changes are made in the structure, equipment, systems, fittings, arrangements or materials which are the subject of surveys for MARPOL, without the approval of the Maritime and Coastguard Agency
- The Flag of the vessel is not changed.

Shipboard Oil Pollution Emergency Plan (SOPEP)

Yachts of 400gt or more must carry a **Shipboard Oil Pollution Emergency Plan** which explains the MARPOL rules with regard to when to report pollution accidents, what information to report and whom to contact. It lists steps to be taken to control discharges under normal operational conditions and under emergency conditions and has other information of use to the Master. At the back are the contact details of all signatory nations. The SOPEP must be submitted to and approved by the MCA. It must be vessel specific and may be drawn up by ship staff, management or by private consultants.

The SOPEP shall consist of the following Chapters:

- Ship identification data
- Table of Contents
- Record of Changes
- Section 1: Preamble
- Section 2: Reporting Requirements
- Section 3: Steps to control Discharges
- Section 4: National and Local Coordination
- Appendices:
 - List of Coastal State Contacts
 - List of Port Contacts
 - List of Ship Interest Contacts

- Ship's drawings:
 - General Arrangement Plan
 - Tank Plan
 - Fuel Oil Piping Diagramm

Further appendices may be added, a list of containment and clean-up equipment for example.

The Oil Record Book (ORB)

All yachts of 400gt or more must carry an **Oil Record Book**. This book can be inspected, on demand, by the appropriate officers of any Convention state when the vessel is in their waters. The book must be in the prescribed format and it must be used to record the following:

- Ballasting or cleaning of fuel tanks
- Bunkering
- Discharge of Ballast or cleaning water from the oil tanks
- Disposal of oily residue (sludge)
- Automatic and manual discharge overboard of bilge water
- Any discharges in circumstances where 'special defences' may be claimed e.g. to save life, to save the ship amongst others

These entries must be made without delay. Each entry must be signed by the officer responsible (usually the chief engineer) and each page must be signed by the Master.

A completed Oil Record Book must be kept for a period of three years from the date of the last entry. If the vessel is sold the seller must keep the book for a period of three years. Failure to make the entries in the book is a criminal offence.

Annex IV - Sewage

All yachts of 400gt or more **and / or carrying more than 15 persons** must have an **International Sewage Pollution Prevention Certificate**. Discharge of sewage into the sea is prohibited, except when the vessel has in operation an approved sewage treatment plant and is discharging comminuted and disinfected sewage more than three nautical miles from land, or is discharging untreated sewage more than twelve nautical miles from land.

Annex V - Garbage

All yachts of 400gt or more **and / or carrying more than 15 persons** must have a **Garbage Record Book (GRB)** and **Garbage Management Plan**. Garbage must be segregated according to type and stored onboard until disposed of ashore. If it is not possible to store onboard, certain categories may be discharged at sea. Where garbage is disposed of ashore receipts must be obtained and these may be inspected by port and flag state controllers.

Garbage is classified into the following categories:

- Food waste
- General waste;
 - Paper
 - Crockery
 - Rags
 - Metal
 - Glass
- Dunnage and packing materials that float
- Plastics

Permitted discharges

Plastic may never be discharged into the sea, in any sea area. Some other categories may be discharged in certain sea areas, if the yacht is **not** in a special area the following can be discharged:

Up to 3 miles from shore (or 500 metres of a fixed platform)	Nothing
From 3 to 12 miles from shore	Food waste and general waste if ground down or comminuted to 25 mm
From 12 to 25 miles from shore	Food and general waste (not ground down), dunnage and packing material that does not float
More than 25 miles from shore	No plastic (which implies all of the above and even floating material)

Inside a special area, only food waste may be discharged, more than 12 miles from shore.

Special areas for garbage include; the Mediterranean, Baltic, Black and Red sea, Gulf Area, North sea, Antarctic area, Gulf of Mexico and Caribbean Sea.

Whenever garbage is disposed of it must be recorded in the garbage record book detailing the type of garbage, position of the ship and quantity in m³. When garbage is landed to shore reception facilities a receipt must be obtained from the port as evidence of correct disposal.

A garbage management plan must be submitted to and approved by the MCA so that measures can be enacted on board to ensure that the crew comply with the garbage rules, for example having segregated bins and notices posted up where garbage is generated. Care should be taken to ensure that such items as paper milk cartons are placed in the plastics bin as they have a plastic lining.

Annex VI – Air pollution

Annex VI sets limits on sulphur oxide and nitrogen oxide emissions from ship exhausts and prohibits deliberate emissions of ozone depleting substances.

All yachts of 400gt or more must have an International Air Pollution Prevention Certificate. Every engine installation which produces exhaust gases must be individually certified within the permitted levels if it is of 130kw or more. A logbook of Ozone Depleting Substances must be kept which records types and recharges of refrigerant gases etc and any release of controlled gases, whether deliberate or accidental.

Anti-fouling

Although it is not listed on the syllabus for this course, in practice it is a requirement for all yachts to have an anti-fouling system which does not contain compounds which can cause damage to the marine environment. Studies have shown that some of the most widespread active ingredients in anti-fouling systems are organotin compounds. Organotin compounds have been scientifically proven to have adverse effects on ecologically and economically important marine organisms.

In 2001 the International Convention on the Control of Harmful Anti-Fouling Systems (AFS) on Ships was adopted to introduce control measures on the use of organotin compounds. The UK adopted this convention which came into force in 2010 and yachts of **24 metres or more in length but less than 400gt** must carry a Declaration on AFS signed by the owner or authorized agent. No survey is required. The Declaration must be accompanied by

appropriate documentation supporting the fact that the AFS is compliant with the UK Regulations, e.g. a paint receipt or contractor invoice, or contain an appropriate endorsement.

Yachts of 400gt and over must be surveyed and issued with an International AFS certificate under the following regime:

- an initial survey before the ship is put into service or when the ship is for the first time in dry dock for the application of an anti-fouling system; and
- a survey when the anti-fouling system is changed or replaced, undertaken to enable the endorsement of the Certificate.

Topic 6: Statutory Safety Duties

The syllabus for this topic is as follows:

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| <ul style="list-style-type: none">a) Demonstrates an understanding of the duty of the Master to respond to signals of distress, and the circumstances when Master is released from his obligation to respond.b) Demonstrates an understanding of the Master's statutory obligations following a collision.c) Demonstrates an understanding of the actions to be taken in the event of a yacht sustaining material damage, with regard to possible consequences for statutory certificates and insurance.d) Can state the definition of a reportable accident, major injury, serious injury and dangerous occurrence and;<ul style="list-style-type: none">i) can describe the initial report following an accident and the required follow up reports and,ii) can describe the actions required after each type of incident, including declarations to other responsible authorities and,iii) can states how the MAIB can respond to such reports,e) Can state when the master has a duty to report dangers to navigation and can list the six categories and describe the action to be taken.f) Can distinguish between compulsory and non compulsory pilotage and understands the responsibilities between Master, pilot and owner. |
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6:(a) Signals of distress

The Maritime Conventions Act, 1911 specified that **“the Master or person in charge has the duty to render assistance to every vessel found in danger of being lost at sea, but only in as far as he does not seriously endanger his ship, crew or passengers”**.

This was further clarified in the Merchant Shipping (Safety Convention) Act, 1949 where it states that the Master of a UK registered vessel is obliged, if he receives a signal that a vessel, aircraft or persons are in distress or information is received to that effect, to proceed with all speed to assist and also inform them that he is doing so, unless:

- He is unable to
- In special circumstances he considers it unreasonable or unnecessary
- He is released from the obligation by being informed of the requisitioning of other ship or ships than his own and that this is being complied with
- If the vessel in distress or the rescue co-ordinator informs him that his assistance is no longer needed

If a Master fails to fulfil this obligation he is guilty of a criminal offence. He must enter the fact that he has received a distress signal in the ships official log book. If he is unable to or

considers it unreasonable or unnecessary to respond he must enter this fact with the reasons in the official log book.

Vessels may only use distress signals at sea and only upon the orders of the Master when he considers that the vessel is in "distress". The penalty for misusing a distress signal is a fine of up to £5 000 upon summary conviction or upon indictment an unlimited fine. Civil liabilities could also arise for costs incurred by rescue services of other vessels.

Authorisation should only be given in case of grave and imminent danger to the vessel or person(s) requiring immediate assistance, or on behalf of another in the same circumstances not able to send a signal.

6:b) Masters statutory obligations following a collision

The **Merchant Shipping Act, 1894** makes clear the responsibilities of the Master with regard to collisions. The penalty for non-compliance could be a fine of up to £50,000 and/or imprisonment for up to 6 months upon summary conviction or an unlimited fine and up to two years in prison upon indictment in Crown court.

The Master, or person in charge is required, in the event of a collision, in so far as he can do so without danger to his vessel, to:

- Ensure the safety of his own vessel and provide care required to those on board
- Render such assistance to the other vessel as is necessary to save them from danger caused by the collision and stand by them until he has ascertained that no other assistance is required
- Take any action necessary to limit damage to the environment
- Give to the other Master the name of his vessel, her port of registry, port of departure and destination

Also, as a collision is a reportable marine "accident" he must:

- Enter details of the incident, including any injuries, into the Official Logbook
- Make a report to the MAIB
- Notify the nearest coastal state in the event of damage or possible damage to the environment

Following a collision between two vessels the finding of the admiralty court may be one of four possibilities, which will affect the nature of damages paid , if any:

- That one of the vessels was totally to blame
- That both vessels are in some degree to blame so that blame is apportionable.
- That both vessels were to blame but it is impossible to establish the relative degree of fault
- That neither vessel is to blame i.e. that the collision was the result of an 'inevitable accident'.

Generally actions to recover collision damages may be brought in the state whose flag the defendant vessel flies. The plaintiff may sue the defendant in his own country or some other country, which permits this, should he wish to. British courts will permit this where the defendant vessel is in a UK port at the time, regardless of the nationalities of the two vessels or where the collision took place. The same applies to US courts.

French courts will entertain an action where neither vessel is French only when both consent. Where one of the vessels is French then French courts claim jurisdiction as under French law a French registered vessel is regarded as a part of France. Italian courts will entertain claims of this nature only where an Italian port is the nearest to where the incident occurred.

6:c) Material damage

If a ship is involved in an 'accident' (see below) and sustains damage to her hull or machinery, or if she grounds and re-floats, even if it is believed that damage was slight, the Master should, on arrival in port arrange to have a survey to verify the seaworthiness of the vessel. An official logbook entry should have been made and possibly a 'protest' noted if the master believes that there could be legal consequences. All of the mandatory certificates carried in conformity with international conventions are liable to be considered void if the condition of the ship has been degraded.

Failure to verify the seaworthiness of the vessel before putting to sea again can have serious consequences should anything go wrong later which can be traced to the original incident. Insurance rights may be jeopardised. The damage may affect other statutory documents held on board.

Damage to the vessel or equipment which affects any area or item covered by a statutory certificate, such as LOADLINE, SOLAS, MARPOL certificates, or Certificate of Compliance with a Code of Practice, must be reported to the MCA and the state Port Authority, who may detain the yacht until repairs are carried out. The assigning authority must also be informed, as the certificates will be invalidated. Re-validation will be subject to repairs being carried out to the satisfaction of the assigning authority, under their supervision.

Any certificates issued subject to compliance with a code of practice will be invalidated if the requirements of the code are not fulfilled. A certificate of class issued by a classification society might also be invalidated. Although not required by law, if the insurance policy requires the vessel to be classed, cover could be withdrawn.

The local classification society surveyor should be consulted for advice. If he is unsure about the condition of the ship he may award a qualified certificate recommending that the vessel be docked at a specified port for further examination. He will issue an "interim certificate of class" when satisfied that the vessel can safely continue trading. Normally this will run so as to bring the ship back into line with the existing programme of surveys. The insurers should also be informed before any action is taken regarding repairs.

In the past before the international convention certificates were so widespread masters would ask a local surveyor for a 'certificate of seaworthiness' after sustaining damage. This practice is now obsolete because of the importance of revalidating the various convention certificates. Possibly if a master has decided himself that there is no damage or insignificant damage (such as paint scrapes with no hull plate movement) and that no report to a classification society is required it would be prudent to ask for a local surveyor to provide such a certificate in the event of his decision being questioned at a later date (for example by an insurance company).

6:d) Accident reporting

The **Merchant Shipping (Accident Reporting and Investigation) Regulations, 2005**, require the Master of a UK registered vessel involved in an 'accident' to report the matter to the Chief Investigator of the Marine Accident Investigations Branch (MAIB) by the quickest means available.

The (MAIB) is responsible for the investigation of all types of marine accidents, both to vessels and to those on board. The MAIB is an independent branch within the Department for Transport (DfT) and is separate from the Maritime and Coastguard Agency (MCA). The MAIB's head, the Chief Inspector of Marine Accidents, reports directly to the Secretary of State on accident investigation. The MAIB's sole objective in investigating an accident under the Regulations is the prevention of future accidents by establishing its causes and circumstances; it is not the purpose to apportion liability, nor, except so far as is necessary to achieve the objective, to apportion blame. **The MAIB is not an enforcement or prosecuting agency.**

Reportable incidents

The accident reporting regulations are summarised in MGN 289 which describes the types of incidents to be reported, reporting procedures and the response of the MAIB with regard to investigations which might follow.

The following are defined as **reportable accidents**:

- Loss of life or major injury to any person on board, or any person is lost or falls overboard from, the ship or one of its ship's boats
- A ship -
 - causes any loss of life, major injury or material damage
 - is lost or presumed to be lost
 - is abandoned
 - is materially damaged by fire, explosion, weather or other cause
 - grounds
 - is in collision
 - is disabled
 - causes significant harm to the environment
- Any of the following occur -
 - a collapse or bursting of any pressure vessel, pipeline or valve
 - a collapse or failure of any lifting equipment, access equipment, hatch-cover, staging or boatswain's chair or any associated load-bearing parts
 - a collapse of cargo, unintended movement of cargo or ballast sufficient to cause a list
 - or loss of cargo overboard
 - a snagging of fishing gear which results in the vessel heeling to a dangerous angle
 - a contact by a person with loose asbestos fibre except when full protective clothing is worn
 - an escape of any harmful substance or agent, if the occurrence, taking into account its circumstances, might have been liable to cause serious injury or to cause damage to the health of any person
- **Major injury** means –
 - any fracture, other than to a finger, thumb or toe
 - any loss of a limb or part of a limb
 - dislocation of the shoulder, hip, knee or spine
 - loss of sight, whether temporary or permanent
 - penetrating injury to the eye
 - any injury leading to hypothermia, unconsciousness, requiring resuscitation, or admittance to a hospital or other medical facility as an inpatient for more than 24 hours

The Initial Report

If an accident or major injury occurs, an initial report must be sent immediately (or as soon as practicably possible) to the MAIB by fax, phone, telex or email and should include as much of the following information as possible:

- Name of vessel and IMO number or official number
- Name and address of owners
- Name of the master, skipper or person in charge
- Date and time of the accident
- Where from and where bound

- Latitude and longitude or geographical position in which the accident occurred
- Part of ship where accident occurred if on board
- Weather conditions
- name and port of registry of any other ship involved
- Number of people killed or injured together with their names, addresses and gender
- Brief details of the accident, including sequence of events leading to the accident
- Extent of damage and whether accident caused pollution or hazard to navigation
- If the vessel is fitted with a voyage data recorder, the make and model of the recorder

The MAIB has a special 24 hour accident reporting telephone line, 023 8023 2527 from the UK, from outside the UK call +44 23 8023 2527 or email maib@dft.gsi.gov.uk

Incident Report Form (IRF)

A follow up to the initial report must be made as soon as possible using the MAIB Incident Report Form. The report should include the above information as well as the conclusions of any on-board examination covering the cause, how a future similar incident might be avoided, and what action has been taken or recommended. As full an account as possible should be given, the list of items above is not intended to be limiting and any matter should be included which will help to make the circumstances clear or to show how similar incidents may be prevented. Sketches, plans and photographs of the damaged areas, taken both before and after the event, are often helpful and may be attached to the report.

The report in should be signed by the master, skipper or the owner's representative, and by the ship's safety officer if one is carried. IRF's are available on the MAIB's website www.maib.gov.uk

Serious injury

A **Serious injury** means any injury, other than a major injury, to a person employed or carried on board which results in incapacity for more than three consecutive days excluding the day of the accident or as a result of which the person concerned is put ashore and the ship sails without that person, unless the incapacity is known or advised to be of three consecutive days or less, excluding the day of the accident.

If a serious injury occurs, an Initial Report is **not** required. An on board investigation of the circumstances of the incident must be carried out and a report outlining those circumstances must be sent to the MAIB within 14 days of the incident. The IRF may be used for this purpose.

Hazardous incidents

Hazardous Incidents are not defined in the legislation, nor is there any legal obligation to report them. If an incident or dangerous occurrence could potentially have caused an accident or serious injury, the MAIB urge masters / owners to report them **voluntarily** so that any useful lessons can be learned.

Privately operated pleasure yachts

The above regulations apply to commercially operated yachts. An accident on board:

- A pleasure vessel not in commercial use
- A recreational craft hired on a bareboat basis
- Any other craft or boat, other than one carrying passengers, which is in commercial use in a harbour or on an inland waterway and is less than 8m in length

do not need to be reported to the MAIB, unless the accident involves:

- Explosion
- Fire
- Death
- Major injury
- Capsize of a power-driven craft or boat
- Pollution causing significant harm to the environment

The same reporting procedure as outlined above would then be required.

Action after an accident

Where an accident has occurred the owner or Master must ensure that all charts log books or other records and documents which could reasonably be required by the MAIB are kept and are not altered until they have been informed that no MAIB investigation will follow or, if one is to be conducted, the investigating officer indicates that he no longer requires them.

Accident investigations and reports

An accident or serious injury may be investigated by the MAIB if it involves a United Kingdom ship anywhere in the world, or any other ship in UK waters, or if the Branch agrees to a request to undertake an investigation on behalf of another flag state. Hazardous incidents may also be investigated.

In some cases, the vessel's own investigation will be sufficient, but the MAIB may seek further details if necessary. Before deciding whether to carry out any form of investigation, the Chief Inspector may seek to obtain such information as he considers necessary concerning the accident, and any remedial action taken. The master, or any other person holding such information shall provide it to the Chief Inspector to the best of their ability and knowledge.

Following a decision to investigate, the Chief Inspector will notify the master and/or owners within 28 days. Public notice that an investigation has started may be given in such manner as the Chief Inspector thinks fit. The initial part of an investigation seeks to establish the causes and circumstances of an accident, with a view to deciding whether any further investigation is warranted, and is called a 'preliminary examination'. When a preliminary examination is complete, the Chief Inspector will decide whether it is appropriate to conduct further investigation leading to a published report.

Where an inspector is appointed to carry out an investigation, his powers are extensive, and are set out in detail in Sections 259 and 267 of the Merchant Shipping Act 1995. Subject to these powers, the Inspector has wide discretion as to how he carries out his investigation. If possible, much of it will take place on board the vessel involved. He may wish to visit the owners or ship managers. He may also prohibit, pending investigation, access to or interference with anything involved in an accident.

The report of the MAIB is entirely independent of any carried out by the police or the prosecution section of the MCA. The reason that the Chief Inspector reports directly to the Secretary of State is that he may have cause to criticise the MCA in a report. There is no possible conflict of interest if he is independent.

The Chief Inspector may, at his discretion and to promulgate any lessons learned, publish collective short reports of accidents that have not been the subject of a full investigation and published report. Reports of full investigations will be made publicly available in the shortest time possible, and in such a manner as the Chief Inspector sees fit. The report shall set out conclusions relating to the facts of the accident, or where the facts cannot be clearly established, analysis and professional judgement to determine the probable facts; and recommendations for future safety. All reports of full investigations are published on the MAIB website, [www.maib.gov.uk]. Hard copies are also widely distributed and can be supplied to anyone upon request.

Provision is made for any person likely to be affected by a report to see the draft and to comment on the facts and analysis therein, before it is finalised and made publicly available. The Chief Inspector will consider representations relating to the facts and analysis contained in the report that may be made to him by or on behalf of the persons served with such notice.

Recommendations can be made as a result of one or more investigations, whether completed or not, by the Chief Inspector. If a preliminary examination has been conducted they will be in the form of a letter from the Chief Inspector. If an investigation has been conducted, the recommendation(s) would be included in the final report. Recommendations are addressed to those considered best fitted to implement them. Any person to whom a recommendation is addressed, should take the recommendation into consideration. They should also send full details of any measures that are being or will be taken to implement the recommendation and, if appropriate, the timetable for securing implementation. Information is published.

The Regulations lay down penalties for breaches of the requirements. These offences include a failure to report an accident or serious injury; not providing information as required; falsely claiming to have additional information or new evidence, and a failure to preserve evidence. In addition, penalties for obstructing an Inspector or otherwise impeding his investigation are laid down in Section 260 of the Merchant Shipping Act 1995.

Consolidated European Reporting System (CERS)

Although CERS is outside the scope of the syllabus for this course, it should be noted that there are additional reporting requirements under EU regulations which require accidents and pollution incidents be reported to the coastal state whose waters it occurs in. Also, there is a requirement to report accidents which cause material damage to the vessel or pollution to the marine environment to the flag state.

6:e) Reporting dangers to navigation

It is the **statutory duty** of masters to report the following where they are encountered at sea; failure to do so can incur a fine of up to £3,000:

- Subfreezing air temperature and high winds causing ice accretion
- Winds of Beaufort Force 10 or more (if not forecast)
- Tropical Revolving Storms
- Dangerous ice
- A dangerous derelict
- Any danger to navigation

The report should be made to all ships in the vicinity and the nearest coast radio station. The information shall be in English or coded using the International Code of Signals 1969 and prefixed by TTT or 'Securité'. The reports must contain the following information (if applicable to the danger being reported):

- Position, true course and speed of the ship when the observation was made
- Position of the storm as far as can be ascertained
- Barometric pressure stating units and whether corrected
- Change in pressure during the previous three hours
- True wind direction
- Wind force (Beaufort scale)
- Sea state
- Description of swell (slight, moderate, heavy) and direction
- Period of swell (short average or long)
- The kind of danger observed
- The position of the danger
- The time and date in GMT when it was last observed

6:f) Pilotage in the UK

Pilots have long been used by mariners to help them where particular local knowledge is required. The **Pilotage Act** of 1987 that year changed all this and instituted the concept of a "Competent Harbour Authority" defined as any harbour authority with statutory powers to control the movement of shipping and safe navigation within its waters, where these are partly or wholly within the former pilotage districts. Each Harbour authority has the power to authorise any suitably qualified persons to act as pilots for its waters. It is a criminal offence to present yourself as a pilot for an area when you have not been qualified as such.

The Master of a UK registered vessel has a **personal** responsibility to the owner, crew and passengers for the safety of the ship, crew, passengers and cargo. If he fails in this responsibility he could be **personally** liable to pay damages. In this context he is required to make sure that the vessel is at all times navigated by a competent person with the knowledge and skill required under the prevailing circumstances. Failure to obtain the services of a pilot, whether or not compulsory, could be regarded as a breach of duty and could constitute civil negligence.

Compulsory and Non Compulsory Pilotage

There are two circumstances whereby pilots are employed. These are in a **compulsory** and **non-compulsory** service. The implications for the Master are different under each. The coastal state has the authority to require vessels to employ a pilot while being navigated within their jurisdiction. In an area where compulsory pilotage is required the Master has a duty to arrange for his vessel to have a qualified pilot for that area on board before navigating the vessel within it. Navigating in such area without a qualified pilot is a *criminal* offence. Notwithstanding this the fact that the vessel is navigated in such an area with a pilot does not relieve the owner or Master of their liabilities under the law in the event of damage or loss caused by the vessel or resulting from the way it was navigated. The pilot is, of course, responsible for his actions but even under compulsory pilotage the Master retains responsibility for the safety of the ship, he is in no sense relieved of any aspect of his command.. This is despite the fact that most pilotage agreements require the Master to hand over the navigation to the pilot (meaning usually the direction of course and speed and control of tugs and any required signalling.)

The owner remains liable for any damage whether caused by the negligence of the Master or Pilot or both - in law they are both regarded as the servants of the owner.

The Master must monitor the actions of a pilot and has a duty to take the navigation out of the hands of the pilot if the latter displays gross negligence or manifest incompetence. Presumably under such a circumstance where pilotage is compulsory he should make the vessel safe and request another pilot.

The terms of the 'compulsory pilotage directions' may vary from area to area, in particular the types and size of vessel subject to compulsory pilotage may vary. It requires the Master to consult sailing directions and pilotage directions for a particular area. A pilotage direction should specify the type or size of vessel to which it applies and also the area and circumstances to which it applies (for example it could be at night only). It may specify circumstances where an assistant qualified pilot is required to be carried. There may be other special provisions. It is the responsibility of the Master to establish whether the direction applies to his vessel or not.

Pilotage Exemption certificates may be issued by harbour authorities where a person can demonstrate adequate knowledge and experience of an area. The person must be a bona fide Master or First Mate of a particular vessel. It is valid only for that vessel and must be renewed annually upon condition that the person continues to qualify and has not been guilty of misconduct or incompetence.

The Master / Pilot Relationship

The relationship between the Master and the pilot will generally be similar in both the compulsory and non compulsory situations. In the non compulsory situation the Master is more at liberty to use the pilot as and when he feels the need and is not bound to hand over the navigation. In both situations the pilot has a duty to exercise diligence and skill but he is charged with 'pilots duties'. He acts as an adviser to the Master. In compulsory pilotage the Master has a duty to ensure that the pilot's orders are attended to by his crew and that the vessel is ready to manoeuvre to his instructions. The master must also ensure that the ship and its machinery respond effectively to the pilots orders and inform him if this is not achieved. In court, departures from the orders of the pilot will be examined very carefully indeed and should not be undertaken lightly; but the Master is not bound to follow them. He must monitor the navigation very closely and ensure that the pilot is maintaining the vessel in a safe position. He must always state his opinion if he is in any doubt as to the safety of the vessel. He must intervene and take over if the orders of the pilot contravene the International Regulations for the Prevention of Collision at Sea, or local byelaws or if the pilot displays any obvious incapacity through, for example, illness or drunkenness.

The Rights of the Pilot

The rights of an authorised pilot are as follows:

- He has the right to supersede any unauthorised pilot conducting the navigation
- He has the right to know the draught, length, beam and any other information relating to the ship or its cargo as he deems necessary for the performance of his duties
- He has the right to know of any defects in the ship or its equipment, which may affect the safe navigation of the vessel
- The pilot may not be taken out of his area without his consent (this is a criminal offence)
- He is entitled to boarding and leaving facilities of an approved type
- He should be provided with all the necessary support on the bridge in terms of visual and radar look-outs, navigation assistance and appropriate manning level to ensure safe navigation in the prevailing circumstances

Topic 7: Safety Organisation

The syllabus for this topic is as follows:

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| <ol style="list-style-type: none">a) Demonstrates an understanding of the role of Master, safety officer and safety representative.b) Can describe the role of the safety committee.c) Can summarise, in general terms, the duties of employer and employee under the current Merchant Shipping (Health and Safety) Regulationsd) Demonstrates an understanding of, in general terms, the role of and the importance of the ISM Code.e) Can describe the purpose of risk assessment and how this is applied in a yachting context.f) Can describe the objectives and content of a Safety Management System.g) Demonstrates an understanding of the purpose of the Code of Safe Working Practices for Merchant Seamen and describes its use in the management of safety on board a yacht.h) Can state which yachts must carry copies of the Code of Safe Working Practices and how many copies are required. |
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7:a) The role of the Master, Safety Officer and Safety Representative

The master, representing the employer, has a duty under law to ensure, so far as is reasonably practicable, crew health and safety and that of other persons aboard a ship who may be affected by what he does or does not do. **If a ship goes to sea with more than five crew** there must be appointed a **safety officer** who must be consulted on matters affecting health and safety. Crew may also elect their own official **health and safety representative** in which case the employer and Master must consult him/her too.

It is very important that the master takes a close interest in the work of the safety officials, checking that the safety officer is fulfilling his responsibilities effectively, while giving support and encouragement. The master is the best person to ensure that the safety committee works successfully by encouraging all crew members to participate in the ship's safety culture.

The safety officer should ensure that the Merchant Shipping (Health and Safety) Regulations are complied with. He is responsible for the day to day operation of the yacht's safety policy, ensuring that correct safety procedure are always carried out. The safety officer must be suitably qualified to meet the following requirements:

- Completed appropriate training including attending a recognised safety officers training course
- Gained sufficient knowledge and experience
- Have at least two years sea service over the age of 18

The statutory duties of the of the safety officer are:

- Promote safety standards and a safety conscious attitude on board
- Encourage compliance with safety codes and safety instructions, including the company's health and safety policy
- Carry out health and safety inspections every 3 months in all accessible parts of the vessel
- Recommend to the master any action required to rectify failings or non compliance with regulations or codes of practice
- Stop dangerous work
- Investigate accidents, hazardous incidents and complaints then make a report and recommendations to the master
- Maintain an accident record book

If the crew decide to elect a safety representative he will attend, with the master and safety officer, meetings of the safety committee and represent the views and concerns of the crew. He has the power to stop dangerous work. He should be consulted on safety issues and will sign any incident report form sent by the vessel.

7:b) The Safety Committee

Once the safety officials have been appointed or elected the master is required to appoint a Safety Committee which includes the safety officer and each safety representative. The master is also on the Safety Committee as chairman and the creation of this committee must be recorded in the official log book. The safety committee should meet whenever it chooses as long as the intervals between meetings are not greater than six weeks.

A Safety Committee should:

- ensure that the provisions of the Code of Safe Working Practices, relevant legislation, Marine Guidance Notices and Merchant Shipping Notices are complied with to improve the standard of safety consciousness among the crew
- make representations and recommendations on behalf of the crew to the company/operator on matters relating to occupational health and safety of the crew

- ensure the company's occupational health and safety policies are observed and to make recommendations for their improvement
- inspect any of the records required to be kept by the safety officials
- ensure that any conclusions reached on matters of safety are followed up

There is a legal duty on the company to help the Safety Committee to work and the company has to:

- provide access to any necessary safety information, documents, Merchant Shipping Notices, Marine Guidance Notices and relevant regulations
- inform the safety officer, safety representatives and safety committee of any hazards on board the ship known to them, which may endanger the ship or her crew
- permit occupational health and safety inspections of any accessible part of the ship where crew members may be required to work

7:c) Duties of employer and employee

Under Merchant Shipping (Health and Safety) Regulations the employer has a duty to:

- Ensure that plant and Machinery are safe and safe systems of work are set and followed
- Ensure that articles and substances are moved, stored and used safely.
- Provide the information, instruction, training and supervision necessary for health and safety
- Keep the working areas on the ship safe and without risks to health
- Maintain a safe working environment on board
- Draw up and bring to crew attention a statement setting out the health and safety policy and explaining how it will be carried out (if five or more people are employed)
- Provide any protective clothing and equipment specifically required by Merchant Shipping Law

Each individual crew member also has a responsibility and duty to:

- Take reasonable care of their own health and safety and that of others aboard ship who may be affected by what they do or do not do
- Co-operate with the employer on health and safety, or with anyone else who is responsible for it
- Not interfere with or misusing anything provided for health and safety
- Report any hazardous circumstances to those responsible on board

7:d) The ISM code

The International Safety Management Code is set out in chapter IX of the SOLAS convention. The aim of the code is the prevention of human injury and loss of life, the avoidance of damage to the environment, particularly the marine environment, and to property. It aims to provide an international standard for the management of safety policies in ships and shipping companies. In other words a standard for the administration of everything so far covered in this chapter.

The international code applies to all vessels over 500gt. UK regulations also require yachts of less than 500gt required to follow the principles of the code as part of compliance with LY2.

Compliance with the code will mean developing policies for safety, writing manuals to promulgate them and undergoing periodic safety 'audits'. Shipping companies and management companies will be inspected to obtain a 'Document of Compliance' and each ship that they run or support must have a safety management system which will be inspected and audited for a 'Safety Management Certificate' to be issued. These will be valid for five years, subject to periodic audits and inspections. A responsible person must be nominated by

the company as a **Designated Person Ashore (DPA)** who is available 24/7 to provide assistance in the event of an incident or emergency and who can take an objective view of the yachts safety management system.

7:e) Risk assessment

Masters should ensure that a risk assessment has been carried out to cover all work activities on board where there is a realistic risk of harm to personnel. The aim of risk assessments is to minimise accidents and ill health on board.

The main elements of the risk assessment process are:

- Classify work activities
- Identify hazards and personnel at risk
- Determine risk
- Decide if risk is tolerable
- Determine control measures
- Prepare action plan (if necessary)
- Review adequacy of action plan

Masters should ensure that not only are risk assessments done for all tasks, but work activities are carried out in accordance with procedures drawn up following the risk assessments. Many accidents and fatalities could have been prevented if crew members had followed the precautions highlighted in a risk assessment. Further information on risk assessment is given in the Code of Safe Working Practices for Merchant Seamen, described below.

7:f) Safety Management Systems (SMS)

As already mentioned previously, all commercially operated vessels of 500gt or more and passenger ships of any size, and their associated management company, are required to comply fully with the IMO International Safety Management Code. All vessels commercially operated yachts under 500gt should employ a safety management system as required by the Large Yacht Code, which should be based on the principles of ISM. (This has become known in the industry as 'mini ISM').

Objectives and content of SMS

The objectives and content of a safety management system is described in annex 2 of LY2 and is summarised below.

Each operator should create a safe working environment and, which should include the following:

A health and safety protection policy. This must address the issues of health, safety and the environment as they affect the company and its staff, both ashore and afloat. Such a policy might read along the following lines:

The policy of (ABC yachting) is to conduct its activities taking full account of the health and safety of its employees and of all persons using or connected with the Company/Owner. In implementing this policy, (ABC yachting) will ensure that the [M/Y Lady Princess] is, at all times, properly maintained and operated by qualified personnel in full compliance with relevant legislation. In particular [ABC yachting] will carry out an assessment of the risks to the health and safety of workers and others affected by its operations, and will take the necessary measures to minimise the risks identified.

The owner/operator is recommended to develop and implement an oil management plan to the same standard as the garbage management plan and to integrate it with the Health and

Safety Protection Policy. This is not required for vessels over 400GT, for which an IOPP certificate is required.

Procedures to ensure safe operation of vessels in compliance with the regulations and rules. The regulations and rules, in addition to those addressed by the Code of Practice, which apply to all vessels include, but are not limited to:

- International Regulations for Preventing Collisions at Sea
- Local Navigation Rules
- National health and safety regulations
- The Code of Safe Working Practices for Merchant Seamen
- All relevant national shipping or guidance notices

The company should draw up simple procedures to ensure that safe working practices are carried out in the operation of the vessel. These may be in the form of checklists which can be followed by all personnel.

Lines of communication between personnel, ashore and afloat. Responsibility and authority of each employee should be clear. This may be best illustrated in a simple diagram, showing who reports to whom.

Procedures for reporting accidents. The requirement for reporting accidents should be well understood by all personnel and in so doing improve the safety culture practiced on board.

Procedures for responding to emergency situations. There should be clearly stated procedures for responding to emergency situations. These may include but not be limited to:

- Fire
- Collision
- Grounding
- Violent act
- Main propulsion or steering failure
- Man overboard

Health and safety responsibilities. One or more competent persons should be delegated to take responsibility for health and safety, and that person/persons should be clearly identified. It is the responsibility of the owner/operator to ensure that the policy is complied with, and that the responsibilities are understood. The company/owner should develop a policy on prevention of alcohol and drug abuse. All personnel both ashore and afloat have a duty to take care of themselves and other persons who may be affected by their acts or omissions. It is essential that, in the event of an emergency, there is the ability to communicate with the emergency services via a shore base. The shore base may be the company office ashore, the local Coastguard, Police or Fire Station, or another office as may be agreed between the vessel and the shore base. The Master must have authority at all times, to make decisions with regard to the safety of the vessel and the persons on board. To ensure that there is no ambiguity regarding the authority of the Master, there should be a simple written statement to this effect.

Personnel and training. All personnel should receive training appropriate to the tasks they undertake. It is the responsibility of the company/owner to ensure that this training is given, and that the personnel have an understanding of the relevant regulations and rules. As a minimum, this means:

- For the Master, the relevant qualifications
- For the crew, relevant qualifications and any additional training appropriate to their designated duties

Prior to the first occasion of working on the vessel, each employee must receive appropriate familiarisation training and proper instruction in onboard procedures. This could include, but not necessarily be, limited to:

- Mooring and unmooring
- Launching and recovery of survival craft
- Evacuation from all areas of the vessel
- Donning of lifejackets
- Use and handling of fire fighting equipment

On-board procedures. Simple procedures should be developed for the operation of the vessel. These should include, but not be limited to:

- Testing of equipment, including steering gear, prior to commencing a passage
- Navigation and handling of the vessel
- Maintenance routines
- Bunkering operations
- Watertight / weathertight integrity
- Stability of the vessel
- Conduct of passengers and crew while on board

Preparation for emergencies. The potential emergencies likely to be encountered by the vessel should be considered. Exercises should then be carried out in the handling of these emergencies and evacuation from the vessel. Where possible, all personnel should be involved in these exercises, both ashore and afloat. The roles and responsibilities of all personnel in an emergency situation should be defined. The exercises should be recorded. The names of those who participated should also be recorded.

Reporting of accidents. Vessels operating under the Code are required to report any accidents to the flag state and the company must therefore have a procedure in place. Additionally, all accidents and near accidents should be recorded and reported to the operator/owner, who should implement corrective action, with the aim of improving safety.

Maintenance of the vessel and equipment is an essential ingredient of safety management. The equipment should be checked and tested daily when in use, in addition to the tests referred to in the on-board procedures section of the Code. There should be procedures for a more detailed inspection and maintenance programme of the vessel and equipment. The frequency of the inspections should be determined by the owner/operator, but every event should be recorded.

Review. Every company/owner should undertake a review of the safety management system of all vessels at least once in every three years.

Each ship will must be able to show:

An onboard safety and environmental protection policy
 Instructions and procedures for safe operations i.a.w. above
 Levels of authority and lines of communication between and amongst shore and ship board personnel
 Procedure for reporting accidents and non conformities
 Procedures to prepare for and respond to emergency situations
 Procedures for internal audits and management reviews

7:g) The Code of Safe Working Practice for Merchant Seamen (CoSWP)

The Code of Safe Working Practice for Merchant Seamen is another code of practice like the large and small commercial yacht codes. Like them it is not in itself a legally binding document; you will not be charged in a criminal court for failing to comply with a code of practice. In this case you would be charged under the Merchant Shipping (Health and Safety) Regulations or the Merchant Shipping Act 1995 or under a host of other regulations. The Code of practice **sets the standard** by which you will be judged in either a criminal or a civil court. For example, the Merchant Shipping (Entry into Enclosed Spaces) Regulations 1988, makes it clear that there have to be set procedures for carrying out this task and that these

have to be drilled. But it does not specify what these procedures are. It states “In fulfilling their duties under paragraph (1) and (2) above the employer, master and any other person shall take full account of the principles and guidance contained in the Code” [of safe Working Practice for Merchant Seaman].

That means that full account must be taken but the master is not obliged to obey the letter of the code. He must set procedures using the code as guidance but is free to adapt his procedures to his particular vessel and crew. The effectiveness of these procedures will be measured against those recommended in the code in the event of an accident.

7:g) CoSWP carriage requirements

The ‘Merchant Shipping (Code of Safe Working Practice for Merchant Seamen) Regulations 1998 SI 1998 No.1838’ lays down a scale for the number of copies of the code which must be carried. All UK registered vessels except fishing vessels and pleasure vessels must carry the code. (Thus all charter yachts must carry it but not necessarily private yachts).

At least one copy must be carried by all such vessels but vessels that carry 5 to 20 crew must carry more ; one for the Master, one for the Safety Officer, one for each Safety Representative and at least one for the crew.

Vessels that carry more than 20 must have one for the master, one for the Chief Officer, one for the Chief Engineer, One for the Purser or catering officer, one for the safety officer, one for each crew representative and ‘a suitable number’ for the crew.

Topic 8: Seaworthiness and Safe Manning

The syllabus for this topic is as follows:

- a) Demonstrates an understanding of the Master’s responsibility to ensure the seaworthiness of the vessel at the commencement of each voyage and the consequences of attempting to proceed to sea in an unsafe and unseaworthy condition.
- b) Can show an appreciation of the fact that possession of valid statutory certificates does not, in itself, prove seaworthiness.
- c) Demonstrates an understanding of that the concept of ‘seaworthiness’ can have a much broader definition in the civil courts.
- d) Can demonstrate an understanding of the principles by which a vessel may be deemed to be safely manned in accordance with the STCW convention.
- e) Can explain the application of United Kingdom manning regulations to a yacht, and the use of the LY2¹ as an alternative to these regulations.
- f) Can demonstrate an understanding of the Maritime Labour Convention 2006 (or as amended) and the Hours of Work legislation as described in MSN 1767 (or as amended).
- g) Can state the duties of Master and chief engineer under United Kingdom merchant shipping regulations as they relate to the organising and maintenance of safe navigational and engineering watches.
- h) Can explain the use of standing orders as part of the process of safe delegation and supervision of delegated responsibilities and understands the Master’s responsibilities to ensure that the navigation bridge is manned by an adequate number of suitably qualified people to deal with prevailing circumstances.

8:a) Masters responsibility for seaworthiness

The master has a legal responsibility to ensure the seaworthiness of the yacht at the commencement of every voyage. What is a seaworthy vessel? Common sense tells us that it is a vessel that is fit to go to sea. A vessel which has sustained damage may well be unfit to return to sea. If the master takes a vessel to sea which is unfit for this reason he is committing an offence, under the Merchant Shipping (Loadline) Regulations amongst others. It is worth pointing out that the Merchant Shipping Act 1995 introduced the concept of a "Dangerously Unsafe" ship, which is defined as;

...not fit to proceed to sea, without serious danger to human life, by some failure of the condition of the ship, its equipment or machinery, having regard for the nature of the task for which it was intended, or by reason of under-manning, overloading, or unsafe or improper loading or any other matter relating to the ships safety...

This means that you are 'dangerously unsafe' if there is some condition in the ship which endangers life seriously. The maximum penalty for this is £50 000 on summary conviction (magistrates court) or an unlimited fine upon indictment at crown court. Lesser failings in the ship which do not directly endanger life or render the vessel unsafe are obviously still punishable but on a the statutory scale 1 to 5. For example, proceeding to sea after sustaining damage, where the damage is not considered by the court to be serious enough for the definition of 'dangerously unsafe' or perhaps having uncorrected charts, not carrying the correct size shapes etc. although if the consequences of one of these lesser failings were serious (ship strikes an object because of poorly corrected charts) the vessel could be deemed to have been dangerously unsafe and the larger penalty applied.

It is important to remember that although the Merchant Shipping Act 1995 makes it an offence to be in UK port in an unsafe condition (or likewise a UK ship in any port) normally this type of offence is committed on the commencement of a voyage. If you are in port for repairs or for refit work, obviously no offence is committed if the vessel is in a condition that would not be safe at sea. If you attempt to proceed to sea, or it is believed that you intend to, then the prosecution may follow. The owner/master of a vessel inspected and found to be unsafe may still be, if the court believed that there was an intention to put to sea, perhaps even if there were obvious plans to repair the shortcomings.

8:b) Certification does not prove seaworthiness

What can the master produce to prove that the vessel is seaworthy? On the face of it the answer is obvious; there are several statutory certificates that the vessel carries with direct bearing on its fitness to proceed to sea. We have examined some of these already; the International Safety Construction Certificate, the Loadline Certificate, the MARPOL certificate, a Certificate of Compliance with LY2, the certificate of class. Unfortunately none of these certificates can be considered as proof of seaworthiness. Why? because they are merely certificates that show that on a particular date when the vessel was last surveyed the surveyor saw nothing that contravened the various provisions of the international conventions that these certificates relate to. It may be that the master was aware of something that the surveyor did not spot, or that something has happened since the last survey to bring into question the safety of the vessel. The answer to the question that heads this paragraph is – nothing. The decision to put the vessel to sea is taken by the master and he is responsible for it. If something goes wrong afterwards and there is either civil or criminal action in court, the fact that all of the required documentation for the vessel was in order will be taken into account as **evidence** when the court considers the question of the vessel's seaworthiness but it will never be considered as **proof** of seaworthiness.

8:c) The wider meaning of seaworthiness

In a civil action the definition of seaworthiness can be much wider than what we have discussed above. For example there are various contractual obligations that the master must consider, contracts of employment (crew agreements), contracts of insurance, salvage or

charter etc. In civil court the question will not just revolve around the safety of life but upon the fitness of the vessel to fulfil the obligations of the owner in the context of his contractual duties. A vessel which does not have a valid ship sanitation certificate which is detained by a coastal state just before a charter, causing delay, could be considered 'unseaworthy'. In this sense it really means 'unfit to perform the contractual duties of the owner'. Likewise a vessel seized and held pending resolution of a maritime lien could be deemed 'unseaworthy' in a civil court.

8:d) Seaworthiness and safe manning

An issue very much under the control of the master is the seaworthiness of the vessel in relation to manning. Clearly a vessel that proceeds to sea without, for example, a qualified Chief Engineer would be considered unseaworthy and perhaps in some circumstances even 'dangerously unsafe'. The international standards set are those of the "Standards of Training and Certification of Watchkeepers" convention 1978 as modified in 1995. Again the onus is upon the master to decide when the vessel is safely manned and may put to sea. This decision is determined partly by the nature of the vessel and partly by the area of operation. A vessel remaining at sea for more than 24 hours clearly needs to have enough watchkeepers on the bridge so that they do not become tired. We have already examined the SOLAS Safe Manning Document. This looks not just at watchkeepers, but at all of the crew. It should be noted that even when a yacht is not required to carry a safe manning document (because it is under 500gt or does not charter) this does not mean that there is no minimum standard for manning, it just means that the master must use his judgement and he, of course, will be accountable for this.

8:e) Manning regulations and the yacht manning scale

The Safe manning document does not specify what qualification a crew member has to have, it will simply specify 'Master' or 'Chief Mate' etc. The actual qualification required to fulfil these positions depends on the size of the vessel and its area of operation. The merchant Shipping (Training and Certification) Regulations 1997 implements STCW into UK law and describes the various certificates issued by the MCA. In a yacht operating under the Large Commercial Yachts code (LY2) an **alternative** scale of qualification is given. Thus the owner of a large yacht has a choice; he can crew his vessel in accordance with the code or in accordance with the full merchant shipping regulations. There are also laid down manning standards for private yachts but here an inconsistency arises. There is no Code of practice for the operation of these vessels therefore, as with all vessels over 24m or 200gt, the full merchant navy qualifications apply. It is clearly not logical to have a group of yachts that do not take out paying passengers requiring a higher standard of manning than one that does, so the MCA have extended the **manning** provisions of the code to **all** yachts.

8:f) Hours of work legislation

The Maritime Labour Convention and STCW(95) both stipulate minimum hours of rest and maximum hours of work permitted on board. These regulations are set out in UK law by the Merchant Shipping (Hours of Work) Regulations, as detailed in MSN 1767. The Hours of Work Regulations:

- Apply to all seafarers (including masters) employed or engaged in any capacity on board a seagoing ship other than fishing vessels, pleasure vessels, offshore installations and tugs which do not ordinarily go beyond the limits of categorised waters
- Provide for a minimum of 10 hours rest in any 24 hour period and 77 hours in any 7-day period and 4 weeks annual paid leave
- Require records of hours of rest to be maintained
- Provide for inspection and enforcement by the MCA

The Maritime Labour Convention also requires adequate accommodation, food and water to be provided.

8:g) Organising watches

The Regulations require the master of any ship to be responsible for the overall safety of the ship. He must also ensure that the watchkeeping arrangements are adequate for maintaining safe navigational watches at all times, including the provision of a lookout as required by the International Regulations for the Prevention of Collisions at Sea. Masters, owners and operators are reminded that the UK does not consider it safe for the officer of the navigational watch to act as sole look-out during periods of darkness or restricted visibility.

The chief engineer officer of any ship is responsible to the master for ensuring that arrangements are adequate at all times for maintaining a safe engineering watch.

8:h) Standing Orders

As already explained at some length the master has some **non delegable** responsibility, he will be responsible for the mistakes of his crew. Nevertheless it is, of course, essential that he delegates duties to his watchkeeping officers or he would never sleep! To do this effectively it is vital that they have no doubt about what is expected of them. This may be achieved by having **standing orders** which are read and signed by all watchkeepers before they take their first watch. These will state exactly what is expected of them in terms of the conduct of the watch in general and when they should call the master. The latter may include a list of circumstances at the discretion of the master such as 'if the ship is more than one nautical mile from the planned navigational track, upon sighting land, upon alteration of course etc. The list should always be concluded with 'and if in doubt' The master may also consider having a night order book hand written with specific instructions relating to the particular voyage in hand, such as 'call me half an hour before the pilot boarding station at ...' etc.

Topic 9: Security

The syllabus for this topic is as follows:

- | |
|---|
| <ul style="list-style-type: none">a) Demonstrates an understanding of and can explain the objectives of the ISPS code.b) Can demonstrate a general understanding of the possible consequences of carrying stowaways and knows the action to be taken to prevent stowaways and action to be taken upon discovery of stowaways.c) Can demonstrate an awareness of the advice of the MCA concerning the carriage of firearms in British registered vessels and has a knowledge of the recommended precautions in circumstances where armed robbery or piracy are a threat in the context of the Master's duty of care. |
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9:a) The ISPS code

As already highlighted in the topic on ship certification, commercially operated yachts of 500gt or more must comply with the SOLAS International Ship and Port Facility Security Code (ISPS Code) which is a comprehensive set of measures to enhance the security of ships and port facilities, developed in response to the perceived threats to ships and port facilities in the wake of the 9/11 attacks in the United States.

In essence, the Code takes the approach that ensuring the security of ships and port facilities is a risk management activity and that, to determine what security measures are appropriate, an assessment of the risks must be made in each particular case. The purpose of the Code is to provide a standardised, consistent framework for evaluating risk, enabling Governments to

offset changes in threat with changes in vulnerability for ships and port facilities through determination of appropriate security levels and corresponding security measures.

In order to comply with the requirements of the ISPS Code every Company/Ship must develop, implement and maintain a Ship Security Plan which addresses the requirements laid down in Code, approved by the flag state administration and that the plan shall make provisions for the three security levels as defined in the Code. The purpose of the Ship Security Plan (SSP) is to contribute to the prevention of illegal acts against the ship, its crew and passengers and also to minimise damage to the marine environment and to port facilities.

A recognized security organization may prepare the ship security plan for a specific ship. The MCA will approve ship security plans for UK registered vessels, except for passenger cruise ships which will be approved by TRANSEC (The security division of the Department for Transport. The code also applies to port facilities serving ships engaged on international voyages.

Requirements under the ISPS Code include:

- Responsibilities of Contracting Governments, e.g. setting security levels and providing guidance for protection from security incidents, establishing the requirements for a Declaration of Security, testing the effectiveness of ship security plans or port facility security plans and exercising control and compliance measures.
- Declarations of Security that addresses the security requirements that could be shared between a port facility and a ship (or between ships) and state the responsibility that each shall take
- Obligations of the Company to ensure that the ship security plan contains a clear statement emphasizing the master's authority and ensure that the company security officer, the master and the ship security officer are given the necessary support to fulfil their duties and responsibilities
- Ship security with activities defined as to how a ship is required to act upon security levels set by Contracting Governments
- Ship Security Assessment, to be carried out by persons with appropriate skills to evaluate the security of a ship, and to include an on-scene survey and a number of other elements
- Ship Security Plan approved by the Administration and carried on board ship
- Records of certain activities addressed in the ship security plan shall be kept on board for at least the minimum period specified by the Administration. These records to be protected from unauthorised access or disclosure
- Provisions for designated company security officers and ship security officers
- Training, drills and exercises on ship security
- Verification and certification for ships
- Carriage requirements for shipborne navigational systems and equipment
- Requirements as to where and how the ship's identification number will be permanently marked
- Continuous Synopsis Record containing specified ownership information
- Provision of a ship security alert system and long range tracking capability

9:b) Stowaways

The Merchant Shipping Act 1995 makes it a criminal offence for an unauthorised person to stowaway on a UK registered vessel. However the terms of the **Carriers Liabilities Act, 1987** also make it a criminal offence for a carrier of an un-authorized person to arrive in a UK port. This raises the prospect of being penalised for bringing stowaways into UK jurisdiction that have no right of entry into the UK or no identification **even if they do not actually land** but are kept secure on board and taken with the vessel on departure!

After the act was passed the Home Office issued the following guidelines to the Immigration Service. A penalty of £2000 per person would be imposed, unless the following circumstances apply where the authorities would consider not applying the penalty:

- The carrier was obliged to bring the persons concerned into the UK by another country and is not at fault
- The person was a stowaway **and the carrier had done everything possible to ensure that no unauthorised were on board**
- The passenger was subsequently accepted as a genuine refugee
- The passenger was in imminent and self evident danger of his life and had no reasonable means of getting documentation, the UK was the most appropriate destination, the carrier had no means of verifying his acceptability to the UK immigration authorities before embarking and was clearly a candidate for refugee status (!)
- Some compassionate reasons (such as accompanying a sick child)
- The carrier had acted on mistaken or unclear advice by the UK Immigration Service or where there was a genuine and understandable failure to appreciate the meaning of an endorsement
- Some other exceptions principally affecting ferry companies accepting transit passengers

The Master's statutory responsibility to assist people in distress is not affected by this legislation.

It follows from the above that considerable precautions should be taken to ensure that stowaways do not enter the vessel and moreover, these should be clearly evident to an immigration officer. Yachts often have very effective security systems built in to prevent unauthorised access due to the high value of items within them and for protection of guests. Yachts must include measures to prevent stowaways as part of ISPS code compliance if more than 500gt. For this reason they may be less of a target for a stowaway, even the largest yacht is much smaller than a container ship and therefore much easier to police. However, it has happened and will happen to yachts!

If a yacht is leaving a high risk port (usually third world ports but some countries in Eastern Europe are also high risk) then a thorough search should be carried out throughout the vessel before sailing. This should be entered into the Official Log Book. Should a stowaway be discovered on arrival at a UK (or other) port this will help to establish that all reasonable steps were taken. This may help to reduce the owner's liability.

It should be borne in mind that other countries are even less welcoming to stowaways and if one is discovered on board considerable expense to the owner is the inevitable result.

If a stowaway is discovered on board the master has a duty under international law to ensure that human rights are respected. The IMO has issued guidelines on the matter, summarised below:

- **General duties:**
 - A stowaway check list to be followed before departure any port by ship staff which must cover all the areas of the ship to be checked by ship staff
 - A proper gangway watch to be carried out
- **Master's Responsibilities:**
 - When stowaway is detected, it is the duty of master to inform flag state, next port of call, port authorities of embarkation for stowaways etc.
 - To establish identity and nationality of the stowaway
 - To take appropriate actions to ensure the general health, welfare and safety of the stowaway until deportation
- **Ship owner or operator:**
 - To ensure that Master's responsibilities for notification has been carried out
 - To comply and support the removal directions made by relevant national authorities for deportation

- **The Flag State of the Vessel:**
 - Assist master and port authority for documentation for disembarkation of the stowaway
 - To make representation for the relevant authority to assist deportation at the next port of call
 - Assist master, ship owners and port authority to make arrangement for removal or repatriation of the stowaway

- **Country of First Port of Call after detection of Stowaway:**
 - To accept the stowaway for examination according to its own local law
 - To allow disembarkation at the expense of ship owner and agent so that he can be sent back to his/her original country of nationality

- **Country of the Original Port of Embarkation:**
 - To accept any such person if he belongs to that country with its nationality
 - If the stowaway is identified in the same port where he/she boarded the ship, he/she must be detained and no charges of any kind should be imposed on ship owner or agent

- **Countries of Transit during Repatriation:**
 - To allow the stowaway a valid visa of transit through their ports or airports travelling under the direction of authority where the stowaway has been disembarked

9:c) Carriage of firearms

The attitude of the MCA towards the carriage of firearms will surprise many in the yachting industry, especially since some yachts carry quite an armoury of weapons. There is no sanction for the carriage of firearms in British registered vessels. Even for self-defence when vessels are intending to cruise in waters considered dangerous for armed robbers or pirates there is no sanction for any sort of firearm. The advice in MGN75 concerning the piracy threat is as follows.

The carrying and use of firearms for personal protection or protection of a ship is strongly discouraged and will not be authorised by Her Majesty's Government. Carriage of arms onboard ship may encourage attackers to carry firearms thereby escalating an already dangerous situation, and any firearms on board may themselves become an attractive target for an attacker. The use of firearms requires special training and aptitudes and the risk of accidents with firearms carried on board ship is great. In some jurisdictions killing a national may have unforeseen consequences even for a person who believes he has acted in self defence.

There is also **no specific law or instrument forbidding the carriage of firearms** but the decision to carry them should not be taken lightly. Any accident resulting from firearms use would be judged harshly in a civil action in view of the above advice and in the event of any UK criminal proceedings yacht masters should remember that in the UK (unlike some countries) if you shoot and kill a burglar entering your premises you are likely to be tried for murder. The attitude taken by other jurisdictions will, of course, vary widely but it might be supposed that many countries will take a dim view of their citizens being shot even in cases where they were engaged in piracy; as some merchant ship crews have found to their cost in Indonesian courts after incidents in the straits of Jakarta. Some countries, such as Italy will arrest a vessel that enters their territorial waters carrying firearms unless there has been prior notification and permission. In effect they do not consider that vessel to be on 'innocent passage' (see section below for a definition of 'innocent passage').

Whilst the MCA does not condone firearms, clearly the master cannot simply ignore the threat if obliged to cruise in waters where there is a risk of armed attack. He has a duty of care towards his passengers and crew. There is specific guidance in the MGN concerning what countermeasures might be considered, these include knowledge of high risk areas, which

should of course be avoided, having an 'anti attack plan' whose measure might include keeping upper deck lights on, patrolling the decks, rigging anti-boarding wires and having charged fire-hoses ready to deter boarders. Planning the passage to avoid the worst areas at night-time could also be considered.

Due to the recent increase in acts of piracy, some yachts have contracted armed security personnel for voyages in high risk areas, as have many shipping companies. The IMO issued a circular on this matter for guidance. However, the IMO, like the MCA, does not endorse carriage of firearms by seafarers, or the use of privately contracted armed security personnel on board ships.

The IMO guidelines are as follows:

Carriage of firearms on board merchant ships:

- Masters, shipowners and companies should be aware that ships entering the territorial sea and/or ports of a State are subject to that State's legislation. It should be borne in mind that importation of firearms is subject to port and coastal State regulations. It should also be borne in mind that carrying firearms may pose an even greater danger if the ship is carrying flammable cargo or similar types of dangerous goods
- The carrying and use of firearms by seafarers for personal protection or for the protection of a ship is strongly discouraged
- Carriage of arms on board ship may encourage attackers to carry firearms or even more dangerous weapons, thereby escalating an already dangerous situation. Any firearm on board may itself become an attractive target for an attacker
- It should also be borne in mind that shooting at suspected pirates may impose a legal risk for the master, shipowner or company, such as collateral damages. In some jurisdictions, killing a national may have unforeseen consequences even for a person who believes he or she has acted in self defence. Also the differing customs or security requirements for the carriage and importation of firearms should be considered, as taking a small handgun into the territory of some countries may be considered an offence.

Use of **unarmed** security personnel:

- The use of unarmed security personnel is a matter for individual shipowners, companies, and ship operators to decide
- The use of unarmed security personnel to provide security advice and an enhanced lookout capability could be considered

Use of privately contracted **armed** security personnel:

- The use of privately contracted armed security personnel (PCASP) on board merchant ships and fishing vessels is a matter for a flag State to determine in consultation with shipowners, operators and companies. Masters, shipowners, operators and companies should contact the flag State and seek clarity of the national policy with respect to the carriage of armed security personnel
- All legal requirements of flag, port and coastal States should be met
- If armed security personnel are allowed on board, the master, shipowner, operator and company should take into account the possible escalation of violence and other risks.

SECTION THREE – CONTRACTS AND MARINE INSURANCE

Two questions in the exam will be based on this section. It covers salvage agreements, including Lloyds Open Form and towing contracts, contracts of employment and crew agreements, charter contracts, marine insurance policies and P&I clubs.

Topic 10: Contracts of Salvage

The syllabus for this topic is as follows:

- a) Demonstrates an understanding, in broad terms, of the definitions contained in the International Convention on Salvage (Articles 13 and 14) including SCOPIC.
- b) Can explain the practical use of Lloyds Open Form of salvage contract, and its advantages to both parties.
- c) Can explain the interpretation of the expression 'a place of safety' as used in Lloyds Open Form of salvage agreement and the need, wherever possible, to agree a 'place of safety'.
- d) Can define and explain the elements of a valid claim for Salvage in Admiralty Law, in the absence of any contractual obligation to pay for the services involved.
- e) Can explain who has the legal right to control the acceptance or rejection of assistance to yachts.
- f) Demonstrates an understanding of the legal definition of the word 'derelict'.
- g) Demonstrates an understanding of the 'Duties of the Salvor' and the 'Duties of the Master/Owner'.
- h) Can distinguish between contracts for assistance based on salvage principles (Lloyds open form) and contracts of hire (towage).
- i) Can explain the advantages and disadvantages to both parties in the use of each of the above forms of contract with reference to the practicality of negotiating and using such contracts at sea.

Salvage

The law of salvage has a peculiar position in English law. Whereas if one helped someone at the side of the road broken down in a car, even at great personal risk, one would not expect to be able to claim for a financial reward against that person or have a lien (claim for possession) on their vehicle. In comparable circumstances at sea one **can** claim a reward or maritime lien upon the vessel if it is successfully saved.

The law of salvage is very ancient, rooted in the fundamental need for mariners to help each other when imperilled on the sea. The common law has explored this subject extensively; there is a long history of case law which has defined precisely the circumstances under which salvage is payable. This forms part of Admiralty Law and is discussed below. In later years statutes have also been passed to enforce international conventions in salvage situations.

10:a) The International Convention on Marine Salvage

The International Convention on Marine Salvage 1989 is given force of law in the UK by the Merchant Shipping Act 1995 so it is a legal requirement to comply with its provisions.

The first attempt to codify the laws of salvage on an international basis was in 1910, the effect was to establish internationally many of the principles that had been current in English common law anyway.

The convention recognises the major contribution which efficient and timely salvage operations can make to the safety of vessels and other property in danger and to the protection of the environment and of the need to ensure that adequate incentives are available to persons who undertake salvage operations in respect of vessels and other property in danger.

Definitions in the convention include:

- 'Salvage operation' means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever
- 'Vessel' means any ship or craft, or any structure capable of navigation
- 'Property' means any property not permanently and intentionally attached to the shoreline and includes freight at risk.
- 'Damage to the environment' means substantial physical damage to human health or to marine life or resources in coastal or inland waters or areas adjacent thereto, caused by pollution, contamination, fire, explosion or similar major incidents
- 'Payment' means any reward, remuneration or compensation due under this Convention

The Convention shall apply to any salvage operations unless a contract has been agreed expressly or by implication for the service provided

The master shall have the authority to conclude contracts for salvage operations on behalf of the owner of the vessel. The master or the owner of the vessel shall have the authority to conclude such contracts on behalf of the owner of the property on board the vessel. A contract or any terms thereof may be annulled or modified if the contract has been entered into under undue influence or the influence of danger and its terms are inequitable or the payment under the contract is in an excessive degree too large or too small for the services actually rendered.

The convention has several articles which set out the rights and duties of the parties involved in the salvage operation, including:

- Duties of the salvor and of the owner and master
- Rights of coastal States
- Duty to render assistance
- Co-operation
- Conditions for reward
- Criteria for fixing the reward
- Special compensation
- Apportionment between salvors
- Salvage of persons
- Services rendered under existing contracts
- The effect of salvor's misconduct
- Maritime lien
- Duty to provide security
- Payment

Article 13

Article 13 sets out the criteria for fixing the value of a reward, which shall be fixed with a view to encouraging salvage operations, taking into account the following:

- The salvaged value of the vessel and other property
- The skill and efforts of the salvors in preventing or minimizing damage to the environment
- The measure of success obtained by the salvor
- The nature and degree of the danger

- The skill and efforts of the salvors in salvaging the vessel, other property and life
- The time used and expenses and losses incurred by the salvors
- The risk of liability and other risks run by the salvors or their equipment
- The promptness of the services rendered
- The availability and use of vessels or other equipment intended for salvage operations
- The state of readiness and efficiency of the salvor's equipment and the value thereof

Article 14 Special compensation

Article 14 (known as the SCOPIC clause) provides for special compensation to be paid if the salvor has carried out salvage operations in respect of a vessel which threatened damage to the environment and has **failed** to earn a reward under article 13.

If the salvor has prevented or minimized damage to the environment, the special compensation payable by the owner to the salvor may be increased up to a maximum of 30% of the expenses incurred by the salvor. However, a tribunal may increase such special compensation further, but in no event shall the total increase be more than 100% of the expenses incurred by the salvor.

Salvor's expenses for this purpose means the out-of-pocket expenses reasonably incurred by the salvor in the salvage operation and a fair rate for equipment and personnel actually and reasonably used in the salvage operation, taking into consideration the criteria set out in article 13. The total special compensation under this article shall be paid only if and to the extent that such compensation is greater than any reward recoverable by the salvor under article 13. If the salvor has been negligent and has thereby failed to prevent or minimize damage to the environment, he may be deprived of the whole or part of any special compensation due under this article.

10:b) Lloyds Open Form

The Lloyds Standard Form of Salvage Agreement (referred to as Lloyds Open Form or LOF) is by far the most widely used type of salvage contract, it is a standard form of salvage contract produced by the governing committee of Lloyds of London. It is called 'open' because it is literally open, with no amount of money being stipulated for the salvage job: the sum to be paid is determined later in London by a professional arbitrator. The form was first developed during the Crimean war in the 19th Century and has undergone several revisions since, the latest being in 2000. The last revision simplified the form greatly by removing many of the clauses to a separate document, called the Procedural Rules, making the form much easier to understand in a crisis. One of the few terms which is written on the form is 'No cure, No pay' which makes it clear that only a successful operation will result in an arbitration award being made. (Unless the SCOPIC clause were to apply).

It is the most common type of salvage agreement because of certain advantages to both salvor and salvaged. Whilst it is true that a service conducted under the terms of the LOF is not common law salvage as such the agreement has been carefully drafted to conform closely with the principles therein and with international law. The latest version (LOF 2000) takes into account the 1989 Salvage Convention.

The Advantages to the **salvor** of using the Lloyds Open Form include:

- There is no doubt as to the nature of the service being offered, the owner may not claim that the service was conducted on the basis of another type of contract e.g. towage or he may not claim that there was no real danger or that his property is not a 'maritime property'
- The owner of the property agrees to put up bail, thus the property need not be seized by the salvor to guarantee his reward. Bail is usually considered a much safer form of security for the salvor than his maritime lien

- The agreement gives the salvor the right, upon successful service, to proceed directly against the owner. If the property is destroyed at a later date but before the claim is settled the salvor still has a remedy in law. (Under the common law of salvage he would lose his right to claim since a maritime lien attaches to the property not its owner)
- The agreement allows the salvor to obtain his expenses before the final award is determined
- The award is determined by arbitration which is usually much less expensive and quicker than litigation

The Advantages to the **Owner** of using the Lloyds Open Form include:

- There is no doubt as to the nature of the service, the salvor may not claim that the service was in the form of a hiring agreement
- Arbitration is less expensive and quicker than litigation
- In an emergency there is no requirement to haggle over terms thus delaying the start of salvage operations
- By avoiding the need for the property to be arrested the vessel can resume trading

10:c) Place of safety

A 'place of safety' should be specified as a part of the agreement thus the definition of 'successful' with regard to the completion of the service is more easily resolved.

Once the salvor has taken the vessel to this place, provided he is not required to remain in attendance by the harbour authority or government, he may leave the vessel, even if it is damaged and requires further work to render it safe. This is now the responsibility of the owner. In salvage claims made in the Admiralty court this can often be a source of dispute.

The use of the Lloyd's form must be unambiguous but it is not necessary to sign the form at the time the service is offered, particularly if some urgency is needed. An agreement under the terms of Lloyd's Open Form does not actually need to be in writing. A verbal agreement made (for example) over the radio is fully enforceable provided it can, if necessary, be proved (e.g. with witnesses). When offering or accepting in this way it is advisable to make the offer and acceptance as clear and unambiguous as possible. Particular clarity is needed because sometimes such communications are preceded by protracted negotiations during which various types of service may be discussed. A coastguard radio station or another vessel could be invited to listen and witness the contract. It should be signed as soon as practicable.

It is advisable to complete the form itself and exchange contracts as soon as possible. If no Lloyds Salvage form is immediately to hand then a sheet of paper signed by both parties indicating that the service is to be provided under the terms LOF then this will suffice. In fact it is quite acceptable to sign the Lloyds form after the successful completion of the service.

10:d) Salvage in Admiralty Law

Salvage operations are usually performed under some form of contract, which has the effect of removing the service from the constraints of the common law of salvage. However the most widely used of these contracts (the Lloyds Open Form) is closely based on the principles that the common law and international conventions apply. Furthermore if a contract in the nature of salvage is manifestly unfair (for example if the danger of a situation was used to extort greater concessions from a vessel requiring assistance), then the courts can and do overturn the contract and apply the common law of salvage as if it did not exist.

If no contractual agreement exists then it will be settled according to Admiralty Law. Under English common law salvage is a **voluntary** service which **successfully** saves or assists in the saving of **maritime property** in **danger** of being lost **at sea**.

Voluntary service

The salvor must act voluntarily. He must be under no existing statutory or contractual obligation to render assistance. For example the crew of a vessel cannot claim salvage unless such services are beyond their contractual duties or their contracts of employment have been terminated. Pilots and Tug operators are under similar constraints. The statutory obligation to assist vessels in distress does **not** affect salvage claims as the obligation in a distress situation is to save life not property. If in saving life property is also saved a salvage claim may be made.

Successful

A salvage claim is not made against the owner but against a vessel or some other maritime property. (A salvage claim is said to be 'in rem'. This is a legal concept meaning that a claim is made against a specific object (the vessel or other property) rather than the owner or an individual person) .If the vessel is not saved then there is no asset upon which a claim can be made. The salvage award is made against the vessel as a percentage of its value and this varies according to the degree of risk involved and the necessary costs incurred by the salvor. The percentage rarely exceeds 10%. An unsuccessful salvor may be sued by the owners if there is proof that negligence on the part of the salvor contributed to the loss!

Maritime Property

Not all property saved at sea will attract a salvage award. Case history in admiralty law has resulted in salvage claims being limited to 'maritime property' defined as a ship (which term includes aircraft and hovercraft), her equipment and cargo and the wreckage of these. It does not include human life or the personal effects of passengers and crew. The saving of life does not in itself attract a salvage award but to encourage seafarers to attempt this a **greater award** is made where both the property **and life** are saved. The Merchant Shipping Act, 1894 gave the Secretary of State power to make a discretionary award out of the exchequer where life but not property is saved. Buoys and navigation marks etc. do not attract a salvage award.

Danger

The salvor must be able to show that the vessel in question was in danger at the time that the service was offered. The danger need not be acute or imminent but it must be **real**. For example a service offered to a well found vessel with engine failure in calm conditions and open water would be viewed differently to the same service offered in the same circumstances except that a storm warning for the area was in force.

At Sea

The concept of salvage is peculiar to maritime law and thus must take place within the jurisdiction of Admiralty law. (The high seas and tidal waters.) Under the 1894 act this extends to objects found upon the sea shore which are salvable and had their origins at sea.

10:e) Right to accept or reject assistance

It is made clear in the International Convention on Salvage and in the UK Merchant Shipping regulations that the Master has complete authority to engage salvors on behalf of the owner, even if the owner disagrees. The Master and Owner have authority to contract on behalf of the owner of any property on board the yacht. A request for assistance should be made as soon as possible and arrangements should not be delayed in order to agree financial terms if the delay could increase the extent of danger or make the operation more difficult. If there are several offers of assistance available, the one most likely to produce a successful outcome should be selected. The Master should of course try to limit the extent of any liabilities which

will be incurred upon the owner by negotiating the most favourable terms if time and conditions allow.

Where there are several would be salvors on scene the Master has the right to decide which is the most appropriate. A salvor who arrives first has no right to exclude one who comes later, though he may still have some rights to make a claim afterwards. If a salvor interferes with an existing operation then he may be liable to civil proceedings.

Article 9 of the International Convention on Salvage recognises the right of the coastal state concerned to take measures to protect its coastline or related interests from pollution or the threat of pollution from a maritime casualty which may result in major harmful consequences, including the right of a coastal state to give directions in relation to salvage operations and order a vessel to accept nominated assistance.

10:f) Derelict

Where a vessel is derelict (abandoned at sea) the situation is different, here the first salvor to take charge of the vessel has the right to control the salvage. The salvor can normally claim more for a derelict since there was manifestly no help from the crew of the vessel. There has been some dispute as to what constitutes 'abandonment', in situations where, for example, the crew have left a vessel that has run aground which has then been towed off by a salvor claiming a derelict, courts have decided that the crew had not abandoned her as they were still nearby and intending to return.

10:g) Duties of Salvor, Master and Owner

The duties of the salvor and of the owner and master are set out in article 8 of the International Convention and incorporated into UK Merchant Shipping regulations as follows:

The **salvor** shall owe a duty to the owner of the vessel or other property in danger:

- To carry out the salvage operations with due care
- To exercise due care to prevent or minimize damage to the environment
- Whenever circumstances reasonably require, to seek assistance from other salvors
- To accept the intervention of other salvors when reasonably requested to do so by the owner or master of the vessel or other property in danger, provided however that the amount of his reward shall not be prejudiced should it be found that such a request was unreasonable

The **owner and master** of the vessel or the owner of other property in danger shall owe a duty to the salvor:

- To co-operate fully with him during the course of the salvage operations
- To exercise due care to prevent or minimize damage to the environment
- When the vessel or other property has been brought to a place of safety, to accept re-delivery when reasonably requested by the salvor to do so

The master has a duty to render assistance so far as he can do so without serious danger to his vessel and persons thereon, to any person in danger of being lost at sea.

10:h) Salvage and Towage

Two identical tugs at sea towing two identical vessels to the same place could be regarded as performing the same job but legally speaking they could be each doing something quite different. The difference depends on the nature of the agreement between the masters/owners of the two vessels. If the master entered into a salvage agreement or if the tug master has made a decision to sue for salvage in the absence of an agreement then the principles of salvage will be applied. It could be however that a contract of towage has been

agreed. In this case the tug master is not a 'volunteer' and salvage cannot be applied. He will be paid according to what was agreed in the contract. If he fails to save the ship through no fault of his own then he normally will still be entitled to be paid. Contracts of towage are, in fact, much more common than contracts of salvage and most professional tug companies spend most of their time performing such contracts.

10:i) Advantages and disadvantages

It would usually be in the owners best interest to negotiate for a contract of towage, perhaps taking tenders from several tug operators. Normally it is only when the situation of the ship leaves no time for this process to be carried out that salvage becomes the best option in which case Lloyds Open Form should be used. To summarise:

- Under towage the towing vessel will be entitled to payment whether or not he succeeds in saving the ship (unless negligent)
- The towing vessel may sue the owner directly (Salvor must claim a maritime lien)
- Towage will normally cost the owner less than salvage (unless the salvage claim is a weak one or the tow is very exceptional)
- Towing contract specifies the amount to be paid so owner knows extent of liability
- Towing contract with hourly or daily rate fee can take longer than expected, increasing the cost
- LOF removes the need for negotiating a fee
- LOF commits owner to unknown liability (trusting Lloyds arbitration panel to make fair award)
- LOF means salvor does not know value of award until claim is settled
- 'No cure, no pay' if LOF used

Topic 11: Contracts of Employment (Crew agreements)

The syllabus for this topic is as follows:

- a) Can demonstrate an understanding of the United Kingdom regulations as they relate to the opening and closing of a crew agreement aboard yachts and be able to state the circumstances in which a yacht must have an approved crew agreement.
- b) Demonstrates an understanding that crewmembers are entitled to and are required to contract on the basis of an approved crew agreement.
- c) Can describe the standard form of approved crew agreement for yachts and explains how the various documents can be obtained.
- d) Can explain the relationship between an approved crew agreement and any other associated contract of employment.
- e) Can describe a procedure for engaging a crew under the standard form of approved crew agreement so as to comply with United Kingdom regulations.
- f) Demonstrates an understanding of the legal obligations of a Master as they relate to the maintenance of crew lists.
- g) Can describe the procedure for terminating a seaman(s) employment under the standard form of yacht crew agreement so as to comply with United Kingdom regulations.
- h) Can define, with regard to yachts, those persons on board who are passengers as opposed to crew.
- i) Demonstrates an understanding of the statutory obligations of an employer as they relate to the maintenance and repatriation of seaman.
- j) Can describe the procedure to be followed so as to comply with all United Kingdom regulations relevant to a crew member who:
 - i). dies at sea
 - ii). is injured at sea on board a yacht
 - iii). is incapacitated due to illness and discharged to hospital

11:a) Crew agreements

An 'employee' under English law is someone who has entered into work under a contract of employment. The contract is formed as soon as the job has been offered and accepted in return for financial remuneration. The terms of such a contract can be written into a formal legal document or devined from a letter of offer or a verbal offer or they may be implied into the contract by the common law. An employer must give an employee who works 8 hours a week or more and who works for more than a month, a written statement of the terms and conditions of employment.

The Merchant Shipping Act 1995, requires that every United Kingdom ship shall have an agreement in writing between each person employed and the person employing him. For United Kingdom ships these are known as crew agreements and they are required to be written and in a form approved by the MCA. These official crew agreements are additional to and separate from any company contract or similar document.

There is a standard form of approved crew agreement supplied by the MCA. The crew agreement and the official log book are closely related documents. The crew agreement is a requirement of both the Merchant Shipping Act and an ILO Convention, it must be used and its correct use is of importance. Failure to keep an approved crew agreement is an offence.

All commercially operated yachts (unless less than 24 metres and less than 80gt) **and** a pleasure yacht with more than 4 paid crew (unless it operates only in UK coastal waters), **must** operate a crew agreement and maintain an up to date list of crew at an address in the UK.

11:b) Entitlement to crew agreements for yachts

All crew in British registered vessels have a right to be employed under an approved crew agreement. Employers are required to honour this as described above.

11:c) Standard form of crew agreement

There are different types of crew agreement approved by the MCA. A detailed agreement drawn up in consultation with ship-owners and seafares unions is used for merchant ships using the Code of Conduct for the Merchant Navy. A simplified agreement has been drawn up which covers the minimum legal requirements and is approved by the MCA for use on yachts. Other agreements may be used if they have been approved by the Maritime and Coastguard Agency at least 14 days before the start of the proposed employment. Any alternative must satisfy ILO and Merchant Shipping regulations and not contravene employee rights.

MGN 149 sets out the required format and content of the minimum crew agreement to be used on yachts. The documents which make up the agreement are; the cover, the contractual clauses and the lists of crew:

The cover

The cover (form ALC 1) of the agreement acts as a folder to keep the other documents in. On the front are details referring to the ship and its owner, taken from the the certificate of registration:

- Name and port of registry, official number
- Description of the vessel
- Register (net) tonnage
- Name and address of the registered owner
- Dates and places of commencement and termination of the agreement

The master must sign the front cover on commencement and closing of the agreement.

Contractual clauses

The second part of the agreement (form ALC(YT)1(d) is the contractual provisions which are detailed on a sheet inside the front cover. It sets out the basic terms and conditions of the agreement between employer and employee such as:

- Identity of employer
- Period of the agreement
- Grounds for termination
- Notice requirements
- Hours of work, leave and subsistence

Further clauses may be inserted provided they are first submitted to the MCA for approval.

The Crew Lists

There are three lists of crew to be kept:

- The first (form ALC1(a) is a list of crew employed under the terms and conditions set out in the contractual clauses must sign a crew list that shows that they accept these terms
- The second form ALC1(b) is a list of all other persons onboard who are **exempted** from the crew agreement but who nonetheless should not be considered passengers, such as nannies, butlers, security guards etc. (the Master must sign this as he is **not** employed under the crew agreement)
- Young crew under the age of 18 years must also be listed on a list of young persons, (form ALC1(c) **in addition** to being included on one of the above lists. There are special rules under European and British Law concerning the employment of minors and it is necessary under UK law to make a declaration if such people are carried.

The only persons who need not be on the crew list are passengers and pilots. The owner, if he owns the yachts in his own name may appear on the exempted list but his family must be listed on the passenger list. If the owner owns the vessel through a company and therefore is not named on the certificate of registry then he is a passenger too and will be on the passenger list.

Note that UK regulations do not allow a person to be signed on ships articles for more than 11 months at any one time.

The MCA recommend that for yachts a crew agreement should run for 12 months, after which time it must be closed and a new one started. On closing, the crew and agreement and lists of crew must be sent, together with the official log book for the same period, to the Registrar General of Shipping and Seamen or to a 'proper officer' within three days.

In order that the Agency can have up to date information on the composition of the crews of vessels, the Registrar General of Shipping and Seamen is empowered to demand a list of crew at any given date and this must be supplied within 28 days. These checks will be made on a random basis or whenever there is cause to question the composition of the crew of a particular vessel.

11:d) Other forms of employment contract

It has been stated that all crew must employed under the terms of an MCA approved crew agreement. There is, however, nothing to stop an employer using an additional, separate continuous contract of employment to stipulate terms other than those contained in the standard agreement (such as hours of work, leave, expenses, flights home, owner confidentiality, taking of gratuities etc.) These contracts must comply with British and

European employment law but need not be pre approved by the MCA. If any such terms contradicted the crew agreement, the crew agreement would over-ride them.

11:e) Procedure for Engaging Crew

The following procedure should be followed when crew are hired to work on board.

First prepare the required documentation:

- The crew agreement must be opened, and the seamen engaged by the Master, a person authorised by him or the employer
- The front page is completed and this information is also entered into the official logbook
- The appropriate notice and voyage clauses are inserted into the cover along with any other clauses required (all must be MCA approved)
- The Master should write his own particulars and sign on the list of crew exempted from the agreement
- Loadline and freeboard details should be copied into the official log book from the load line certificate
- An entry should be made in the narrative section of the OLB to the effect that the crew agreement has been opened

Then, for each Crewmember:

- Allocate a reference number to each
- Check the qualifications of each crew member joining
- Enter their details on the list of crew subject to the crew agreement; name, address, next of kin, rate of wages
- Show the seaman the terms of employment
- Each Seaman should sign the list of crew subject to the crew agreement
- Each seaman should be given a copy of the terms that requests it.
- All exempt persons should be entered on the list of crew exempted from the agreement
- List any seaman under 18 on the list of young persons

The terms and conditions should be posted in a conspicuous place. Copy relevant details of the crew employed into the inside front cover of the Official Log Book section for 'record of seamen employed in the ship'.

11:f) Maintenance of crew lists

The master should ensure that an up-to-date copy of the crew list is passed to the owner at the commencement of each voyage and he is subsequently required, in addition to noting any changes of crew in the crew list carried on-board, to also notify, as soon as practicable and in any case **within 3 days**, the changes to the owner for entering in the list of crew maintained ashore. Only changes notified by the master be entered in the list of crew maintained ashore and it is important that that copy should be maintained in the form required by the Regulations.

It is vital that the copy of the list of crew maintained ashore is kept up to date and that the details specified in MGN 111 are included since in the event of the loss or abandonment of the ship or fishing vessel to which it relates, it will be this list which is used to establish whether any of the crew are missing . Certified extracts may also be required by the Registrar General of Shipping and Seamen and may enable the death of a person on the vessel to be recorded thus avoiding any delay in settling their estate.

11:g) Procedure for Termination of the Crew Agreement

Crew agreements are terminated automatically at the end of their period. Within three days of this time the agreement must be sent to the Registrar General of Shipping and Seamen along with the official log book. The date of closing must be entered on the front cover.

Where a seaman is being discharged from the crew agreement for any reason it will normally be done in front of the master, his representative or the employer. His/Her discharge book should be filled in if this is produced. Otherwise a certificate of discharge should be given. Complete the crew list section (place date and reason for discharge) and the seaman should then sign it. Give the seaman a reference if requested (a sea service testimonial).

The seaman will normally be present on discharge, and will be able to leave the vessel after customs clearance. An entry should be made in the Official Logbook. If the person is not present upon discharge (e.g. because of hospitalisation, then the local consular office should be informed and the crew list noted to this effect. This should be stated in the OLB. If there is a wage dispute upon discharge then the local 'proper officer' should be informed (consular official) within 48 hours of the discharge. He should be sent a "notice of discharge" detailing the vessels name, official number, port of registry, place date and time of discharge, the seaman's capacity on board and if applicable the number of seamen discharged at the same time.

Payment of Wages on Discharge

The Merchant Shipping Act 1995 lays down certain requirements concerning the payment of seaman's wages on discharge.

Wages must be paid to the seaman in full when they leave the ship on discharge or, if paid monthly no later than the next monthly due date had they remained employed.

If there are any funds owing to the seaman as a result of the discharge (e.g. pay in lieu of leave) or any other reason, if the amount payable exceeds £50 and it is not practicable to pay this on discharge then not less than £50 shall be paid in cash on discharge or not less than $\frac{1}{4}$ of the balance, whichever is greater. The remainder must be paid within 7 days. Failure to pay will be regarded as 'with-holding wages', an offence which could entitle the seaman to a days pay each day it is late for 56 days after discharge and thereafter to 20% interest per annum. For seaman paid monthly any monies outstanding at the time of the final payment accrue interest at 20% per annum. The seaman is entitled to have his wages paid in cash but if he agrees it may be paid by cheque, money order or bank transfer.

Deductions from wages

Under some circumstances deductions may be made from seaman's wages, these are:

- Goods supplied (by the ship)
- Radiotelephone calls
- Postage expenses
- Cash Advances
- Allotments
- Pension/charity trade union contributions.
- Any actual expenses incurred as a result of the employee's absence without leave, if this was a breach of the crew agreement, up to a maximum of £100. This shall not be made if the employer is satisfied that the absence is due to accident, mistake or another cause beyond his control and that the seaman took all reasonable steps to avoid being absent

- Any actual expenses incurred other than by absence without leave, where the employer is satisfied that a breach of the crew agreement has occurred, (perhaps wilful damage), up to a maximum of £300
- Where the seaman is employed under an approved crew agreement to which the Merchant Navy Code of Practice applies, a contribution towards repatriation expenses may be deducted from his wages where a serious breach of the code has occurred. This may be no more than the equivalent of a weeks wages.

In the latter three cases above 24 hours notice must be given of the deduction and the seaman should be given opportunities to make representations to the Master. This notice should specify the provisions of the crew agreement that have been broken, and how the deductions were calculated. It should be made clear on what grounds the Master believe that the crew agreement has been breached.

If there is a dispute over wages then the matter may be referred, if both parties agree, to the local consulate/embassy. He is not bound to accept but if he does then his decision is final.

11:h) Definition of a Passenger

As already stated in topic 4:f), under British Law a person in a ship at sea is a passenger unless:

- They are employed on board on the business of the ship
- They have been rescued from the water or another ship in distress
- They are stowaways (though there are other ramifications of this)
- They have been ordered to be transported by the authorities of another nation
- They are a child under one year of age

Any person on board who is not identified on the list of crew or list of exempted crew may be regarded as a passenger. Yachts (including private ones) may not carry more than 12 passengers without being certified as a passenger vessel.

11:i) Repatriation of Seamen

If a seaman is left behind for any reason the employer has a duty to repatriate. Under the Merchant Shipping Act 1995 where:

- A person employed on a UK Registered vessel is left behind in any country other than the UK or is taken to such a country on being shipwrecked or
- A person who became so employed under an agreement entered into outside the UK is left behind in or taken to the UK

The persons who last employed him or her as seamen shall make provision for the return and shall make provision for the relief and maintenance of the person. The owner shall also provide for any other requirements made by the Secretary of State. The latter are made in the Merchant Shipping (Repatriation of Seamen) Regulations 1979. The place of return is defined in these regulations as follows:

- If the Seaman is a UK resident then the persons home address
- If the seaman is not resident in the UK then to a place in the country where he is resident, being
 - if he joined the vessel in that country then the port where he joined or
 - if he joined outside the country, the place in that country where he was engaged to join.
- Any other place as may be agreed between the seaman and the employer.

In those cases where such action is not taken by the employer, UK Consuls are able to take the necessary steps, at the employer's expense.

The employers obligation ceases if the seaman refuses suitable alternative employment (in another ship for example), or reasonable arrangements for his return or if he disappears for three months or more. The master should notify the local proper officer of the fact and the circumstances surrounding a seaman being left behind within 48 hours of sailing.

11:j) Termination on death, injury or illness

In the event of a death on board, establish the cause of death if possible (ideally by a doctor). A report should be made to the proper officer if in port and to the local authorities. If at sea this should be at the next port of call. If the death is by accident, reports should be made in accordance with the accident reporting regulations (see topic 6:d). If the death was of natural causes then a report should be made at the appropriate time to port health officials at the next port of call (see topic 2:b). The following action should be taken:

- Inform next of kin within 3 days of the death
- Inform the owner as soon as possible as he will have some financial liabilities to prepare for and is obliged to repatriate the body
- Make out a Return of Death (RBD/1) and make entry in OLB
- Discharge the person from the crew agreement
- Prepare an account of wages
- Collect the person's possessions with a witness as above
- Preserve the body if possible in accordance with the Ship Captains Medical Guide, if not possible to preserve it carry out a burial at sea (See SCMG)
- Consult the Manning Document and if in port employ a replacement if required
- In the event of someone being lost overboard the return above should be made and the same procedure followed even though it is possible that the person may not actually be dead

The entry in the Official Log Book should be made as follows and it should be countersigned by a another member of the crew:

- Date of death (or loss overboard)
- Place of death or position of the ship
- Name of the deceased
- Nationality, sex, date of birth or age of the deceased (if known)
- If deceased is a married woman, her maiden name (if known)
- Rank, occupation or profession (if known)
- Usual residence at time of death
- Cause of death and if not due to natural causes then the circumstances surrounding the death .
- If the deceased was lost overboard, what steps were taken to recover the person
- The fact that the RBD1 was made and to whom it was sent
- The fact that the next of kin have been informed

Where the deceased was employed in the ship, an inventory of any property the deceased has left (including money) must be attached in the back of the OLB.

If a crew member becomes ill or is injured and is discharged to hospital ashore, the procedure for discharge is similar to that above:

- If the seaman is unable to pack his own gear someone must do it for him in the presence of another crewmember, it must be inventoried and the list entered in the official logbook
- All medical expenses must be paid and also payments for maintenance ashore
- An account of wages will be made up in the seaman's absence and forwarded with a copy placed in the OLB
- Full details must be recorded in the OLB regarding the reasons for the discharge

The crew members job must be kept open for them until they recover, unless the nature of the injury or illness will be prolonged, in which case their employment can be terminated. A temporary disablement is no grounds for dismissal under the Common Law. If the nature of the disablement is permanent or of such sufficiently long duration in relation to the length of the contract of employment that it may reasonably be regarded as frustrated then the contract may be terminated.

Some qualification is required to this: the employee could still claim unfair dismissal if he can satisfy an industrial tribunal that there was a reasonable alternative to his dismissal. (other duties, for example).

Wages are payable throughout the period of the crew member's incapacity until the point of dismissal. If the illness or incapacity result from the crew members own action, then provided that this is stated in the crew agreement, (as it is in the BSF agreement) they are payable up to that action.

If a crew member goes AWOL (absent without leave), this is a valid reason for termination unless the seaman can prove that the absence was due to a mistake or to circumstances beyond his control and that he took all reasonable precautions to avoid it. If the absence is of a serious nature then it constitutes a repudiation of the contract and so the employer may accept the repudiation and terminate the agreement. Whether or not the absence was in fact a repudiation is a matter for the courts to decide in the event of litigation. Under the **Merchant Shipping Act, 1995** the employer may sue the seaman for damages in this event.

If a seaman is left behind for **any** reason, including those mentioned above, the following must be done to comply with the Merchant Shipping Acts:

- Inform the local immigration authorities and enlist their help in trying to find him (if he is AWOL) and inform the local consular officer.
- If not found discharge him from the crew agreement and have this witnessed and signed in the OLB
- Engage a substitute if the manning document requires this
- Make arrangements for the relief and repatriation of the seaman should he re-appear (usually money left with an agent)
- Collect and itemise the seaman's property in the presence of another crewmember
- Prepare an account of outstanding wages
- Make an entry in the OLB detailing exactly what steps were taken and who was informed

11:k) UK employment law

Historically the powers of the master were very great indeed; many masters operated a despotic regime on board and they had powers of capital punishment! Even in the early days of seafaring, however, the master was answerable for his actions upon return. Until recently the master retained the power to administer judicially certain punishments such as extra work or fines of one or more day's pay. This has now been removed under UK employment law and a master must treat his crew in the same way as any other UK employer.

Disciplinary offences fall into two categories; those where a criminal offence is committed which must be tried in a criminal court and those which may be dealt with on board. There are considerable overlaps between these two, for example a master can deal with wilful disobedience, which is a criminal offence, as an internal matter on board. The master retains his power to arrest and can detain anyone that he considers to be a danger to the ship.

The Code of Conduct for the Merchant Navy

Vessels which operate under an approved crew agreement which incorporates the Code of Conduct for the Merchant Navy (the 'federated' crew agreement) have access to shorebased review committees which can review and confirm or modify decisions made by the master on

board. Although the code is not formally part of the yacht crew agreement in MGN 149, there is nothing to stop a master either formally incorporating it with an extra clause added in or informally making it part of the vessel's standing orders. The extra clause would have to be approved by the MCA but as both the yacht crew agreement and the code of conduct itself are both approved this would be a formality. There is nothing in the code which is incompatible with the professional yacht environment since it deals with issues that are common to all seafarers.

One important effect of the code is that it establishes a procedure for dealing with unacceptable behaviour which ensures that UK employment law is observed. It specifies what minor acts of negligence may result in sanctions and defines an escalating series of warnings which can ultimately lead to dismissal from the ship. It also makes clear what types of behaviour can result in summary dismissal at the next port of call.

The Code of Conduct for the Merchant Navy may be downloaded from the British Chamber of Shipping website www.british-shipping.org follow the 'publications' link. The code is aimed at crew, though it is very useful to the master, as it clarifies exactly what is expected of the crew and their behaviour with respect to performing duties, obeying orders, treatment of accommodation and respect of other crew members. It also details procedures for dealing with breaches of the code and cites examples of serious breaches where crew could be summarily dismissed, and less serious matters for which a series of warnings can be given. It also details the procedure to be followed if a crew member is to be disciplined.

It is essential that the master is careful to adhere to UK employment law. The Master may not dismiss someone wrongfully or unfairly. The definitions of a **dismissal** are:

- Termination of employment by the employer
- Termination by an employee who resigns
- Expiry of a fixed term contract without renewal
- An employee is refused return to work after giving birth

All dismissals are assumed to be unfair unless it can be PROVED that:

- There was a fair reason (acceptable reasons are detailed below under summary dismissal)
- The employer acted reasonably in deciding if dismissal was justified
- Fair procedures were adopted and followed

Summary dismissal is sanctioned in law under the following circumstances:

- Lack of capability, this is easier to establish in the early days of employment
- Serious misconduct such as endangering the vessels, habitual drunkenness, striking another, etc.
- Lack of qualification
- Redundancy - where a person is redundant the employer cannot be expected to pay him. Thus upon sale of a vessel the crew can be paid off. (they have certain rights in such a case)
- Statutory requirement (e.g. suspension of certificate of competence)
- Other grounds are possible and would need to withstand the examination of an Industrial Tribunal if challenged

If a Seaman feels that he has been dismissed when he should not have been then he can proceed against the owner/master for "wrongful" or "unfair" dismissal. A contract of employment can be legally terminated either summarily for good cause (see above) or upon an agreed period of notice.

Wrongful dismissal

This is a common law offence whereby the crew member can challenge the dismissal on grounds that the correct procedure was not followed or upon grounds that the dismissal was for a trivial offence. Wrongful dismissal cases will always be heard in a court of law. Any damages awarded will be limited to actual losses incurred.

Unfair dismissal

This was introduced by Employment legislation to further protect employees and occurs when someone is dismissed without a valid reason. Cases for unfair dismissal are always heard in an Industrial Tribunal. Not all classes of seaman can claim unfair dismissal; the following will not be able to claim :

- Concessionaires (shop keepers etc)
- Those over normal retiring age (65 unless otherwise stipulated)
- Those who have not completed one year continuous service
- Seafarers engaged to work *wholly* outside the United Kingdom and who are not normally resident in the UK probably will not be able to claim - the terms of the contract would have to be examined by the court
- Seafarers who fail to register a complaint within three months

Failure to be able to claim unfair dismissal does not affect a seaman's right to claim wrongful dismissal. The crew agreement is a contract of employment. When it expires and is not renewed then a seaman has been dismissed in law. If the dismissal is not "fair" then he can have a remedy in law (unless excluded for the above reasons) It may be considered unfair if warnings have not been given in the appropriate manner (see below). An Industrial Tribunal may award re-instatement of the employee, or damages with punitive award.

One more type of unfair dismissal which needs to be understood is **constructive dismissal**. This occurs when an employee resigns because of certain conduct by an employer. The employer's action must be such that it can be regarded as a substantial breach of the terms of the contract (implied or explicit). Examples of such conduct may be:

- Pay or conditions are reduced without agreement
- Employee is arbitrarily reduced in rank
- Employee is humiliated in front of others
- Contractual rights are ignored

Fair Dismissal

Crew members must be made aware of circumstances that could lead to dismissal. The Code of Conduct for the Merchant Navy is one way of achieving this. Captain's Standing Orders for the Yacht would be another. The crew agreement can also assist in this respect. Problems should be tackled early to avoid, if possible, recourse to dismissal. For a dismissal on grounds of capability due to inadequate performance to 'stick' under legal examination it is very important to show that all reasonable steps were taken before dismissal to avert it. These might include:

- Informing the seafarer of his/her shortcomings and making a private record of the interview
- Giving further training
- Arranging for supervision
- Following the correct warning procedure

If no improvement is noticed the seafarer could be 'logged' which involves making a note in the official logbook and giving a formal notification or warning to him/her. The seafarer should be asked to sign both copies of this notification.

In all circumstance where a crewmember is subjected to disciplinary procedures they have the right to be :

- Informed of allegations made against them
- Given opportunity to explain actions and contest evidence
- Have somebody accompany them in all disciplinary hearings
- Have somebody speak on their behalf
- Receive a copy of any OLB entries referring to them
- Informed of these rights

All action taken should be properly recorded as it may be scrutinised as evidence in any legal proceedings which might arise afterwards.

Topic 12: Yacht charter agreements

The syllabus for this topic is as follows:

- a) Can distinguish between 'bareboat' (Demise) and 'standard' time yacht charter party agreements
- b) Can describe the consequences of these types of agreement for the owner and charterer in terms of their:
 - i). responsibilities;
 - ii). liabilities;
 - iii). degree of operational control.
- c) Can demonstrate an awareness of the importance of prior reading through all charter agreements.

The hiring of ships is undertaken by a special form of contract known as a 'charter-party'. This name derives from the Italian 'carta partita' meaning 'divided document'. Early forms of this type of agreement were copied out twice on each side of the paper, signed by both parties and then cut down the middle. Each party kept a half.

The modern charter-party is a commercial contract between the owner and a charterer. Like other contracts there are conditions and warranties; (what constitutes a condition and a warranty is a matter for the courts to establish in the event of litigation). The owner **and the Master** have the power to change a charter-party after the agreement has been signed provided all parties agree: for example if the charterer wishes to leave the cruising area the master may acquiesce on the owners behalf if he considers it to be in his owner's best interest.

Standard Time Charter and Demise (Bareboat) Charter

There are two types of charter-party; a time charter and a voyage charter. Voyage charters are not normally used in the context of yachting. Time charters can also be classified as either Standard Time Charter or Demise/Bareboat Charter, (there can be a distinction between demise and bareboat but this does not affect us). Charters in yachts are usually arranged by a yacht charter broker. Whereas the normal commission fee for a ship time charter is 1.25% of the owners gross receipts for hire, freight, dead-weight etc the yacht charter broker often receives 15%, divisible in the event of more than one broker being involved, according to the arrangement between them or MYBA rules. Yacht time charters are often conducted using a MYBA contract which has become the industry standard, but there is no standard contract for the demise/bareboat charter of large yachts as this is very rare. (a shipping contract would be used).

Safe Ports

In virtually all charter-party agreements there will exist provision that the vessel be taken only to safe ports and berths. The definition of a safe port in this context is as follows.

- There must be safe access to the port free from permanent obstruction. A port, which is safe in other respects, may not be safe if the vessel cannot reach it without danger, An obstruction such as a bar impassable at low tide need not render the port unsafe.
- It must be possible for the vessel to remain afloat at all states of tide (unless the vessel can safely rest on the mud and it is customary to do it in that port)
- There must be adequate facilities for the commercial operations being considered (for yachts this does not mean Armani, Versace and a good choice of restaurants but good wharves, safe landing etc.)
- The port must be politically safe and free from war and international embargo
- The charterer (any type) has no right to ask the Master to enter an unsafe port. **It is the duty of the Master to refuse.** The Charterer may not be liable if the Master agrees to enter an unsafe port at his insistence and damage results because of the Master's obligation to refuse.

12:a) Difference between Standard Time and Bareboat agreements

Standard Time Charter

A Time Charter is the most common form of large yacht charter. The Captain must serve both the owner and the charterer but in different ways:

- The charterers hire the boat from the owner for a stated period of time (a day, week, year etc)
- The **Owner retains responsibility for the running costs of the vessel** (manning, repairs, maintenance, stores, wages, insurance etc)
- The **Charterers are responsible for the employment of the vessel and pay for food, fuel, pilotage dues, berthing** etc.
- Time charter is considered to be a commercial activity if the owner receives more than the immediate running costs of the vessel
- A yacht offered for hire under a Standard Time charter agreement must have a certificate of compliance with the MCA code of practice and any other international convention certification as a commercially operated vessel

Demise / Bareboat Charter

The role of the charterer is very different (and therefore so is his relationship with the Captain) in a bareboat Charter situation:

- The charterer becomes responsible **as though he was the owner and assumes full legal accountability** (he is referred to as the disponent owner)
- The charterer agrees to hire the boat from the owner for a stated period of time (usually a long period like a year or more)
- The charterer assumes **all** the running cost of the vessel as if he were the owner. (wages, crew employment, maintenance, repairs, etc)
- Bareboat charter is not considered to be a commercial activity

12:b) Responsibilities, Liabilities and degree of control

Owners responsibility - Time Charter

The owner should deliver the yacht to the charterer in the specified port in good time in a seaworthy condition ready in all respects to perform the charter.

The condition of seaworthiness is usually stated in the charter-party agreement but if it were not it would be *implied* by the law. The various certificates in conformance with international conventions (see section 2) are not actually PROOF of seaworthiness in themselves but if the yacht is delivered for a charter in the absence of one of them or with one of them out of date this could be grounds for the charterer to reject the yacht.

There could be a survey before delivery if the charterer wishes but in yacht r this is not often done. The merchant navy practice would be for a 'delivery slip' to be signed on completion of the survey to certify that the charterer accepts the ship. In yachts the acceptance of the charterer would be implied when he moves on board with his guests.

If the charterer rejects the yacht the master should establish the reasons for this rejection and obtain these in writing if possible. He should contact the charter broker and his owner without delay. If the reasons are valid but rectifiable he should take all steps necessary to continue the charter. If the reasons are, in his opinion, not valid he should communicate this to the charterer in clear terms and in writing but, if reasonable, he should still endeavour to continue the charter if this proves possible. He should consider noting a protest. The owner should be kept informed at all times.

If the owner fails to deliver the yacht to the charterer on time there will normally be a penalty. This could either be a payment to the charterer at a rate specified in the C/P (normally pro-rata daily rate) or an extension of the charter period if both sides agree.(see clause 9)

The Master and crew work for the owner but provide a service to the charterer under the terms of the agreement. They are responsible for the efficient running of the yacht in fulfilment of the contract. The owner remains liable in the event of a breach of the law or any civil liabilities concerning the vessel.

If the vessel breaks down during the hire period or is damaged causing delays etc there may be penalties. (In the MYBA agreement these are specified in clause 12 "Breakdowns and disablement")

The owner will insure the yacht. The nature of this insurance may be stipulated in the Charter-party. In the MYBA contract the charterer has the right to inspect the document at reasonable notice and it must be kept on board.

Charterer's Rights and Duties – Time charter

On being satisfied that the vessel is acceptable for his purpose the charterer will accept the vessel. This may involve signing a document such as a delivery slip. Upon delivery he will be obliged normally to pay an advanced provisioning allowance [see MYBA clause 1]

He should give clear instructions to the Master as to the services he requires ensuring that such remain within the terms of the agreement: for example under MYBA Clause 4 he may not go outside the stated cruising area. He may not require the vessel to enter a port, which is not 'safe' (see above) He may not take the vessel to such a place that it is unable to return to the port of re-delivery on time. He may not require the Master or crew to act in any way unlawfully [MYBA Clause 7]

The Charterer undertakes all operating costs of the vessel as soon as he accepts delivery. Such cost include fuel, Pilotage dues, berthing fees, food, water, etc.

The Charterer will be responsible (liable) for the conduct of himself and his guests and they may not act unlawfully or in a way to endanger the vessel. (The owner is liable for crew misconduct) The MYBA agreement states that “no member of the crew shall be responsible for the safety or entertainment” of children [Clause 5]. This clause is intended to ensure that charterers take proper care of children with them but is extremely unlikely that a court of law would interpret this to mean that the crew are in any way absolved of their professional duties with regard to the safety of the guests or their children.

The Charterer may have certain other restrictions concerning the use of the yacht depending on the terms of the agreement used: for example under some yacht charter-parties the charterer is expressly forbidden from carrying cargo of any type and he will not normally be allowed to sublet the vessel.

The MYBA contract has additional clauses, which other contracts omit concerning the rights of the owner and charterer in the event of a sale of the vessel. These are intended to protect the interest of the charterer. Other clauses are intended to protect the interest of the broker in the event of a sale.

The Charterer must deliver the vessel at the re-delivery port at the required time. Penalties will be incurred for failure to do this: under the MYBA contract these are payment of a pro-rata daily rate plus 40% and any consequential damages (such as loss of the next charter).

Owners responsibilities – Bareboat/Demise Charter

The owner must deliver the vessel to the charterer at the agreed place and in good condition. It must be ‘seaworthy’ and ready to perform the charter.

Normally an on-hire survey would be conducted in view of the nature of the responsibilities that the charterer is about to undertake. The survey in this instance would be complete and thorough in order to ensure the vessel is as specified in the charterparty and also to establish the condition in which it must be returned at the end of the agreement (with allowance for fair wear and tear). This survey would check and document:

- The agreement itself in order to compare the vessel and equipment against what is specified
- Life saving equipment and servicing records
- Firefighting equipment, installations, plans and servicing records
- Hull and machinery condition and function, including seacocks, bilges, pumps etc.
- Routine maintenance records
- Documentation (Certificate of registry, SOLAS certificates, MARPOL certificates and other required documents. Instruction manuals, drawings, plans, GA, etc.
- Navigation equipment, Charts and Nautical publications
- Inventory of consumables found on board (fuel, oil, spares, valuable items etc)
- Competence and qualifications of crew (if they are retained by charterer)

A delivery certificate will normally be signed on acceptance

If the charterer rejects the yacht the reasons should be obtained in writing and the owner informed. If these reasons are not accepted by the owner or the master in his absence protest should be noted immediately and the charterer should be informed in writing that his reasons are not considered acceptable. Whether or not the charterer has justifiably rejected the yacht all reasonable efforts should be made to rectify whatever has been raised so that the charter may proceed.

The owner will surrender operational control of the yacht to the charterer. He may qualify the degree to which control is passed by stipulating terms in the charter-party agreement. He may, for example, place geographical limitations on the operation of the vessel. He may reserve the right to choose or approve the captain or crew. He may forbid certain types of operation.

The owner will normally insure the yacht himself (if the charterer becomes bankrupt he may not be able to pay his liabilities in the event, for example, of a maritime lien on the yacht). He may pay the premium himself or require the charterer to do this as a term of the charter-party.

The owner is entitled to expect the vessel re-delivered in the agreed place and time in the same condition as it was delivered (notwithstanding fair wear and tear) He will normally conduct his own survey and check the inventory. The fuel levels and other consumables will normally be expected to be at the same level as when that yacht was delivered unless otherwise stated in the C/P.

Charterers rights and duties – Demise/Bareboat charter

After satisfying himself that the vessel is acceptable upon survey and after signature of the delivery certificate the charterer assumes full responsibility for the yacht as if he were the owner, (except with regard to any exclusions stated in the charter-party agreement). He will normally appoint and will pay the crew.

Except as stated in the C/P the charterer may operate the vessel as he wishes. He is fully liable, both criminally and civilly, for all activities of the vessel. It is therefore particularly important that the yacht's conformity with the various international conventions is verified before acceptance.

He must either insure the vessel himself or arrange to be covered by the owners policy and pay the necessary premium.

The charterer must maintain the vessel in class and ensure that all the various surveys required by law to be carried out are conducted and at his expense.

The charterer must re-deliver the vessel at the time and place specified and re-imburse the owner for any damage other than normal wear and tear. He must compensate for any shortfall in the inventory. Failure to re-deliver on time will result in further penalties. He remains responsible for the vessel until the owner has accepted re-delivery after satisfactory survey.

12:c) Prior reading of agreement

The exact responsibilities of the owner and the charterer for any type of charter agreement used in yachting depend on the exact terms of the charter-party, which must be agreed and signed by both parties.

The master must read carefully what is written in the agreement as he must be aware of any changes to the normal terms or additional services which may have been promised. The master will of course have the responsibility of fulfilling the contractual obligations on behalf of the owner.

Topic 13: Marine Insurance

The syllabus for this topic is as follows:

- a) Can recognise the voluntary and contractual nature of the insurance of yachts.
- b) Can distinguish between the insurance of a yacht and the insurance of other forms of Owners' liabilities.
- c) Can explain the following insurance principles:
 - i). indemnity, subrogation and contribution
 - ii). actual total loss
 - iii). constructive total loss
 - iv). particular average (partial loss)
 - v). deductibles
- d) Can state the difference between and implied warranty and express warranty and can explain the following marine insurance clauses:
 - Clause 1 Navigation
 - Clause 2 Breach of warranty
 - Clause 5 Termination
 - Clause 6 Perils
 - Clause 8 3/4 collision liability
 - Clause 10 GA and salvage
 - Clause 11 Sue and labour
 - Clause 19 Constructive total loss
 - Clause 24 War exclusion
- e) Recognises that hull insurance policies place various restrictions on the use of a yacht, in particular the use of the yacht to save or assist in saving property
- f) Recognises the change/loss of a Certificate of Class, change of flag or ownership and demise chartering, could all result in automatic termination of hull insurance
- g) Can explain why underwrites may prefer assistance to vessels at sea to be negotiated on the basis of Lloyds Open Form.
- h) Can describe the function of organisations known as P & I Clubs.
- i) Can state the type of risks that yacht owners usually insure with P & I Clubs.
- j) Can describe, in general terms, the likely sequence of events after a major claim. Can describe what must be done immediately after an incident and subsequently, in order to act in the owner's best interests.
- k) Can demonstrate an awareness of the importance of prior reading every contract of insurance.

Introduction

The London insurance market is the largest in the world and today covers not just marine insurance but all forms of insurance from supertankers to supermodel's legs. Lloyd's in fact is only part of the London Market, albeit the largest part. The other two pillars of the market are the Institute of London Underwriters and various Protection and Indemnity Associations (P&I clubs for short) The ILU, sometimes referred to as the Companies Market, is an association of underwriting companies (as opposed to individuals) which voluntarily adopt uniform practices. There are some 150 of these companies each represented by an underwriter in a 'box', very much as at Lloyd's, waiting for a broker or individual to approach with a request for

cover. The “Institute Clauses” are used by both the ILU and Lloyd's. There is a network of ILU agents throughout the world .

13:a) Voluntary and contractual nature of yacht insurance

Marine Hull Insurance, unlike car insurance, for example, is not compulsory under UK law. Some shipping companies actually choose not to insure their vessels, preferring to keep the premium and invest the money against future losses. Effectively such companies insure themselves.

13:b) Insurance of other liabilities

Insuring against the loss of the vessel or against the damage that might be caused to other vessels (hull insurance) is only one aspect of the total risk that the owner may wish to insure for. Damage to the environment, for example, is a significant risk which some vessels may have separate insurance (oil tankers, for example) Also hull insurance does not cover the owner against his liabilities in the event of crew illness or injury. The potential risk here is huge, especially if there has been some failure on the part of the owner or his crew resulting in an accident and long term medical care is needed. It is for matters such as these that Protection and Indemnity associations are used. These are increasingly being used by yacht owners. The P&I clubs were formed during the last century by shipowners in various parts of the country hoping to save money on premiums by insuring themselves as part of a ‘mutual’ association. They are non profit making companies whose main purpose today is to provide cover in areas where the rest of the market will not or is reluctant to cover, this lies particularly in the fields of the shipowner’s liability for personal injury or Death and for damage to the environment caused by oil pollution.

13:c)The Principles of Insurance

To understand how yacht insurance works three basic principles need to be understood. Insurable Interest, Indemnity and the Utmost Good Faith. These principles were embodied in the Marine Insurance Act of 1906, which codified the insurance practice of the previous years. This act is still the principal act in this field of law.

The person requesting insurance must have a real ‘interest’ in the matter being insured. This was established as long ago as 1745 with the first Marine Insurance Act to stop insurance being used as a form of gambling. (If you insure a vessel that you have no interest in then you are effectively betting on its non arrival) Various parties can be deemed to have insurable interest, the owner, a charterer, a mortgagor, a trustee, a creditor, and owners of cargo amongst others, including the insurer himself who can therefore re-insure the risk he has taken. If an insurance policy is taken out where the insured has no insurable interest then the policy has no force of law. (In fact in certain special circumstances this is done but the payment of the claim upon loss is dependent entirely upon the goodwill of the insurer)

Closely linked to the concept of insurable interest is the concept of **indemnity** whereby the assured is entitled to payment in compensation for the loss he has suffered to the exact amount of that loss **and no further** (he cannot make a profit on his insurance). In, for example, car insurance the insured is covered for the full amount of the car at the time of the accident. If the car is a ‘write off’ he will be in the same financial position as he was before the accident. In marine insurance he is covered to the extent agreed in the policy.

The ‘Insurable Value’ is the market value of (for example) the ship at the time of the policy being written. The ‘Sum Assured’ is the value which the owner is requesting cover for. If a Feadship is valued at \$20 m the owner may wish to insure the full amount in which case the sum assured is \$20 m Even if the value of the vessel drops (because some international terrorist gets a grudge against Feadship owners) during the period of the insurance, the underwriters are still obliged to pay on the basis of the sum assured. Possibly the owner might want to save money on his premium by reducing the sum assured - if the above owner sets this at \$10m the insurers are obliged to pay at worst 100% of \$10m in the event of a total

loss. (Even if the value rockets because the Queen buys a Feadship) In the event of a partial loss (termed a “particular average” - see below) the insurer must pay a proportion of the sum assured according to the size of the loss.

There are two sub principles of Indemnity which need to be understood before proceeding further. **Contribution** is the principle whereby the insured cannot claim more than once on the same risk. If the above Feadship owner insures his vessel with two insurers at a sum assured of \$20m; he does not receive \$40 m in the event of total loss: each insurer will be obliged to pay \$10 m (or a proportion of this for particular average).

Subrogation is the principle whereby the insured party cannot recoup his loss from another person after he has been paid for his claim. For example an owner who suffers damage to his yacht because of a collision with a vessel which was negligent can recover his loss from the insurer. He cannot then receive damages from the owners of that vessel for the loss; the insurers ‘subrogate’ his rights in this respect and can sue the owner of the other vessel in their own right. The insurers are allowed to receive up to the value of the claim and then any excess goes to the owner.

“The truth, the whole truth...” No party to any contractual agreement may misrepresent essential facts to the other. This is particularly so in marine insurance. The Marine Insurance Act, 1906 makes very clear that a breach of good faith voids the policy. A person about to effect a policy must not only make no active misrepresentations to the insurer but he must not fail to disclose anything which could seriously affect the judgement of an insurer regarding the nature of the risk being undertaken.

The Insurer must; subject to the provisions of the Marine Insurance Act, 1906

- Be liable for any loss proximately caused by any peril of the sea insured against, the latter obtains even where the loss resulted from the negligence or wilful misconduct of the Master or crew

Unless otherwise provided for in the policy the insurer will not be liable for

- Loss caused by delay, even where this delay is caused by a peril insured against (e.g. the loss of a two week charter because of a yacht being laid up for repairs)
- Ordinary wear and tear
- Ordinary leakage and breakage (but any damage resulting from these is covered)
- Any ‘inherent vice’ or flaw in the nature of the subject matter insured (mostly applicable to cargo)
- A loss proximately caused by rats or vermin.
- Any damage to Hull or Machinery not proximately caused by a peril insured against

13:d) Implied and express warranties

Warranties are an important part of marine insurance. A warranty is a contractual undertaking by the assured contained in a marine policy; it is “promissory” which means that the assured must undertake to do something or not to do something regardless of how it affects the risks to which the insurer is exposed. For example; if there is a warranty in a policy that a yacht may not go outside certain limits, should it do so even briefly and at no extra risk to the insurer (e.g. in fine weather), and then subsequently return within limits and much later be lost in an accident: the policy is void even though the loss had absolutely nothing to do with the breach of warranty.

There are two types of warranty; ‘implied’ and ‘express’. Express warranties must actually be stated in the text of the policy or in some document referred to by the policy. Implied warranties are part of the common law; they are implied by the law but not written on the policy.

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The test of an implied warranty is whether the contract can function without. The two major implied warranties that affect yachts are those of 'seaworthiness' and 'legality'. There are other implied warranties for example which affect vessels that have a voyage policy (a vessel insured to proceed from Nice to Port Suez voids the policy if it then sets off for the Bahamas even if this is not specifically excluded in the policy.

Seaworthiness is employed in its civil law context here. The vessel must be 'reasonably fit to encounter the ordinary perils of the sea of the adventure insured'. If the policy is a time policy also attaching to periods spent in a port then it must also be fit encounter the ordinary perils of the port. In time policies (most yachts are insured under time policies) the implied warranty of seaworthiness applies if the vessel proceeds to sea in an unseaworthy state with the knowledge or consent of the owner or manager, or in circumstances where they should have known.

Legality is an implied warranty. The insured adventure must be lawful and carried out in a lawful manner; thus yachts involved in drug running, gun running, or international slavery will be voiding their insurance policies.

Express warranties are those actually written in the text of the agreement. These are contained in the Institute Clauses. These are as follows:

Clause 1	Navigation
Clause 2	Breach of warranty
Clause 3	Continuation
Clause 5	Termination
Clause 6	Perils
Clause 7	Pollution hazard
Clause 8	3/4ths collision liability
Clause 9	Sistership
Clause 10	General Average and Salvage
Clause 11	Duty of the Assured (Sue and Labour)
Clause 12	Deductible
Clause 13	Notice of Claims and Tenders
Clause 14	New for Old
Clause 15	Bottom Treatment
Clause 16	Wages and Maintenance
Clause 17	Agency Commissions
Clause 18	Unrepaired damage
Clause 19	Constructive total loss
Clause 20	Freight Waver
Clause 21	Assignment
Clause 22	Disbursement Warranty
Clause 23	Returns for lay up and cancellation
Clause 24	War exclusion
Clause 25	Strikes Exclusion
Clause 26	Malicious Acts Exclusion
Clause 27	Radioactive Contamination exclusion

Not all of these need be examined in detail for our purposes here but we shall look at some of the key clauses.

Clause 1 Navigation

This states that the vessel is covered at all times during the policy and may sail or navigate without pilots, it may go on sea trials, assist or tow another vessel in distress. The vessel **should not be towed** except as customary (berthing etc) or, when in need of assistance to the nearest port or place of safety. **No towage or salvage contracts may be carried out without approval of the underwriters.** The vessel may not transfer cargo at sea without notifying the insurer and terms are agreed. If a vessel has sailed to be scrapped then her value is the scrap value.

Clause 2 Breach of warranty

A vessel is held covered in the event of a breach of warranty **so long as the underwriters are given immediate notice** and the policy amended; an additional premium may be required. A vessel wishing to offer salvage or towage services to a vessel may do so or a vessel wishing to change area of operation may do so under this clause.

Continuation states that if the policy expires when the vessel is at sea, in distress, in a port of refuge or on port of call on a voyage the policy is automatically extended at a pro rata monthly premium until her port of destination on her current voyage, provided due notice is given to the underwriters.

Clause 5 Termination

This overrides any other clause, which is not consistent with it. The insurance automatically terminates on:

- Change of owner
- Change of flag
- Bareboat charter
- Requisition (by flag state)
- Change, suspension, discontinuance or withdrawal of class
- If a CS survey is overdue unless exemption has been agreed with the CS

If the vessel is at sea then the termination takes effect upon arrival in port. The insurance will also terminate:

Clause 6 Perils

The perils insured against are listed in this clause. The insurance will cover loss caused by:

- Perils of the seas, rivers, lakes and navigable waters
- Fire and Explosion
- Violent theft by persons from outside the vessel
- Jettison
- Piracy
- Contact with land, dock, harbour, equipment and installations
- Earthquake, volcanic eruption and lightning
- Accidents in shifting, loading, discharging fuel or cargo
- Also covered is loss or damage caused by the following provided that the loss did not result from lack of 'due diligence' by the owner or his representatives or managers. The intention is to ensure that the insurers do not pay for maintenance, that the vessel is not allowed to deteriorate to such an extent that damage is caused.
- Burst boilers, breakage of shafts and any latent defect in the hull or machinery
- Negligence by the master, officers or crew
- Negligence by repairers and charterers, (provided that they are not insured under the policy)
- Barratry of Masters, Officers and Crew
- Contact with aircraft, helicopters or similar

Clause 8 3/4th collision Liability

The insurers will pay for 3/4 of the following damage resulting from a collision:

- Damage to another vessel
- Delay or loss caused to another vessel
- General Average of another vessel (see below)
- Salvage or Salvage under contract of another vessel

The remaining 1/4 can be insured with a P&I club.

Clause 10 General Average

The insurance covers the vessel's proportion of salvage, salvage charges, or general average; this is applied in relation to the sum assured.

Clause 11 Sue and labour (duty of the assured)

This provides that the assured has a duty to ensure that all reasonable steps are taken to avert or minimise the loss for which a claim would be payable. In return costs incurred in taking such steps are recoverable over and above any claim for loss caused by an insured peril and is payable even if this action fails to avert the damage. An example; a 40 metre yacht is aground in an exposed position, the master hires a tug to pull him clear so that he can continue his voyage. The cost of the tug is recoverable under the Sue and Labour clause. Such charges are called, confusingly, "particular charges"(not to be confused with *particular average* - see below) they are proportional to the relationship between the sum assured and the insurable value. (if the vessel is insured for 50% of its insured value then 50% of the 'particular charges' under a Sue and Labour clause are payable.)

A yacht dragged an anchor, holing the hull and causing flooding. The yacht was brought ashore and the crew repatriated. The owner made a claim on his hull policy. Due to the remote location of the yacht there was a delay in appointing a surveyor. The owner's surveyor eventually inspected the yacht and, in view of the scale of the deterioration caused by several days inundation with salt water, declared a constructive total loss (value \$1 500 000). The underwriter's surveyor assessed that had the owner or his manager instructed the crew to remain with the vessel, flush out the machinery spaces with fresh water and carry out preservation work the damage could have been limited to \$250, 000. This was the sum that they offered in settlement! If the owner had ordered his crew to stay with vessel all of the costs associated with this could have been recovered under the Sue and Labour clause.

Insurers will cover the cost of salvage but be aware that the master might well be expected, under this clause, to negotiate using Lloyds Open form. This will normally be less expensive than fighting a salvage claim in the civil courts therefore the owner has a 'duty of the assured' to use it. Equally it would normally be less expensive to negotiate towage if there is time to wait. Again the insured would have a duty to do this if it were cheaper.

Clause 12 Deductibles

This is the 'excess' of marine insurance. A claim or aggregate of claims must exceed a certain limit. This amount is deducted from any claim. In return for increasing this amount the premium is reduced. It does not apply to a total constructive loss. (see below). This clause helps to discourage small and frivolous claims and is perceived as an incentive to extra care on the part of the assured.

Clause 13 Notice of Claims and Tenders

This is often called the "tenders clause" In the event of an accident resulting in a claim the underwriters must be informed by the owner as soon as possible after becoming aware of an incident (or after they should have been aware) so that a surveyor representing the underwriters can be appointed if desired. The underwriters have a right of veto over the choice of repair yard or port, they may take tenders or require that further tenders be taken if tenders have already been taken by the owner or his representatives.

Failure to comply with this clause can cause a deduction of up to 15% from the claim. This clause is aimed at reducing the delay in establishing the cause of damage and confusion over the cost of repairs. Any costs to the owner caused by the insurers exercising their rights are recoverable under the policy.

Clause 19 Constructive total loss

Constructive Total Loss occurs when:

- a property is reasonably abandoned because its total loss appears to be unavoidable. (a vessel stranded on rocks and beyond salvage would be a good example - the owner need not wait for the actual break-up of the vessel before claiming)
- the property cannot be preserved from actual total loss without unreasonable expenditure, which would exceed the value of the property at the time the expenditure would occur. (a vessel suffering collision damage that the cost of the repairs would exceed the value of the vessel when repaired)

The owner is not obliged to declare a constructive total loss. He can claim a 100% partial loss and keep possession of the vessel and carry out repairs.. If he does declare a constructive total loss he must *abandon* the property to the insurer.

Where an owner fears a constructive total loss he must make a 'notice of abandonment' to the insurer. Tenders will usually be taken from salvors and repairers. These costs will be added to any General Average charges to which the vessel may become liable (see below) if the costs exceed the repaired value the insurers will be liable for a total loss and will own the vessel or what remains of it.

Clause 24 War exclusion

There are various exclusion clauses which expressly exclude risks associated with war, strikes, malicious acts, (explosive devices, weapons of war terrorists etc) and Nuclear contamination. These can be insured against separately.

13:e) Restrictions on use

If the yacht is operated outside of any of the terms set out in the policy, the policy will be voided. Even a claim arises at a later date which is not connected to an earlier breach, the policy will have ceased to exist from the time of the original breach (unless notified as required under clause 2). Also clause 1 makes it clear that the policy will not cover a yacht which tows or salvages another vessel or property, without prior approval.

13:f) Classification and insurance

Clause 4 requires a yacht to be certified by a recognised classification society. Clause 5 makes it clear that falling out of class for any reason will terminate the policy, as does change of flag or ownership or demise chartering.

14:g) Lloyds Open Form

Lloyds insurers recommend that any operation to salvage the insured vessel is carried out under the Lloyds Open Form agreement, as they assume any award would be a fair one if referred to the Lloyds arbitration panel.

13:h) P & I Clubs

Protection and Indemnity associations (P&I clubs) are increasingly being used by yacht owners. The P&I clubs were formed during the last century by shipowners in various parts of the country hoping to save money on premiums by insuring themselves as part of a 'mutual' association. They are non profit making companies whose main purpose today is to provide cover in areas where the rest of the market will not or is reluctant to cover.

13:i) Risks covered by P&I clubs

P&I clubs specialise in providing cover in for shipowner's third party liability for personal injury or death, damage to the environment caused by oil pollution and as additional cover to the hull insurance (for the 25% collision damage not covered by that policy for example)

13:j) Actions after a claim

A marine loss can either be a **total loss** or a **partial loss** (called 'average'). A total loss can be either an Actual Total Loss or a Constructive Total Loss. A partial loss, (or average), can be either be a Particular Average or a General Average. A particular average results from an accident. A General average results from a deliberate act (see below).

Actual total loss may occur in four ways:

- Where the property is actually destroyed (e.g. shipwreck)
- Where goods change their character and are unsaleable
- Where the owner is irretrievably deprived of his property (e.g. a vessel sinks in very deep water)
- Where a property is posted 'missing' at Lloyd's

A **Particular Average** occurs when a loss takes place caused by a peril insured against. This may be as in the list of perils contained in the standard Institute Clause (No. 6 see above) or some owners may take extra insurance to cover themselves against any accident at all. The only proviso in either case is that it must not be from want of due diligence on the part of the owner that the accident occurred. (So the cost of repairs after a collision would be particular average)

General Average is a concept unlikely to affect even a commercial yacht owner but may be summarised as follows. It is a partial loss *deliberately* entered upon for the common benefit of all the parties interested in an adventure in the face of some danger. In plain English if cargo is jettisoned to save the ship this is regarded as a general average act. The owner of the cargo or the owner of the freight would be out of pocket except that the principle of general average stipulates that all the parties to the adventure share, pro rata, in the loss. If a vessel has to put into a port for urgent repairs to stop her sinking this also is a general average act (had she been allowed to sink all parties to the adventure would have been out of pocket. Salvage costs *may* be a general average cost if it can be shown that there was a real danger. (Salvage constructed under LOF may or may not have been in the face of danger. Salvage proved in a court without a salvage contract will always be a general average act because it is necessary to prove the danger to justify the salvage. Most maritime countries have general average laws, they are amongst some of the oldest codified laws (our laws come ultimately from the codes of the Roman Emperor Justinian) To standardise the rules various international conventions have taken place. A set of rules, called the "York Antwerp" rules have been accepted internationally.

Actions to take when making a claim

When a loss is incurred for which a claim is to be made the owner will normally inform the underwriters through his broker. Abroad a Lloyd's or ILU agent will be notified and a surveyor may be nominated to assess the scale of the damage.

Certain documents must be forwarded to the underwriters for the claim to be processed:

- The deck log and the Engine Log for the period covering the casualty
- Master's detailed report

- Relevant letters of protest
- Underwriter's surveyors report
- Class surveyors report
- Owners surveyors report (if applicable)
- Receipted accounts for repairs/spares/docking etc endorsed by the underwriter's surveyor as fair and reasonable
- Accounts for any repairs not being claimed for executed at the same time
- Copies of all communications entered in to regarding the incident. together with their costs
- Any accounts rendered by surveyors with their dates

After a collision the following must be forwarded:

- Details of steps taken to ascertain liability between the two parties
- If an action is to be made against the other party to recover losses, the details of all such and an account of the legal costs
- A detailed copy of any claim received from another vessel
- Details of efforts to limit the scale of the loss

There are many pitfalls in yacht insurance, which Masters needs to be aware of if they are to serve the best interests of their owner. Some potential problems will be discussed here though this is not exhaustive.

It will be seen from the above list that records are very important - they must be kept and preserved meticulously in a professional yacht. Firstly there are the mandatory records such as the deck log, the engine room log and the official logbook. It is imperative that these are kept correctly not only from the point of view of compliance with Merchant Shipping Law but to assist the progress of a successful claim.

Other records can also greatly assist the claim if they are properly kept, such as records of planned maintenance for machinery and equipment. Yacht managers should be particularly careful in record keeping as a failure on their part could be regarded as lack of 'due diligence'.

Due Diligence - Example

Recently a manager was nearly blamed for a flooded engine room because the crew claimed that the replacement for the leaking stern gland had not been sent to them. Fortunately the manager kept records which proved that it had. The crew subsequently found the part, which they had received but not fitted. The cause was deemed as crew negligence, which was covered. (Had the manager been blamed the insurers could possibly have declined to pay on the basis of want of 'due diligence' on the part of the manager.

In the event of a happening, which could result in a claim, detailed notes should be taken on the circumstances surrounding the event. It may well be appropriate to 'note a protest': the authenticity of such a document is beyond question and it can be seen to have been written close to the event (as opposed to hastily scribbled later to support the claim).

Good communication should be established with the underwriters immediately after an incident to ensure that actions taken have their consent and this should always be re-enforced by **written** communication.

13:k) Prior reading of agreement

Yacht captains should be fully aware of what warranties exist on the policy for their yacht. In this chapter the main institute hull clauses have been listed: there do exist also "Institute Yacht Clauses" which are used more for the smaller yacht. These are different and need to be fully understood. Other clauses may be included depending on the owner's requirements.

