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The Impact of Choice of Flag on Ship Management

Primarna literatura

1. Introduction

Ship registration, primarily a requirement under international law, evolved especially after the second half of the twentieth century into an important and at times quite complex commercial decision for ship owners. This change of nature of ship registration from a legal condition to a business choice, largely effected by the absence of universally binding provisions to determine the “genuine link” between the flag state and the ship and by successful and quick industry response to market pressures and opportunities, has had a number of consequences at company, industry, national and international level. Ship owners were presented with an array of flag types and actual flags in which freely to register their vessels; the industry found a means to improve its competitiveness but also ended up with increased and serious safety concerns; some nations came up with a way to earn revenue and gain some political significance, while others were confronted with a national threat along these same lines; at an international level, new sources of supply of labour were developed with transfer of expertise and dynamics changed. The major issue has of course been the proliferation of the open registers regime designed and established to provide mainly a cost reduction service to ship operators in relation to the option of traditional national flags. Today the top 35 maritime countries account for 95.35% of the world deadweight tonnage and 67% of this is under a foreign flag, a figure which drops to 53.7% when the number of vessels is considered (UNCTAD, 2008).

Although other types of ship registration have sprung up, like the second or international registers, the main dichotomy has been between flags of convenience and traditional national flags and the choice between the two has constituted a topical subject for research. Various myths and realities have been widely explored. In the course of research and with the passing of time some have been verified, others have failed to point to safe conclusions and yet for others new scope of thought has been triggered. For example, the significant reductions in crew costs advocated by open registers can be said to be an everyday reality felt by ship owners around the world and manifested clearly in relevant research stipulating that crew cost differences between selected EU flags and lower-cost open registry vessels, for instance, range from +22% to +333% (Anon, 1995). Open registers have conventionally been associated with poorer safety performance than traditional flags and some research results have provided support to this assumption (Li and Wonham, 1999; Alderton and Winchester, 2002). Yet, today some of the most important open registries, like Liberia, Malta, Cyprus, and the Bahamas are on the White List of the Paris MOU together with important traditional flags like Greece, USA and the UK, while the most important open registry, Panama, with 22.6% of the world tonnage registered in it is on the former's Black List (Paris, MOU 2007; UNCTAD, 2008). The unprecedented growth of open registries has alarmed traditional maritime nations which have seen their own flags retrenching with direct and indirect economic, political and national repercussions. A study by Peeters *et al.* (1994), however, exhibited another dimension to the problem concluding that 70% of the value added by the Dutch shipping industry actually came from onshore activities related to shipping, a finding which

was reflected in the new shipping policy introduced in 1996 in the Netherlands. Overall, the examination of the two types of flags has centred on their costs and benefits, their standing in the shipping industry and, in a wider social context, selection criteria, fiscal implications and safety issues.

The two types of flags have been seen to offer two distinct alternatives to ship operators, each with its own advantages and disadvantages and with its own commercial and operational requirements. It is within these realms that the view is taken that flag choice has a bearing also on various management issues in shipping companies. The argument put forward is that opting for a specific type of flag is in fact a strategic business decision with broader consequences for ship management. The aim of this chapter is to address the issue of choice of flag in the context of ship management with the object of assessing its expected impact on management principles and practices. For the purpose of the analysis the traditional, clear-cut distinction between national flags and flags of convenience has been chosen to form the framework of reference. Their noted features and/or requirements are considered in respect of the way they can affect management decisions and the adoption of management approaches. The discussion is based on the case where the flag choice decision is made by the same entity that is both responsible for and also essentially carrying out the management of the vessels. In other words, the analysis relates to the paradigm of the ship owner who is at the same time the ship operator - even if this is concealed by the corporate veil. It does not seek to address the situation where third party ship managers are used and where an association between flag choice and management practice might be differentiated (or not) because of a number of reasons inherent in the characteristics of the service they provide. The subject matter is treated on a theoretical basis developing a rationale founded on critical analysis and appreciating that the influence between the choice of flag and management functions can potentially be twofold and may come from either direction.

Initially, this chapter will set the context of the analysis by looking into the existing literature on ship registration reviewing the different characteristics, conditions, benefits and constraints of the range of ship flags available to ship owners. The authors will then make a case that the choice of flag is a management decision by examining different management dimensions which are related to it. Analytic discussion of the effects of flag preference on managerial aspects will follow; the analysis will focus particularly on the practical impact which the choice between an open register and a national flag is expected to have on management issues relating mainly to strategic management and human resource management. Lastly, an evaluation of the current standing of open and national registries will be presented together with a critical assessment of its effect on contemporary ship management.

2. Literature Review and Background

Since its first significant appearance in the 1950s, flagging out – the change of a vessel's registry from a national flag to a flag of convenience or open registry – has been a topic of interest in the international shipping industry. This now widespread phenomenon has attracted a great deal of attention for a variety of reasons. First, open registry fleets have expanded at a faster rate than any other fleet in the world. Secondly, it has been felt that the expansion of the open registry has limited the growth of the fleets of other countries and has caused the decline of the fleets of the traditional maritime countries with all the related consequences for their maritime clusters, the balance of

payments, and the supply of skilled labour.

According to Boczek (1962) a FoC can be defined as: “the flag of any country allowing the registration of foreign-owned and foreign controlled vessels under conditions which, for whatever reasons, are convenient and opportune for the persons who are registering the vessels”. However, this definition still does not allow the clear identification of an open registry flag. Even the Rochdale Report (1970) did not give a precise definition of flags of convenience but instead suggested a list of criteria which should lead to the classification of these. It defined the FoCs in terms of six common characteristics:

- the country of registry allows ownership and/or control of its merchant vessels by non nationals;
- access to the registry is easy and transfer from the registry at the owner's option is not restricted;
- taxes on the income from the ships are not levied locally or are low. A registration fee and an annual fee, based on tonnage are normally the only charge made;
- the country of registry is a small power with no national requirement under any foreseeable circumstances for all the shipping registered, but receipts from very small charges on large tonnage may produce a substantial effect on its national income and balance of payments;
- manning of ships by non-nationals is freely permitted; and
- the country of registry has neither the power nor the administrative machinery effectively to impose any government or international regulations, nor has the country the wish or the power to control the companies themselves.

The Report continues that although one or more of the above features may be found in the policies of many maritime countries, it is only when *all* of these features exist that a country is characterised as being an open register.

Metaxas and Doganis (1976) identified as a FoC: “the national flags of those states with whom ship owners register their vessels in order to avoid the fiscal obligations and the conditions and the terms of employment of factors of production, that would have been applicable if their ships were registered in their own countries.” While Bergstrand (1983) adopted the following definition: “A flag of convenience is a flag of a state whose government sees registration not as a procedure necessary in order to impose sovereignty and hence control over its shipping but as a service which can be sold to foreign ship owners wishing to escape the fiscal or other consequences of registration under their own flags.”

The United Nations Convention on the Conditions for Registration of Ships (1986), for the first time defined the principles to be followed when granting nationality to a ship. The existence of a genuine link between a vessel and its country of registry must be verified on the basis of the following characteristics:

- the merchant fleet contributes to the national economy of the country;
- revenues and expenditure of shipping, as well as the purchases and sales of vessels, are treated in the national balance of payments accounts;
- the employment of nationals on vessels;
- the beneficial ownership of the vessel.

This chapter will adopt a definition of “open register” which reflects the matters that most concern the

ship owners, such as: costs, accessibility of the register and standards enforced by the state of registry. Therefore, an open registry should be identified as a flag which allows:

1. Lower crewing costs/manning requirements, since registration under a flag of convenience generally means:
 - unrestricted choice of crew in the international market;
 - not being subject to onerous national wage scales; and
 - more relaxed manning rules.
2. Lower operating costs generated by "lighter" maintenance programmes and less stringent enforcement of safety standards imposed by the register.
3. Less regulatory control and avoidance of bureaucracy.
4. The probable avoidance of corporate tax.
5. Anonymity.
6. Easy accessibility/exit to/from the registry.

Nowadays, even though traditional maritime countries continue to dominate the ownership of world shipping, the extent of flagging out to Open Registries is such that they account for a greater proportion of the total world fleet than the traditional maritime countries themselves. The share of world deadweight tonnage registered in the major Open Registries has risen from about 4% in 1950 to over 54% in 2008 (UNCTAD, Review of Maritime Transport 2008). There exists no clear definition of "open and international registries" but UNCTAD has created such a group by including the 10 largest fleets with more than 90% of foreign-controlled tonnage. These fleets are Panama, Liberia, Bahamas, the Marshall Islands, Malta, Cyprus, the Isle of Man, Antigua and Barbuda, Bermuda, and Saint Vincent and the Grenadines.

The motivation for transferring a ship from one registry to another is no different in principle from the motivation behind any other strategic decision on the part of a profit-maximising firm. The basic principles of the theory of the firm can be applied to the economics of this behaviour. Shipping companies are assumed to be profit maximisers which strive to reach their objective by seeking the production input combination which allows them to minimise costs. However, their choice of factors of production is constrained by their operating environment. Institutional factors and the characteristics of the market in which they operate condition their ability to make independent decisions. The selection of factors, their quantities, their costs and quality appear to be regulated in most of the so-called developed countries.

However, the existence of open registries creates a sort of dualism in the international maritime transport sector splitting the industry into two segments distinguished by operating characteristics peculiar to the two different scenarios and by lower break-even points. The ship owner like any other entrepreneur must choose the optimum amount of inputs to obtain the desired service output and strives to have the freedom to do so. Flagging out is primarily caused by the desire to minimise costs under a relatively lower cost regime but, as we shall see, the decision to flag out might have an impact on several ship management functions.

Flag selection is a high-level decision usually made, on a vessel-by-vessel basis, at the time of vessel acquisition and is generally based on experience. Different companies perceive different factors as being important to their decision on flag (Bergantino and Marlow, 1998). A flag might be chosen

for political reasons, to ensure a supply of skilled labour, for public relations reasons, for historical reasons, because of directives from financial institutions, or for reasons related to the trade routes of the vessel or to its characteristics. In the Bergantino and Marlow study companies which had chosen not to use the national flag gave crew costs as the most common reason for their decision. Other factors which had influenced them were: to escape bureaucratic control, high costs of compliance with standards of the national flag, the unavailability of skilled labour (the need to ensure a supply of same), and fiscal reasons.

In particular, operating costs¹ are identified as the ones where significant savings would be achieved by registering the ship in an Open Register. It is in the manning costs area where flagging out policies allow varying degrees of freedom to be obtained from the constraints of Union agreements and national manning regulations. Hence, according to the vast majority of authors,² shipowners, shipowners' associations and trade union representatives, the main reason for flagging out is to reduce manning costs. It has been stated by many authors that the adoption of an open registry flag can lead to savings in the following categories of crew-related costs:

- direct and indirect wages;³
- stores;
- maintenance.

The authors share the belief that crew costs can be considered as the main financial reason behind the ship owner's decision to flag out. The cost of manning a ship can be considered the easiest variable to influence when compared to other ship costs which appear to be mostly fixed internationally, especially in the short run. Stores costs are not as relevant as the other two categories and, furthermore, the adoption of an open register flag does not necessarily imply a decrease in this category of cost. As for the maintenance costs it is argued that while some crews can carry out certain tasks within the vessel, thereby eliminating the use of shore labour, others cannot and the lack of such maintenance and the subsequent neglect may lead to major damage claims and therefore higher insurance costs. Operating efficiency could, therefore, depend on the quality of the crew.

Manning costs have two components which are considered of equal importance: the direct and the indirect wage. The basic wage depends on the standard of living in the country of origin of the seaman, on the current exchange rate of the seaman's currency against the US dollar, and on international regulation and ITF policies framed to avoid the exploitation of the FoC crews. Indirect wage costs are those which do not represent immediate payment to the employed and are set independently by single national governments with regard to national seafarers (i.e. national insurance payment, leave entitlement, pensions, training, employment taxes, medical expenses, and so on). Therefore, the indirect wage is the element of the manning costs where different national policies could have a strong impact on the ship owners' decisions regarding flag.

By adopting a flag of convenience the ship owner gains the ability to offer contracts with gross salaries, transferring the responsibility for pension provision, social security costs and coverage of medical expenses to the employee. At the same time employment conditions such as lengths of duty and leave could be re-negotiated on an individual basis. The governments of most of the traditional maritime countries have modified their policies to move them closer to the situation created by the legislation of the Open Registry countries. This has led to the introduction of second or international

registers but these will not feature as the focus of this chapter.

A group of factors that might influence the shipowner's decision, but which have been partly ignored by the existing literature, are the characteristics of the shipping companies and of the ships. It is observed that only some companies of the same nationality decide to flag out, and that the decision to flag out might concern either all or only part of the fleet of the same shipping company. In the next section flag choice as a management decision will be discussed.

3. Flag Choice as a Management Decision

However straightforward the attribution of nationality to a ship may initially sound, the reality described in the previous section clearly shows the variety of alternatives ship owners have at their disposal and the diversity of parameters that have to be taken into account. It is this absence of externally imposed legal conditions, this aspect of informed and educated choice between alternatives that, first of all, makes the preference for a specific type of registry a management decision. Previous research (Bergantino and Marlow, 1998) showed that ship owners are driven in their choice of flag by certain criteria many of which can be seen to be related to management issues, such as marketing considerations or the decision to reduce input costs, i.e. crew costs. However there seems to be another direction in this relationship; the dimensions along which flags differentiate touch upon management issues and therefore flag choice can have an effect on management practices, too. In fact, the direction of such associations can become quite blurred, especially given that the choice of flag tends to be based on different sets of criteria for individual ship owners and individual ships (Bergantino and Marlow, 1998). Within these realms the focus here will be on identifying general management areas which are expected to be influenced by ship owners' choice of registry for their vessels.

Firstly, the choice of a ship's flag is very likely to affect *the location of the management company* itself. Traditionally, the nationality of a vessel has been connected with the nationality of its owner but well-known developments in the international shipping scene have brought about the evolution of the ship registration system and the plethora of registration schemes, procedures and requirements. Although, as already pointed out, there is no international legal instrument that lays down universally accepted registration provisions, the United Nations Convention on the Conditions for the Registration of Ships, 1986 – which is not in force and possibly never will be – provides some useful guidance. Articles 7–10 (UN 1986) call for participation by nationals of the flag state in the ownership, manning and management of the ships; either the ownership or manning criterion has to be satisfied but the management criterion is to be satisfied in all cases. Many nations appear to have indeed taken up – part of – its content at their discretion and to various degrees and today a number of registries require some form of commercial presence in the country. In some cases, such as Liberia, the requirement for a Liberian shipowning company can be easily satisfied by setting it up there only on paper and so it is not thought to have any significant impact on management. In other cases, like the Dutch registry, ships must be managed in that same country, a condition with important management implications. Such implications relate to the general legal framework of company operation prevalent in the country but also to the wider cultural characteristics which should be taken into account. On the assumption that local management companies will be staffed mostly by indigenous expertise, management action should take into account the special features of its human resource as conditioned by cultural differences. Hofstede's work (1980), on how national cultures can be explained by four key factors,

namely, individualism, power distance, uncertainty avoidance and masculinity, has been most influential in this respect. It has shown how nationality affects human behaviour and consequently how it also constrains management practice. For example, he has found that countries which score highly in power distance and uncertainty avoidance are likely to produce forms of organisation that rely heavily on hierarchy and clear orders from superiors, but those which score low in power distance and high in uncertainty avoidance will produce organisations that rely on rules and procedures (Hofstede, 1991). If to the above, the effect of the company's macro environment is added, i.e. the general national economic situation, the existence of infrastructure and telecommunications etc, the expected impact of management location on management practice becomes even more evident.

Clearly, the legal framework that the different registries offer touches upon a number of dimensions in relation to management. *Company laws* and *financial laws* relating to, for instance, the company's organisation, the disclosure of ownership of shares, or the auditing of the accounts, will obviously be expected to have a bearing on management functions. Open registries are generally believed to encompass more flexible and owner-friendly commercial environments but many shipowning nations, such as Greece and the UK, have also attended to the provision of an attractive commercial context for ship operation. A specific trend between registries may perhaps be difficult to observe but although such items may be rather flag-specific, they nevertheless have important implications for ship management.

The way that open registries and traditional ones have dealt with *tax liabilities* has conventionally been one of the most fundamental differences between the two. Open registries have led the way with the early introduction of advantageous taxation schemes for both ship's tax and company tax. Although indeed a significant parameter in ship owners' choice of flag (Gardner *et al.*, 1984), differing tax systems may be thought to affect management practice to a small and mostly indirect extent. For example, they may necessitate or not the existence of a separate sub-department in the accounts department or require expertise in the form of outside experts or outsourcing. Indirectly they will influence the company's balance sheets, its cash flow and perhaps ultimately and long-term the investment capability/options of the company. But, unless seen from this perspective, diverse tax schemes cannot be seen to have a considerable impact on management practice. In terms of ship's tax, one more exception may apply; when the tax system, such as a tonnage tax system, is tied to a training obligation, as in the case of the UK and other nations, then, more obvious implications are developed for the human resource management exercised by the company.

The issue of flag has mainly been related to cost differences. In other words the main differentiating factor between traditional flags and open registries is cost, translated into total crew costs, tax and high costs of compliance with safety standards of national flags. Tax does not really have a dramatic effect on management practices. Nevertheless, the degree of preoccupation with cost as a formative parameter of strategy and the repercussions for crew employment choices that occur with the preference for a flag are the two issues with the most impact on management decisions and these will be explored in some detail in the following two sections.

4. The Impact of Choice of Flag on Strategic Decisions

The choice of flag also affects a number of *strategic decisions at corporate level*. In the first place, the flag a vessel flies may influence the actual *market sectors* in which a company engages. Decisions

about the fields and industries in which a corporation's Strategic Business Units (SBUs) will pursue commercial activities are among the most significant decisions corporate executives and top management are expected to make for the success and the viability of every firm. Consider the example of countries, Norway for instance, which offer exclusive employment of vessels flying the national flag in certain protected trades, such as coasting, or when there is a preference for the national fleet for government cargoes, like the case of the USA. Clearly, the flying of a foreign flag automatically prevents the company from involvement in specific market segments. Along the same lines, a firm using reputable and highly recognised flags for its vessels may have built up a respectable and dependable profile and may thus enjoy further business opportunities for involvement in higher risk trades, such as the tanker industry, which it could otherwise perhaps not be provided with. Hand in hand with these strategic choices come also management decisions about the firm's assets or features of the firm's fleet especially in terms of ship types and ship sizes, and so the latter can also be seen to potentially be affected by the ship owners' flag choice. In connection with the above, ship management can also be influenced by the choice of flag *at an operational level*. Preference for certain *trade routes* may be effected by a need, for example, to avoid highly regulated geographic regions, such as the USA especially after the introduction of OPA 90, or the EU, or certain countries or strict Port State Control areas if ships are flying a PSC-targeted flag.

Interestingly, and perhaps unexpectedly, flag choice can be seen to have an impact on yet more strategic management issues. The formulation of a corporate strategy can potentially be affected by a specific flag choice when, for instance, flags give attractive incentives for building new ships. Fleet expansion is of course a management decision primarily driven by market conditions, good freight rates, strong cash flows, and optimistic expectations. But more often than not, history in shipping has shown that ship owners in their decision to invest in new ships are also influenced by favourable building incentives, coming either from the yard or the government, to such an extent that this behaviour has been thought to bring ultimately negative results for the freight market (Strandenes, 2002). In other words, although a rational assumption here, the impact of appealing newbuilding support schemes as part of a flag's regime on a ship owners' decision to adopt a *growth strategy* is in fact a noted reality. Growth and fleet expansion can be achieved also through the acquisition of second hand ships. In this case, too, the flag's effect on the decision to expand can be considerable, especially in situations when the flag provides ship owners with access to loans at better rates of interest within the realms of its industry support plan. On the other hand, the choice of flag does not only have a bearing on whether top management takes up a growth corporate strategy or not but also on the ways in which growth is to take place. A straightforward example relates to the manner in which registries deal with the issue of dual registration. If a flag does not allow dual registration, this affects also the fleet expansion policy as ship owners are restricted with regard to bareboat chartering options under this registry system. On top of that, management decisions on *fleet replacement policy* can at times be impacted by the choice of flag. This is so since many registries, both traditional and open registers, have a maximum ship's age restriction which means that if ship owners, for a number of reasons, wish their ships to fly this flag, they must adjust their replacement policy accordingly.

Associations between the choice of flag and the formulation of *business-level strategies* can also be considered. According to Porter (1980), there are three generic strategies that companies can pursue: a differentiation strategy; a cost leadership strategy; and a focus strategy. The differentiation strategy

seeks to distinguish the company's products or services from those of the competitors' in the industry along some dimensions that are valued by clients. Such dimensions may relate to the quality of the product/service, the development of distinctive product features, etc, and receive higher than average prices. With the cost leadership strategy the company attempts to gain competitive advantage by reducing production costs and selling its product/service at lower prices than competitors. The company will still offer comparable quality at these low prices and make a profit. With the focus strategy the company concentrates on a particular market segment, a group of customers or geographical location, and adopts either a differentiation focus or a cost leadership focus. Bearing in mind that the use of open registries has been instigated particularly by the drive for cost-cutting, it can reasonably be assumed that companies opting for them would follow a cost leadership competitive strategy. On the other hand, ship owners who are willing to take on the additional costs of a national flag and invest further in the image of a traditional, quality operator would, in effect, opt for a differentiation strategy for their business ventures.

The strategic decision of the top management concerning the *employment of third party ship managers* does not appear to be directly affected by the choice of flag. Relevant research indicated that flagging out was ranked low down in importance by ship owners as a potential reason for turning to third party ship managers (Mitroussi, 2004). Other assumptions of indirect associations between flag choice and the use of third party ship management can be attempted but seem to be less able to hold up in a critical rationale, especially when additional dimensions are considered. For example, it has been shown, that when ship owners do not use third party ship management it is very much because they want to keep close overall control over vessels, both in terms of cost as well as maintenance levels (Mitroussi, 2004). National flags, on the other hand, are known to administer and therefore require, on the part of their operators, close control in order to keep safety standards high. On these grounds a logical assumption would be that the choice of national flag might deter the loss of absolute control and therefore the use of third party ship management. Nevertheless, market requirements, with charterers often preferring to do business with a recognised ship manager rather than a small operator, especially in trades of high risk, like the tanker sector, point to the idea that third party ship management and control of safety standards might be on the same side of the road. With ship owners generally retaining the decision on the choice of flag even when third party ship managers are used (Mitroussi, 2004), it seems that although overall the choice of flag can influence ship management practice, it does not have an impact on its outsourcing.

Last but not least, management is concerned with *dealing with the external environment* of a company too, and even more so today, given the upsurge of the concept of corporate social responsibility, with its various stakeholders. Although shipping is indeed a truly international business, choice of flag by definition has an effect on this aspect of management as it dictates the micro external environment of a shipping company through the legal framework it provides, such as the national shipping bodies, government agencies, bureaucratic control and other aspects. In the case of traditional flags usually some important work should be expected on the part of the management of the company to achieve and enhance relationship building with unions, flag officials, other contacts and other shipping related associations. This can be both time-consuming and require specific managerial, social and even negotiation skills but it also allows room for lobbying, and gives

opportunities for recognition within the community and for making the company's voice heard. On the other hand, such aspects of management are usually not required – certainly not to a significant extent – when the ship operation concerns vessels registered in flags of convenience, which are generally accepted to encompass lax governmental controls and a minimum shipping infrastructure. Quite clearly, the choice of flag touches upon management issues in this respect, too.

5. The Impact of Choice of Flag on Human Resource Management

Open registries and the process of changing the flag – the flagging out – have been particularly associated with the issue of ship manning. Applying Vernon's dynamic model of location of production (1966), flagging out is regarded as analogous to the establishment of overseas subsidiaries by large production firms and is considered to be the third wave of maritime transport (Sletmo, 1989). Flagging out is seen as part of the shipping industry's effort to develop least cost systems of ship operation by taking advantage of low cost labour. By definition, therefore, the choice of flag has an axiomatic direct impact on the human resource management of a shipping company. This impact, although primarily related to crews, extends to the overall management practice in a company, not least because crew management is an essential part of it, but also due to the inevitable relationships developed between onboard and shore-based human resource management.

"Human resource management involves all management decisions and practices that directly affect or influence the people, or human resources, who work for the organisation" (Torrington *et al.*, 2002). The term has in recent years been more and more used in the place of the term 'personnel management' in order to signify a shift in its importance and in its orientation. Torrington *et al.* (2008) talk about the changing nature of the management of people underlining that personnel management is preoccupied with managing the supply of people to the business, but human resource management with managing the demand for human resources to meet the operational needs of the business. In essence, emphasis on a more strategic approach to people management is given, as human resource management must integrate the firm's goals with the correct approach to managing its human capital (Baron and Kreps, 1999). Effective human resource management has been positively associated with higher employee productivity and better financial results (Delaney and Huselid, 1996; Huselid *et al.*, 1997). The role of human capital and its management in sustaining competitive advantage has been stressed in the general management literature (Pfeffer, 1995) but also more recently in shipping-related literature. Lorange (2005), examining contemporary evolutionary forces in relation to shipping company strategies, talks of company cases in which "the assets are the human capital" and underlines "a strong emphasis on being 'a people make the difference' business, without owning any 'steel' at all."

Human resource management is of particular significance in shipping, which although traditionally capital intensive, particularly relies on its people for successful and profitable ship operation. This is so, not just due to their innate characteristics as service-sector organisations, but particularly due to the unique idiosyncrasies of the shipping business itself (Mitroussi and Chang, 2008). The special features of shipping with regard to its people mainly relate to the distinction between shore-based and ship-based personnel in the companies, the inherent complexity of ship operation which places capital intensive assets in the hands of very few (e.g. 15 to 20) people, the multinational aspect and immensely high turnover of the crew and the social aspect of the staff's time on board.

The scope of human resource management activities is quite broad and could perhaps best be described as the effort to attract effective employees, develop them to their potential and maintain them over the long term (Fisher, 1989). These main areas include a number of activities ranging from human resource planning, recruitment and selection, to training, development and appraisal and yet further to managing employee relations and services, such as welfare. The focus in this chapter is primarily on the first two areas, as these are thought to be more directly affected by the choice of flag.

One of the most important aspects of people management in shipping is its *international dimension*. International human resource management is a term which has only recently appeared in shore industries and has emerged as a consequence mostly of the establishment and expansion of overseas subsidiaries and of course the development of globalised firms. Research suggests that the majority of companies in shore industries have yet to deal with and align their human resource policies and practices with globalisation needs (Wellins and Rioux, 2000). International manning is certainly not a new matter for the shipping business, given its inherently international character; however, as already pointed out, the burst of foreign recruitment on board vessels took place with the third wave of shipping – the flagging out process. In other words, if it is assumed that national flags have traditionally required a full – or an overwhelming majority – of national crew complement, then it can safely be deduced that international human resource management should be expected to be more of a concern for companies opting for flagging out. This clearly indicates a considerable impact of the choice of flag on human resource management of companies, as it points to differences in human resource approaches and procedures for companies registering their vessels in different flags. Ship managers involved in dealing with a diverse pool of seafarers coming from around the world are faced with a number of challenges. Cultural and national differences have to be coordinated and accommodated; policies and practices may have to be adjusted to take into account differences in cultures and social norms; effective communication needs to be maintained in different languages and for different backgrounds and frames of reference. As such, the special concerns of ship operators managing a nationally diverse workforce encompass a number of aspects, such as the organisation culture and the education programmes, and primarily should concentrate on building human resource systems which are bias-free in many respects (Cox and Blake, 1991). Special attention must be paid to the significant issue of successful communication not just from the office to the ship but also most importantly among the crew onboard the vessel, not only because these people will be the direct and first handlers of an emergency situation, but also for the good social and working relations and the efficient execution of duties onboard. As language and cultural barriers are bound to be present in the communication of multi-national crews, the proper mix of crew nationalities and knowledge of such potential barriers play a vital role in effective ship management. For example, research has shown that people of different nationalities pay differing degrees of attention to the social context – nonverbal clues, social status, etc – when they communicate verbally (Kennedy and Everest, 1991). The Chinese, for example, come from a high-context culture and tend to derive meaning from context, whereas Scandinavians come from a low-context culture and derive meaning primarily from words. The implications for effective communication within these realms are quite self-evident as well as the implications for the human resource management of shipping companies involved with the manning of multinational crews.

Appropriate planning is the starting point for successful human resource management. *Human resource planning* is the process for identifying an organisation's current and future requirements, developing plans to meet these requirements and monitoring their effectiveness (Beardwell and Claydon, 2007). It is an integral part of broader company planning as it is connected with the organisation's future development and objectives. Its main stages encompass an assessment of current staffing needs, forecasting the future personnel needs, formulating a staffing strategy and finally evaluating and updating the whole process (Kreitner, 2001). Clearly, every shipping company should engage in human resource planning, but circumstances in the shipping business make this a rather challenging task regardless of the flag the ships fly. Items related to the phase of analysing existing needs constitute in fact and, to a great extent, a requirement for shipping companies under international law (i.e. under the International Ship Management (ISM) Code). The reference is for the process of job analysis which is made up of two parts: the job description – the duties of a job, and the job specification – the skills and qualifications needed for the job. Given the widespread adoption and implementation of the SOLAS Convention important differences with regard to this aspect of human resource planning should not be expected to be observed, at least not in relation to staff positions related to the safe management of the vessels. Difficulties in the human resource planning arise for all shipping companies in respect of the forecast of future supply and demand of labour.

Relevant issues which cause complications in human resource planning and are common for all shipping companies, regardless of the flags they use for their vessels, include the unpredictable fluctuations of the freight rate market and the increased flexibility to trade in and out of market sectors primarily through the sale and purchase (S&P) market activities. Of great importance for the forecasting of projected staff needs is the ability to predict revenues and demand for the service. Such predictions, however, are notoriously hard to attain in the shipping business, where forecasting tools generally fail to reflect and encompass the complexity and volatility of macro and micro realities. The S&P market offers shipping companies increased flexibility to trade in and out of varied market sectors within short periods of time and often even at short notice, which can cause further difficulties in the forecast of demand of future labour needs. Forecasting the supply of labour entails basically two tasks: assessing the internal supply – the number and type of employees expected to remain in the firm – and the external sources generally available in the labour market. Given the discussion above about the international character of the human resource process in shipping, the difficulties and complications of trying to anticipate availability of external sources of labour are quite obvious. Within these realms, the companies which use foreign flags are subject to greater complexities in their human resource planning process, but also greater opportunities as the human resource supply area for their ships becomes effectively the whole world. Another difference between firms using open registries and those flying the national flag relates to the estimation of the likely supply of internal candidates to satisfy future staffing needs. Traditionally, shipping offices have been manned by ex-seafarers; this is still the case today, especially in respect of certain office posts, such as the marine superintendent, for which ex-shipmanship can be a requirement (for a detailed account of such posts see Pettit *et al.* 2005). Shipping companies using national flags tend to have an established pool of seafarers who regularly go on their ships. In order for companies to retain the acquired expertise and be able to install more easily commitment and corporate culture, companies often tend to keep

seafarers on their payroll, even for periods of time when they are not serving onboard the company's vessels. This creates a source of internal supply of qualified employees for projected openings in the company's office. Shipowners taking advantage of open registries cannot easily build up this pool of dedicated skilled labour which can potentially be used at the office due to the high turnover and the practicalities of employing staff of different nationalities. Along the same lines, companies using open registries while at the same time relying for their recruitments on an "as needed" basis cannot plan succession schemes for onboard posts either, that is, relating to officers advancing from lower ranks to becoming masters or chief engineers. Exceptions of companies who customarily use open registries but have developed strong ties with foreign crew supply areas – for example, through the establishment of representative crew offices locally, or supporting marine schools there – do exist. However, it is on these conditions of considerable investment on the part of shipping companies in the crew supply areas that the existence of crew succession schemes can be more readily associated with open registers and only really with regard to onboard posts, leaving succession from the ship to the office to still be a major concern. Given this limited potential application of succession plans as well as the fact that such investment in crew supply areas is usually related to a critical company size, not necessarily satisfied by the majority of deep sea tramp operators, some differences can be considered between shipping companies flying the national flag and those using open registries in the application of the human resource planning process.

The next stage for an organisation, after assessing its future human resource needs, is recruitment and selection. This stage is concerned with attracting and choosing suitable people to meet the company's human resource requirements. The importance of effective *recruitment* is quite straightforward as both the quality as well as the number of the candidates is crucial for the selection of ultimately the most suitable employees. There are a number of recruitment methods ranging from internal searches to advertising in the press and on the internet, formal and informal contacts, such as employee referrals or simple "walk-ins", education liaison and recruitment agencies. The choice of a national or foreign flag can have a bearing on the recruitment techniques adopted by shipping companies. For example, companies with ships registered on the national registry and employing nationals onboard their vessels can take advantage of informal contacts, such as word of mouth and speculative applications or even use their own shore or sea staff to recommend candidates for job openings. Traditional ship owners in maritime nations, like Greece, for instance, are famous for historically building their business relying on a pool of expertise which would come from their own village or island and with whom they shared a common background, culture, aspiration and therefore stronger ties. This is important as managers should consider not just the technical competence but also the sociability of candidates, the degree to which they can fit well into the cultural and social context of the company. This subtle aspect of human resource recruitment is generally lost when the search is only for the least expensive crew complement. In addition, ship owners using the national registry may utilise the method of college recruiting, especially as national flags often require the training of cadets onboard registered vessels, as in the case of the Greek flag.

One very important issue for consideration as an option for the recruitment process in a shipping company is the extent of use of and reliance on crew agencies for the manning of its vessels, in other words, the option and degree of *outsourcing*. Outsourcing is increasingly being used on a global scale for different management functions and human resource is one of them, with the jobs outsourced

mainly being administrative ones, like payroll or recruitment. In fact, research shows that human resource is one of the most commonly outsourced business activities today (Lawler, 2004). Crew agencies have been used in shipping to a great extent and for many decades not least at national level, too, but once again the growth of open registers has brought about an increased reliance on crew agencies. Expanding on the aforementioned argument about the impact of flag choice on the internationalisation of the human resource process, the choice of flag is expected to have an effect also on the degree of HR outsourcing in a shipping company. Ship owners who choose open registries to take advantage of lower crew costs by employing seafarers from third countries, should obviously be expected to make considerably more use – both in terms of general crew as well as officers – of outsourcing to crew agencies as a means of access to distant labour supply areas. Management is thus further affected by the potential advantages and disadvantages of outsourcing. In respect of advantages, ship managers opting for some HR outsourcing are presented with: greater flexibility – an especially good thing when a company's needs can fluctuate quickly with the buying in or selling of vessels; access to expertise that could be hard to find otherwise; greater variety and mix of nationalities; reduced costs, which can relate not only to lower crew wages but to the absence of any need for keeping staff on standby and also to the lack of investment in training. However, disadvantages have also been noted. For instance, recent research revealed that UK companies are reluctant to use outsourcing due to fears of loss of control, loss of personal touch and doubts about the quality and commitment of the relevant staff (Hammond, 2002). Especially at the recruitment process the use of crew agencies in shipping may mean that poor candidates can bypass the initial screening process and enter the company's pool with damaging consequences for the business. Additional potential disadvantages include loss of skill and knowledge, reduction in the quality of service, loss of employee morale, short term disruption and discontinuity and damage to long-term competitiveness (Cooke *et al.*, 2005).

With regard to the *selection process*, shipowners are also presented with a variety of techniques. The choice of flag is thought to have some effect on this dimension of the human resource management, too. Shipping companies, who make use of international crew agencies for the manning of the vessels they have under foreign flags, in reality give up completely the activities connected with the recruitment stage and some – if not all – of the activities connected with the selection phase. The first step in the process of selection is ordinarily the review of application forms followed by interviews, personality/psychometric/ability tests, work simulations, or participation in assessment centres and medical examinations including drug and alcohol tests. The degree to which such activities are carried out by the agencies rather than the shipping company itself varies but it should be expected that shipping companies using open registries will exhibit a less “hands on” approach in respect of many of them. This is in line with the principle of cost-cutting through outsourcing HR activities and it is not rare that newly recruited, especially lower ranked, crew members never actually set foot in the company's office premises. The shrinkage of direct selection costs, which comes with the shrinkage of the human resource selection activities in which a shipping company gets involved should, however, be weighed against the costs of selection failure, as poor recruitment and selection can have obvious detrimental effects for ship operation.

Along the same lines the *training and development* as well as performance appraisal of the human

resource management in shipping companies can be influenced by their choice of flag. Training refers to teaching employees how to do their present jobs, while development focuses on building the knowledge and skills of employees for future responsibilities and challenges. Given the vital role of staff as a crucial and expensive resource, their contribution to effective and efficient organisational performance and the contemporary movement towards more flexible organisational structures and employee empowerment, training and development clearly constitute a critical HRM function. The main difference that should be expected to be observed between companies using open registries and others using national flags is the degree of investment in training and development especially for their seafarers. Such an investment will relate to the allocation of resources, planning, time, money, equipment and should be considered to be less for shipping firms registering their vessels in open registries and far more for those using national registries. The argument here continues from the reasoning discussed above in connection with the earlier stages of human resource management and concerns the extent to which HR functions are outsourced. Companies relying extensively on crew agencies to take advantage of low-cost distant supply areas cannot easily adopt a systematic approach to the management of training. Such a systematic approach entails several steps, from an assessment of training needs to an embedding of commitment and involvement of staff and from a clearly defined policy to a carefully planned training, review and evaluation programme (Mullins, 1991). A shipping company which mans its vessels on an ad hoc, “as needed” basis from crewing agencies around the world and with a high turnover will find it quite difficult, for example, to engage in any objective assessment of training needs. This requires analysis at three distinct levels, the organisation, the task and the person, and at high turnovers and with minimum knowledge of the employees the chain of the assessment is broken at the third tier of the analysis. In the same way, the review and evaluation of training programmes can hardly be effectively carried out when seafarers do not stay with the same company for more than six to eight months. The choice of flag may also affect the types of training that companies may adopt. To begin with, since companies using open registers may not usually invest in any long-term employment relationship with their seafarers, they should be expected to be less concerned with employee development, such as varied work experiences or formal education. They should also be less concerned with sea staff career development or management. Their training programmes may be more oriented towards induction programmes, on-the-job training or simply the training required by national/international regulations, like the ISM or the ISPS Code. In addition, they would not be expected to adopt apprenticeship training, as open registries do not require any form of cadet training obligation on the part of their vessels, unlike some of the tonnage tax regimes adopted by traditional flags.

The choice of flag is also considered to have an impact on the *performance appraisal* function of the human resource management again due to the diverse crew employment conditions connected with different flag types. Performance appraisal is a review and assessment of the behaviour and performance of staff and its systematic nature involves a scheme of regular and continuous judgement and feedback. It is this systematic approach to appraisal and its various implications for several other managerial functions and decisions that give rise to differentiations in respect of this HRM function between companies using open and national registries. First of all, the appraisal system should be designed in accordance with organisational objectives and to fit its organisational culture and policies, while supervisors should undergo relevant training to avoid the costs of poorly administered

appraisals. However, due to the quick pace with which shipping companies using open registries may change officers onboard their vessels, masters cannot receive appropriate appraisal training nor can they readily align their appraisal practice with the goals and culture of the company. Also, the system needs to be evaluated regularly based on feedback from supervisors, but again the frequent change of crew members onboard foreign flagged vessels does not provide the conditions for effective monitoring of the system and reliable, systematic feedback from the appraisers, the masters/officers. In addition, a successful performance appraisal scheme means that results are fed into other HRM activities, for example, for validation of selection techniques, for assessment of the impact of training programmes, for forecasts of staffing needs or as a basis of a review of financial rewards, promotions, etc. It also means that employees are provided with appropriate feedback to reflect on and improve their individual performance, to identify training/development needs and plan career progression. The usually limited time of crew members onboard ships flying flags of convenience and the ad hoc basis of their employment put severe restrictions on the actual and successful application of performance feedback procedures, while they also have an effect on the frequency with which appraisals can be carried out.

All of the above have an impact on the organisation and structure of the office-based staff too. The more human resource activities are outsourced, the less the responsibilities and activities of the office in respect of them and hence the smaller the relevant department in the office and vice-versa. The operation of the office of a shipping company is also affected in other ways, like in respect of the succession planning, mentioned earlier or the effective communication with the vessel, coordination of duties, the provision of quality service, the attraction of business and other indirect ways. Nevertheless, with regard to the shore staff of shipping companies, it must be underlined that some of the HRM functions discussed above, such as the training and development or the performance appraisal, are not considered to be directly influenced by the choice of flag. Shipping companies, for example, can make considerable investments in training and development of shore staff and take advantage of the wide range of training programmes for their office personnel without being restricted by their choice of flag. In addition, given that ship owners may choose different flag regimes for different vessels of the same fleet – research has suggested that the decision to flag out is taken on a ship-basis and not a fleet-basis (Bergantino and Marlow, 1998) – it is possible that many of the issues discussed above cancel each other out when the overall management approach of a shipping company is considered.

6. Flag Regimes in Convergence

The basis for this comparison of the management approach has been the traditionally clear-cut distinction between open registers and national flags. Contemporary developments, however, in the international ship registration regime have brought the features of national flags and open registries much closer. For example, the overwhelming majority of the ocean-going fleet is suspected to be under some form of tonnage tax system, while nationality restrictions for crew complements become more and more lax for traditional flags. The ways in which flag regimes have recently come towards some convergence as well as the potential impact of these developments on expected management approaches by shipping companies in the light of our discussion, will now be examined.

A growing awareness of the importance of the shipping industry to the international and national

economies and an increased interest in supporting it have resulted in measures being taken by governments to foster the competitiveness of their national shipping industries. Within this context and in order to encourage ships not to flag out, the European Union has attempted to secure a level playing field for the shipping industry by introducing a relevant regulatory framework. The 2004 State Aid Guidelines are in force currently and for a time period of seven years, that is until 2011 (Commission of the European Communities, 2004). The 2004 Guidelines regard shipping tonnage tax as a State Aid, a fiscal incentive which can be endorsed to safeguard quality employment and facilitate the development of community shipping in the global market; they make provisions for reduced rates of contributions for social security and reduced rates of income tax for Community seafarers on board ships registered in a Member State; they propose, *inter alia*, other state aid initiatives, which include the reimbursement of repatriation costs of Community seafarers, tax free reserves for capital gains, specific investment aids, some forms of training initiatives, and financial aid to cover up to 30% of operating costs for a new service that will enable road transport cargoes to be diverted to sea.

Indeed most of the traditional shipping nations in the EU have taken advantage of the aid measures allowed since the 1997 guidelines by introducing, for example, tonnage tax systems and/or schemes to reduce crew costs. Tonnage tax entered into force in the Netherlands and Norway in 1996, Germany in 1999, the UK in 2000, Denmark, Spain, Finland, Ireland, Belgium and France in 2002, and Italy in 2005. The current system of tonnage tax in Greece has existed since 1975. At an international level, too, the trend to come up with ways to support the industry through fiscal and financial incentives is also evident. For instance, Singapore operates the Approved Shipping Logistics Enterprise Scheme which offers a 10% concessionary tax rate for a five-year period (recently changed to ten years, 15/02/07); while the Hong Kong Shipping Register introduced a range of schemes to attract quality tonnage, among them a six month annual tonnage charge reduction scheme every two years provided their ships have not been detained (Grinter, 2007).

A re-examination of the definitions of open register existent in the literature (section 2), suggests that the older the definition provided, the more outdated it appears, given the current status of affairs generally in the political and economic environment and in the international shipping industry. Traditional flags have admittedly been adjusting their registration procedures to make them more attractive, more “convenient” and “opportune” for ship owners:

- foreign-owned or foreign controlled vessels can be allowed to register in traditional flags, e.g. the Norwegian Ordinary Ship Register (NOR) accepts EU citizens or companies as equivalent to Norwegian citizens or companies to be registered as owners of vessels flying its flag;
- access to and transfer from national flags is made easy while the cost of registration fees has been brought down, e.g. in the UK flag registration costs are amongst the lowest available in national flags while there are no annual renewal fees;
- taxes on the income of ships are not levied, a tonnage tax system is used instead, e.g. Greece has the longest history in applying a tonnage tax regime that goes back to 1939 (Moraitis, 2003), while the current taxation system applying to the shipping sector was introduced by Law 27 in 1975;
- fiscal obligations can be circumvented usually through the avoidance of corporate tax, e.g. as is the case with the UK and Dutch flag;
- the manning of ships by non nationals is permitted to a smaller or a larger extent, e.g. recently

a softening of Greek flag manning requirements with regard to the complement of Greek nationals has meant that, with the exception of masters, who must remain Greek, shipowners are free to choose whether the Greek contingent (minimum 4-6) consists of officers, lower ranks or a combination of the two.

In the light of these changes to traditional registers, how can our discussion in the previous sections be affected? If the basis of the theoretical rationale we have developed, (i.e. the clear-cut distinction between open registers and traditional flags), is no longer so clear-cut, does this affect, and if so to what extent, the assumptions made about the impact of choice of flag on ship management?

The fundamental distinction between national flags and the flags of convenience has been the absence of a “genuine link” on the part of the latter. This can take the form of a number of attributes and, if the UN relevant instrument on Conditions for Registration of Ships is followed, such attributes can relate mainly to the ownership, the manning and the management criteria as well as the contribution to the national economy and its inclusion in the national balance of payments accounts. With regard then to the actual convergence between flag regimes, the real question is not how close traditional flags have become to the attractive features of open registers but whether, to what extent, and along which dimensions such changes have altered the basic characteristic of national flags, i.e. the genuine link, and so the essence of the nature of national flags.

A detailed reasoning of the potential impact of such developments on ship management choices, in the lines of the discussion in the previous sections, will not of course be attempted at this point, as this would be a valuable exercise in its own right. Rather some basic, underlying principles will be addressed and reviewed in relation to the issue of the recent convergence of traditional and open registers.

The adoption of measures on the part of national flags which relate to the reduction of bureaucracy in registration procedures or the decrease in registration/annual fees is straightforwardly an aspect which should not have an effect on the management behaviour of shipping companies. The much discussed and widely applied tonnage tax scheme, although indeed an important aspect of convergence between the two main flag regimes and with direct consequences to national economies, should not be expected to affect management practice to any significant extent, as argued earlier in this chapter.

Of much greater significance for both the determination of the existence/absence of the genuine link with ships, as well as the management practice is the degree to which national flags nowadays allow for the registration of ships owned by non-nationals. On the one hand the need to enhance competitiveness and, on the other, the political reality of regional unions of sovereign states, like the EU, has meant that traditional flags previously not open to other nationalities, would have to accept foreign shipowners in their register. This development should be expected to affect at a first level the cultural identity of the flag itself and then, as a result of that, to potentially have some impact on a number of elements of ship management for individual shipping companies. Historically, traditional flags have been associated with the maritime nation of their countries, its reputation with regard to ship operation, the way it is thought to conduct business, its know-how and expertise. They have built up a certain image – positive, negative, peculiar, indifferent – based on this. With the participation of foreigners in their registers such identity and consequently image will slowly be infused with elements from the shipping experience and standing of other nations. Initially ships, controlled by

foreign interests, entering a newly opened-to-foreigners traditional flag, should be expected to be drawn to it because they also share some common principles in respect of the business of ship operation. Inevitably, there will be a two-way influence between the two entities affecting the status of the flag itself. The degree to which the traditional flag will sustain its attitude towards the shipping business will largely depend on its desire to treat registration as a procedure necessary to impose sovereignty and hence control over its shipping. In this way, recognising that national flags have the expertise, the infrastructure, the procedures and tools and assuming still also the will, to impose sovereignty then the relaxation of ownership requirements, although bringing them closer to the known attributes of flags of convenience, should not be expected to alter significantly the management choices of the companies who prefer them. However, if a national flag's previous reputation for quality and high safety standards is lost, then this may affect some of the strategic decisions – as discussed in section 4 – of companies registered in it. In respect of the legal framework of company's laws and other laws inherently relevant to every nation, a specific trend between registries may be difficult to observe and such items should be rather flag-specific than flag regime-specific.

The genuine link between registers and their vessels can also be demonstrated by the management criterion, the fact, that is, that nationals must have some presence in the actual management of the vessels. Many traditional flags appear still to adhere to this requirement, despite their opening up to other nationalities or the adoption of favourable tax and registration systems. This issue is of course related to the actual control of and accountability and liability for ship operation but it is also very much connected with the protection of the national maritime cluster and national economy. In recent years the realisation has been that actually 70% of the value added by the shipping industry comes from on-shore activities related to shipping (Peeters *et al.*, 1994). It seems, therefore, that maritime nations wishing to keep the primary source of the industry's contribution to their economy and balance of payments – the valued added, the employment generation, the investment generation, the preservation and enhancement of expertise – are willing to “sacrifice” potential corporate tax income to protect the management dimension of their shipping business. Examples of traditional flags which have resorted to the adoption of tonnage tax but have sheltered their shore-based shipping activity by including the management requirement in their registration include the UK and Dutch flag. Others, like Greece, have for many years provided a favourable tax regime for ship management companies established in the country in order to attract more onshore business activity in it.⁴ Since the location of ship management has important consequences for management practice, as also discussed in section 3, the decision of traditional flags to retain management functions nationally essentially distances the former from what open registers stand for.

National flags generally go down the path of using open registers as a benchmark in order to increase the competitiveness of their own national shipping industry and extended maritime cluster rather than because they wish to provide a service which can be sold to foreign ship owners wishing to escape the fiscal or other consequences of registration under their own flags. It is in this distinctive philosophy that a main difference between traditional and open flags is still to be observed. Shipping is generally thought to be considered by traditional flags as an important industry for their nation, one in which governments should invest and to which private investment should be attracted. This creates

the environment and further encourages the development of shipping related organisations, trade and shipowning associations, seafarers' and workers' unions and other bodies, all of which should be seen to ensure the sustainability of national shipping through promoting quality, safety, training, expertise, fair working conditions and an appealing commercial environment for conducting the business.

The relaxation of national manning requirements should also be viewed within these parameters, although this development should be expected to have significant repercussions for the adoption of ship management practices by shipping firms. It is in this regard that it can be said not only that the two registry regimes are coming very close in disposition, but also that this alters to a significant extent the assumptions made with regard to the impact of the flag choice on human resource management (section 5). The rationale about the human resource management choices of shipping companies was built basically around the principle that its international dimensions (outsourcing, the 'as needed' strategy and high turnovers) were issues primarily connected with the use of flags of convenience. Given the new development of traditional flags now adopting a more laissez-faire approach to the nationality of seafarers onboard their ships, such issues and their consequences could no longer be regarded as more relevant for companies choosing open registers. The difference between shipping companies with regard to their people and their human resource management should then be expected to stem more from the degree of investment made by them in this key management dimension rather than be implied by their flag choice. The requirement for the training of nationals which is built into some traditional flags is expected to bring some differences in management practices, for instance, in relation to recruitment process. Overall, the preoccupation with cost cutting in order to enhance the competitiveness of flags is most vividly exhibited in the softening of national manning requirements, and changes should be expected in the way the business will be conducted.

7. Conclusion

This chapter has been concerned with the impact of the choice of flag on ship management. The basis of the analysis was the conventional distinction between open registers and traditional, national flags. The subject is treated in a theoretical context and the examination reveals a number of management dimensions in a shipping company which can be thought to be influenced by the choice of flag. General management aspects such as the decision on the actual location of the ship management company can be affected, but most importantly it is the strategic management decisions and the human resource management process that are considered to be particularly influenced by the company's flag choice. With regard to strategic management, both corporate strategies and business-level strategies of a shipping firm can be affected as, for example, the use of open registers corresponds to a cost leadership competitive strategy, while the use of national registers corresponds to the differentiation strategy. Human resource planning, the recruitment and selection process, as well as the training and development and performance appraisal programmes are regarded as management functions on which the choice of flag can have a bearing.

As stated earlier, the basis for comparison of the management approach has been the traditionally clear-cut distinction between open registers and national flags. Contemporary developments, however, in the international ship registration regime have brought the features of national flags and open registries much closer. The overwhelming majority of the ocean-going fleet is suspected to be under some form of tonnage tax system, while nationality restrictions for crew complements become more

and more lax for traditional flags, as in the case of the Greek flag. In the light of such developments a re-evaluation of the different management approaches expected by shipping companies using diverse ship registration regimes would be another valuable exercise. This chapter did not attempt to tackle all the issues in an holistic manner and other considerations, such as cultural diversity and associated crew management practices, could usefully be included in future.

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Endnotes

- [1.](#) Operating costs comprise all the costs and expenses incurred in the day-to-day operation of the vessel at sea and in port. These costs are associated with manning, maintaining, supplying and insuring a vessel.
- [2.](#) Metaxas and Doganis (1976), Metaxas (1985), Tolofari, Button and Pitfield (1986), Dorey (1988), Asteris (1993), and Policy Research Corporation (1994) to cite only some.
- [3.](#) The above category of costs consists of: basic pay, bonuses, leave overtime, pensions, social security, subsistence, uniforms, and so on.
- [4.](#) The reference is especially to Law 89/1967 on the establishment of offices of ship management and other shipping related activities in Greece.

The ship registry

Sekundarna literatura

CHAPTER 3

THE SHIP

REGISTRY

Registration of British ships dates from the Navigation Acts from 1660 onwards. The original purpose was to confine the privileges of certain branches of British trade to vessels owned by British subjects. Nowadays important points of public policy involved in registration include the question of who may be entitled to the privileges of the national flag, evidence of title to ownership of the ship as property and the need for countries to be able to enforce their laws and exercise jurisdiction over their ships.

In 1988 the British Government amended Part I of the 1894 Act (together with other matters) by passing the Merchant Shipping Act 1988. When brought into force, sections 1, 2 and 3 of the 1894 Act, which required compulsory registration of British ships, are replaced by sections 2 to 8* of the 1988 Act. Although the 1988 Act restricts Part I of the 1894 Act to registration in the United Kingdom, under section 11 an Order in Council may make provision for registration in a **"relevant overseas territory"** which means the Isle of Man, any of the Channel Islands, or any colony.

Although it no longer appears to be an obligation to register as British a ship which is owned by qualified persons, section 72 (as amended) of the 1894 Act states that although an unregistered ship is not entitled to any benefits, privileges, advantages or protection usually enjoyed by a British ship, the ship will be dealt with as if she were a British ship, for the payment of dues, fees or other charges, for liability to fines and forfeiture, and for the punishment of offences committed on board, or by any persons belonging to the ship. The following paragraphs outline Part I of the 1894 Act as amended by the 1988 Act. **British Ships.** Under section 2 of the M.S. Act 1988 a ship is a British ship if: –

(a) it is registered in the U.K. under Part I of the 1894 Act or section 5 of the 1983 Act, or if a fishing vessel, under Part II of the 1988 Act; or

(b) it is a Government ship registered in the U.K. under s.80 of the 1906 Act; or

(c) it is a fishing vessel eligible to be registered as such, but is excluded from registration by regulations made under section 13 of the 1988 Act and is not registered elsewhere; or

* In force 1st April 1989.

(d) it is registered under the law of a relevant overseas territory; or
(e) it is less than 24 metres in length and is wholly owned by one or more persons qualified to own a British ship, but is not a fishing vessel and is not otherwise registered under paragraph (a) above or under the law of any other country outside the U.K.

Persons qualified to be owners of British ships. Under section 3 of the 1988 Act persons qualified to be owners of British ships for the purposes of Part I of the 1894 Act are: –

- (a) British citizens;
- (b) British Dependent Territories citizens;
- (c) British Overseas citizens;
- (d) British subjects under the British Nationality Act 1981;
- (e) British Nationals (Overseas) under the Hong Kong (British Nationality) Order 1986;
- (f) bodies corporate incorporated in the U.K. or in any relevant overseas territory and having their principal place of business in the U.K. or in such territory; and
- (g) citizens of the Republic of Ireland.

For the purposes of section 5 of the 1983 Act qualified persons are those listed above in paragraphs (a) to (e) and (g) above and Commonwealth citizens not falling within those paragraphs.

A person who is not qualified under paragraphs (a) to (g) above to be an owner of a British ship may nevertheless be one of the owners of such a ship if a majority interest in the ship (as in section 4 below) is owned by qualified persons and is registered in accordance with that section under Part I of the 1894 Act.

Entitlement to registration. Under section 4 of the 1988 Act, a ship is entitled to be registered under Part I of the 1894 Act if a majority interest in the ship is owned by one or more persons qualified under section 3, paragraphs (a), (b), (c) or (f) above. Where such a ship is 24 metres or more in length and the person, or each of the persons, by whom the majority interest in the ship is owned is not resident in the U.K., the ship is only entitled to be registered if a representative person is appointed for the ship.

Where a majority interest in a ship is owned by one or more qualified persons under section 3, paragraphs (c), (d) or (g) above, the ship is entitled to be registered if that person, or any of those persons, is resident in the U.K., or (where that condition is not satisfied) if the Secretary of State consents in a declaration to the ship being registered, and in addition, a representative person is appointed for the ship.

Where a majority interest in a ship is owned by one or more persons qualified to be owners by section 3 paragraphs (a) to (g) above, the ship is entitled to be registered if any of those persons is resident in the U.K., or (where that condition is not satisfied) if a representative person is appointed for the ship.

For the purposes of this section, one or more persons are treated as owning a **majority interest** in a ship if there is vested in that person or persons, taken together, legal title to 33 or more of the 64 shares into which the ship is divided for registration, but leaving out of account any share in which the beneficial interest is owned by a person not qualified to be an owner; and a body corporate is treated as resident in the U.K. if it is incorporated in the U.K. and has its principal place of business there.

Representative persons. Where under section 4 entitlement to registration is conditional on the appointment of a representative person, section 5 requires the ship's owner, before applying for the ship to be 'registered, to appoint an individual or body corporate' satisfying prescribed requirements to be such a person and to maintain the appointment after registration. The requirements are that a representative person is either an individual resident in the U.K. or a U.K. body corporate having its principal place of business there; and also such other requirements as may be prescribed by regulations.

Refusal of Registration. Under section 6, if for any reason it appears to the Secretary of State after an application that a ship may not be entitled to be registered, he may, after serving notice to the applicant, direct registrars not to register the ship.

After an application for registration of a ship entitled to be registered has been made the Secretary of State may direct registrars generally not to register the ship if he is satisfied that, having regard to the ship's condition, relevant to its safety or to any risk of pollution, or to the safety, health and welfare of persons employed or engaged in any capacity on board the ship, it would be inappropriate for the ship to be registered.

Removal from the register Section 7 provides for the Secretary of State under specified circumstances to direct the registrar of a ship's port of registry to terminate the ship's registration. Section 8 specifies offences relating to knowingly and recklessly furnishing false information and provides on summary conviction, for a fine not exceeding the statutory maximum, on conviction on indictment, to a fine.

Registrars. The registrar of British Ships at any port in the U.K. approved for the registry of ships is any officer (whether at that port or elsewhere) appointed for the purpose by the Commissioners of Customs and Excise.

Register. Every registrar must keep a register of such ships with entries made in accordance with the following provisions: –

1. The ship is divided into 64 shares. This dates from 1823, but there seems to be much doubt about the reason for choosing that particular number. It is evidently a very convenient number

inasmuch that it has seven factors, including itself and unity. It has been suggested that it may owe its origin to a former system of distributing prize money whereby the amount was first divided into eight shares, some of which were further subdivided into eighths.

2. Not more than 64 individuals or corporations may be registered as owners of one ship at the same time. A member of a company may claim through any registered owner or joint owner.
3. No person may be registered as owner of a fraction of a share. But any number not exceeding 5 may be registered as joint owners of a ship, or a share, or a group of shares.
4. Joint owners are regarded as "one person" and may not dispose of their joint interest in severalty.
5. A corporation may be registered as owner of a ship or share by its corporate name, and since most ships are owned by companies this is nowadays a common practice.

On first registry the register will show the name of the ship and the name of the port to which she belongs, together with the following information: –

- (i) Details of tonnage and build and other particulars descriptive of the identity of the ship as shown in the surveyors certificate.
- (ii) Particulars respecting her origin as stated in the declaration of ownership.
- (iii) The name and description of the registered owner and, if more than one, the proportions in which they are interested, i.e. the number of 64ths owned by them.

Further information may be added during the subsequent career of the ship depending on circumstances as shown below: –

- (i) If the ship or any share is sold the name of the transferee must be entered. It is the duty of the vendee to register the transfer. Bills of sale are entered in the order of their production to the registrar.
- (ii) If a ship or any share is transmitted to a qualified person by any lawful means (other than under section 24), the name of the person entitled to be the owner (or persons, if more than one) under the transmission must be entered.
- (iii) Mortgages are entered in the order of their production.
- (iv) Discharged mortgages are entered on production of the mortgage deed endorsed with a receipt for the mortgage money.
- (v) Transfers and transmissions of mortgages are entered.

- (vi) Particulars are entered of registered alterations and the fact of a new certificate of registry being issued or the original certificate endorsed, as the case may be.
- (vii) If registry is transferred from one port to another, that must be entered.
- (viii) Any change of the ship's name would be entered.

Survey, Measurement and Marking. Prior to registry a ship must be surveyed and measured for tonnage in accordance with the tonnage regulations. Such measurement and survey may be undertaken by a surveyor appointed by an authorised Classification Society instead of by a surveyor of ships. For this purpose Lloyd's Register of Shipping and the British Committees of Bureau Veritas, American Bureau of Shipping, Det norske Veritas and Germanischer Lloyd are authorised Classification Societies. The surveyor grants a certificate specifying the tonnage, build and other particulars descriptive of the vessel's identity, and this certificate must be delivered to the registrar.

The ship is required to be marked permanently in the following manner: –

(a) The name on each bow, and the name and port of registry on the stern, are to be in white or yellow on a dark ground or in black on a light ground, the letters being at least one decimetre long and of proportionate breadth. (It is not necessary for these to be cut into the fabric of the ship. The usual practice is to paint the lettering on the hull or to affix solid lettering).

(b) The official number and the registered tonnage must be cut in on the main beam. The "main beam" is nowadays taken to be the after coaming of the main hatch or, in a tanker, the dry hatch.

(c) For ships registered before 1st January 1974, the draught scale on each side of the stem and stern in Roman numerals or in figures of 6 inches in length must be cut in and painted in white or yellow on a dark ground or black on a light ground, or in some other approved way.

(d) Ships registered on or after the above date are to be marked with a draught scale on each side of the stem and sternpost, either of decimetres, or of metres and decimetres. The scale is to be cut in and painted at two-decimetre intervals, the figures being not less than one decimetre in length and the lower line of the figures coinciding with the draught line indicated. Where the scale is in metres and decimetres, the capital letter M is to be placed after each metre figure and the top figures of the scale are to show both the metre and decimetre figures. All the above marks must be permanently continued. The penalty for inaccurate, concealed or defaced marks is a fine not exceeding level 3 on the standard scale.

It should be noted that the assignment and marking of load lines

does not enter into registry procedure at all. That is a matter provided for by the M.S. (Load Lines) Act and is dealt with elsewhere in this book.

Declaration of Ownership No person is entitled to be registered as the owner of a ship or share thereof until he has made and signed a declaration of ownership containing: –

1. His qualification to own a British ship.
2. A statement of when and where the ship was built. (If the ship was foreign built at some place unknown, a statement to that effect must be made. In the case of a ship condemned as prize of war, particulars of the condemnation are required).
3. The number of shares legal title to which is vested in him or the corporation, alone or jointly with any other person.
4. A declaration that a majority interest in the ship is owned by qualified persons, and the ship is entitled to be registered.
5. If the ship is still registered outside the U.K. a declaration that all steps will be taken to terminate that registration.

Further Evidence required on First Registry. The following must be produced in addition to the declaration of ownership: –

1. If the ship is British built, a **Builder's Certificate** giving particulars of the ship including her estimated tonnage, when, where and for whom she was built; and if there has been a sale, the **Bill of Sale**.

"2. If foreign built, similar evidence is required, or a statement that the builder's certificate cannot be produced, if that is the case. 3. If the ship has been condemned by a prize court, a copy of the condemnation.

N.B.– A false statement in a bill of sale makes the offender liable to punishment consisting of a fine not exceeding level 4 on the standard scale.

When all the above evidence has been produced, and provided that all rules have been satisfactorily complied with, the registrar is required to enter the appropriate particulars in his register.

The Carving Note. When it is proposed to register a ship, the owner or owners, or their accredited and testified agents, must apply to the registrar at the intended port of registry, supporting the application with the documents mentioned above. The registrar then issues to the owner what is usually referred to as a "carving note". This form shows the proposed name of the vessel, the name of the intended port of registry, estimated tonnage, official number, and a request that the necessary markings shall be made. When the ship has been satisfactorily "carved" the Dept. surveyor signs the carving note to that effect, and the Department return it to the owner. The latter can then deliver

it back to the registrar who, on the strength of it, will issue the Certificate of Registry.

Certificate of Registry. This document contains all the details from the register, including gross and register tonnage.

In the sense that it provides *prima facie* evidence of title to ownership, the certificate of registry is a private document. It is not, however, conclusive evidence, and proof that the owner was in fact an unqualified person would rebut any presumption that the ship was lawfully British. It is also a public document, showing that the ship is entitled to the privileges and subject to the duties of a British ship, and must be produced on demand by various authorities. It may be used only for the lawful navigation of the ship, and is not subject to detention by an owner, a mortgagee, or any other person in respect of any claim. The master is the proper person to have custody of the certificate so long as he remains the lawful master.

Use of a certificate not legally granted is an offence rendering the ship liable to forfeiture.

The M.S. Act provides that if a person, whether interested in a ship or not, has the ship's certificate of registry in his possession and refuses to deliver it up to an officer of Customs on the latter's request, a court capable of taking cognisance of the matter may summon that person to appear before it and be examined. Unless it is proved to the satisfaction of the court that there was reasonable cause for refusal to deliver up the certificate, the offender shall be liable to a fine not exceeding level 3. If it is proved to the court that the certificate is lost, the person summoned shall be discharged and the court shall certify that the certificate of registry is lost. If the person referred to is proved to have absconded, or if he persists in his refusal to deliver up the certificate, the court shall certify the fact, and the same proceedings may then be taken as in the case of a certificate being lost, mislaid, or destroyed.

Change of Ownership must be endorsed by the registrar of the port of registry or elsewhere, and the master, under penalty of level 3 fine, must deliver the certificate for such endorsement. The registrar is obliged to act so as not to detain the ship.

If the Ship is Lost, constructively lost, taken by the enemy, broken up, or ceases to be entitled to be registered, the registrar must be notified and the master must deliver the certificate of registry (unless it is lost or destroyed) to the registrar of the ship's port of registry, or if the ship is at a port outside the British Islands to the appropriate person.

"the appropriate person" in such a port means (a) any British consular officer within whose district the port lies, or (b) any

nominated member of the High Commissioner's official staff where H.M. Government is represented by a High Commissioner, or (c) where the country is a colony, the Governor or any person appointed by him.

Procedure when Certificate of Registry is Lost. In the event of a ship's certificate being mislaid, lost or destroyed, the registrar of her port of registry is required to grant a new certificate. But if the port where the ship is, or first arrives after the event, is in a country not in the British Islands, and the master or some other person having knowledge of the facts of the case makes a declaration before the appropriate person stating those facts and giving the names and descriptions of the registered owners to the best of his knowledge and belief, the appropriate person may grant a **Provisional Certificate of Registry** containing a statement of the circumstances under which it is granted.

Within ten days after the first subsequent arrival at a port in the U.K. the provisional certificate must be delivered up to the registrar of the ship's port of registry who must then grant a new certificate. Failure to comply with this requirement without reasonable cause is an offence punishable by a fine not exceeding level 3.

If it is discovered when the ship is at sea that the certificate is not on board, it is possible that a quick recovery may be effected by notifying by radio the ship's agents in the last port of call. If the certificate is still in their hands, or has been left behind at the local consulate or shipping office, the agents may be able to airmail it to the ship's next port of arrival and thereby save the trouble of applying for a provisional certificate. In those cases, probably rare, where a provisional certificate is needed to replace temporarily a mislaid certificate, much trouble can be avoided by having all the information contained in the certificate available in a handy form. For this purpose a photostat copy, or simply a handwritten copy of the document, kept on board at all times, would be of tremendous value.

Ship becoming entitled to be registered while abroad. If a ship becomes entitled to be registered while at a port in a country outside the British Islands, then the appropriate person may, on the application of the master grant to him a provisional certificate stating: –

- (a) the name of the ship,
- (b) the time and place of the purchase of the ship and the names of the purchasers; and
- (c) the best particulars of the tonnage, build and description of the ship which are available.

A copy of the provisional certificate must be forwarded to the Registrar-General of Shipping and Seamen by the issuing official. No provisional certificate is to be granted to any person unless he is satisfied that an application for registry has been made or is intended.

A provisional certificate is valid as a certificate of registry for three months from its date, or the ship's arrival at a port where there is a registrar, whichever happens first.

Where a provisional certificate has been granted under this section 22, no further provisional certificate is to be so granted for the ship within one year from the certificate's date except with the consent of the Secretary of State..

The usual procedure for obtaining a provisional certificate of registry in a port abroad involves the following.

The previous certificate of registry (i.e., the foreign one) and the bill of sale, or photostat copies of those documents, are taken to the official so that the necessary particulars extracted from them can be entered

into the provisional certificate.

The declaration of ownership must be made. This could be signed at the foreign port by someone having power of attorney from the owners, but a more practical alternative is for the owner to make his declaration at the port where the ship is to be registered, and for the registrar at that port to cable the official at the port where the ship is lying to confirm that the declaration is in his possession. The official will also require a letter or cablegram sent on behalf of the D.T.I.—Radio Regulation Division indicating the radio call sign (signal letters) that has been allocated to the ship. (Although signal letters are allocated by the D.T.I., application for them should be made to the Registrar General of Shipping and Seamen). He will, in addition, need a letter or other confirmation from the local Collector of Customs to the effect that the ship's former foreign registry has been cancelled. In some countries, too, a permit from the appropriate government department would be required giving official approval of the "sale of the ship to aliens".

Before the ship sails from the foreign port the master should satisfy himself that the ship is in all respects seaworthy according to British standards, including proper documentation. If the load line certificate, safety and radio certificates, etc., or any of them, are out of date, the necessary surveys should be arranged and the certificates affected endorsed or renewed, as the case may be.

On arrival at the British port where the new certificate of registry is to be issued, the vessel will be surveyed and remeasured, her markings will be checked, and the new official number (and registered tonnage, if changed) will be cut in on the main beam, the old ones being obliterated.

Whilst on passage to the country where she is to be permanently registered, such a provisionally registered ship retains her original official number. Suppose for example, that the ship's name is "California" and her existing port of registry is New York. The ship, if taken over in Galveston, would be described in the provisional certificate issued by the British Consul in Galveston as the "California" of New York, with the original official number shown. It would

however, be consistent with common practice to paint out New York on the ship's stern, but this does not matter. No rule is being broken if the old port of registry is allowed to remain on the stern until the ship is newly "carved".

If it is intended that the ship's name should be changed at the same time as the change of flag, the owner must arrange with the Secretary of the Marine Division, D. Tp., for the old and new names to be cabled to the British official so that he may enter the new name in the provisional certificate. It would seem that much expense and formality are avoided by renaming the ship at this stage instead of deferring it until after the ship has been formally registered.

Temporary Pass. In special circumstances the Commissioners of Customs in the United Kingdom may issue a temporary pass to enable an unregistered ship to proceed to sea from one port in the United Kingdom to another (usually for the purpose of undergoing registration survey). Such a pass ranks for the time being as the equivalent of a certificate of registry, thus ensuring for the vessel all the privileges of a British ship, and extending to the owner the provisions of the Acts relating to limitation of liability.

REGISTRATION OF GOVERNMENT-OWNED SHIPS

Except where for certain purposes it is specially provided, the M.S. Acts do not apply to ships belonging to Her Majesty. But, by the 1906 Act, Her Majesty may by Order-in-Council make regulations as to the manner in which the Government ships may be registered as British ships for the purposes of the M.S. Acts. Government ships are ships not forming part of Her Majesty's Navy which belong to Her Majesty or are held by a person on behalf of or for the benefit of the Crown and which, for that reason, cannot be registered under the principal act. Post Office cable ships used to be included in that category when the G.P.O. was a department of State, but since it became a Public Corporation such ships require to be registered. A number of such Orders-in-Council have been made from time to time enabling Government ships both at home and overseas to be registered.

REGISTRATION OF YACHTS AND FISHING BOATS

Merchant Shipping Notice No. M.1162 describes the procedure for the registry in the United Kingdom of British owned yachts under the 1894 Act. For pleasure yachts under 13.7 metres overall length which are to be registered, a simplified system of tonnage measurement is defined in Appendix 5 to schedule 5 of the M.S. (Tonnage) Regulations 1982 (SI 1982 No. 841). Tonnage has to be measured by a surveyor

appointed by an authorised Classification Society (AB., RV., N.V., GL. or LR.), or a measurer appointed by the Royal Yachting Association or by the Yacht Brokers, Designers & Surveyors Association.

From 1st November 1983, as an alternative to registration under the 1894 Act, small ships less than 24 metres in length wholly owned by Commonwealth citizens resident in the United Kingdom may be registered on the Small Ships Register introduced by the M.S. (Small Ships Register) Regulations 1983 (SI 1983 No. 1470) and the Merchant Shipping Act 1983. Small ships which qualify may be registered on the Small Ships Register without the need for tonnage measurement. The Small Ships Register is run by the Royal Yachting Association on behalf of the Department of Transport. Registration is for a period of five years but may be renewed for further five year periods if the department is satisfied that the registration may properly be continued.

Now that Part II of the M.S. Act 1988 is in force, British fishing vessels fishing for sea fish for profit, which are eligible under section 14 of that act, will require to be registered in a new register of British fishing vessels prescribed by regulations made under section 13.

MORTGAGE OF SHIP OR SHARE

A registered ship, or a share in such a ship, may be made a security for the repayment of a loan. The document creating that security, known as a mortgage, should be produced to the registrar of the ship's port of registry, who will record it in the register. If there is more than one mortgage they rank in priority according to their dates of registration, not according to the date of mortgage. Except as far as may be necessary for making the ship or share available as security for the mortgage debt, the mortgagee is not deemed to be the owner of the ship or share which still remains in the ownership of the mortgagor. A mortgagee enjoys a statutory right to dispose of the ship or share in respect of which he is registered but, in practice he is usually bound by a separate agreement not to do so unless the mortgagor defaults. Transfers and transmissions of mortgages are required to be entered by the registrar in his register book. Transmission of a mortgage is required to be authenticated by a declaration of the person to whom the interest is transmitted in a similar manner to the transmission of ownership.

A shipowner who desires to use his ship (or a share thereof) as security for a mortgage debt usually arranges to mortgage it to a bank.

A registered mortgage is not affected by the bankruptcy of the mortgagor.

Mortgage of ship to a Bank. A shipowner, or a prospective shipowner, is not always in a position to purchase a vessel outright, pay the cost of any repairs and alterations, equip the vessel for some particular form of employment, and meet all the incidental expenses

involved in preparing the ship for a voyage, out of his immediate resources. Hence, it will often occur that a banker is approached to aid the shipowner by accepting the security of the ship in return for a mortgage loan.

As, by the M.S. Act, the mortgagor retains the status of owner, the mortgagee does not incur liabilities to third parties and it is not essential for him to be a British subject.

The banker, naturally, will wish to avoid any necessity of having to enforce the mortgage. Therefore in deciding whether to accept the security of the ship, he will be influenced not only by the personal integrity of the borrower but also by the general state of shipping and the particular prospects of the mortgagor. He will engage a professional ship valuer to assess the value of the security and, to ensure that the ship substantially maintains its value, he will require that the ship be classed by one of the recognised societies and kept in class through periodic survey and repair. For his further protection the banker will consider it desirable to have a collateral deed of agreement drawn up providing, amongst other things, that the mortgage shall be a security for such sums as the bank may decide to advance from time to time, that the advances shall be payable on demand, that the ship shall retain her British nationality and be registered at a United Kingdom port, and that she shall be kept free of any other charge or maritime lien. Liens arising out of tort, obviously, must be excluded from this provision. It will also be required of the mortgagor that he shall keep the vessel adequately insured and do nothing to render the insurance void or voidable. Such deed will generally provide that the mortgage shall become enforceable (1) should there be a default in the payment of principal or interest, possibly allowing seven days' grace, (2) in the event of breach of covenant (*e.g.*, failure to keep the ship seaworthy, or failure to keep her insured), (3) should the mortgagor become bankrupt or go into liquidation, (4) in the event of the arrest or seizure of the ship, and possibly on the happening of other events.

If the borrower mortgages another one of his ships to the bank it is customary for the collateral deed in respect of the second ship to contain either directly or by reference, the covenants as in the first collateral deed, and a clause providing that all monies secured by the previous mortgage shall be deemed to be secured on the second vessel also, and *vice versa*. Another clause is necessary to provide that the borrower shall not be entitled to redeem one mortgage without at the same time repaying outstanding amounts in respect of the other.

If the mortgagor is a company the mortgage must be registered with the Registrar of Companies as well as being registered in the Shipping Register. The latter registry is acknowledged by the registrar and endorsed on the mortgage document stating the date and hour of the day when registration was made. A first mortgage will be described in the registrar's memorandum and in the register book as "Mortgage A". Any subsequent ones will be denoted by successive letters of the

alphabet. This alphabetical notation can be relied on as evidence that there are no prior encumbrances on the register. The banker will nevertheless, usually obtain a transcript of the entries in the register. A personal search may be made for a fee of a small sum for each ship inspected, but for a transcript a somewhat larger fee is charged. The latter, however, has the advantage that the details are extracted by experts and are certified as correct by the registrar. Moreover, the M.S. Act provides that the transcript is admissible in evidence in any court. Search of the register may reveal that a certificate of sale or a certificate of mortgage has been issued. The existence of the former would obviously render a proposed mortgage out of the question. The latter would give warning that any mortgage raised in pursuance of the certificate and endorsed thereon by a registrar or British consul would take priority over the one proposed.

The insurance of the ship will normally include the usual marine risks, war risks, and club or mutual insurance, and since it is customary for the ship to be insured by the mortgagor there is a risk that, in the event of total loss of the ship, the proceeds of the insurance will be available for the mortgagor's creditors in general.

To meet this difficulty the banker will probably obtain an undertaking from the underwriters that they will hold the policies and proceeds of claims on behalf of the bank and that the insurers will notify the bank in the event of premiums or calls being unpaid when they fall due.

SHIP'S NAME

The principal Act lays down that a ship shall not be described by any name other than its registered name which cannot be changed without the consent of the Dept. To change the name of a ship requires an application in writing and such notice published as the Department may require. Notice of a proposed change is usually published in Lloyd's List and other shipping papers and is displayed in Mercantile Marine Offices and Custom Houses. The notice will include a request that any objection to the proposed name should be notified to the Registrar-General of Shipping and Seamen at Cardiff. When permission is given, the name must be changed forthwith on the bows and stern of the ship and in the certificate of registry. The penalty for non-compliance is a fine not exceeding level 3.

A ship having once been registered may not be re-registered under any name other than her original registered name without previous written permission from the Dept.

Where a foreign ship becomes British-owned she may not without previous written permission be registered except by the name she bore at the time of her becoming British.

By the 1906 M.S. Act it is provided that the Dept. may refuse the

registry of any ship by a name that is already the name of a registered British ship or a name so similar as to be calculated to deceive. Amending regulations, dated 1979, modify this, however, with the proviso that they may allow registry by the proposed name if satisfied that the ship is intended to replace another of the same name which within 10 years of the date of the application belonged to the same owner when her British registry was closed, or which within 10 years of the date of the application was sold by the same owner on condition that her name should be changed and her name has been changed. Hence, it is possible for two ships of the same name to be registered as British ships at the same time. Since 1936 yachts have been under the same rules as regards names as commercial ships.

REGISTRY OF ALTERATIONS

If the particulars of a ship's tonnage and description which appear in the register are altered, the owner must apply for registration of the alteration, or for renewal of registry. Failure to comply is an offence punishable by a fine not exceeding level 3, plus UK Pnd 20 for each day of the continuance of the default. If the alteration involves a change in any of the ship's principal dimensions (length, breadth, or depth), or if there is a change of the means of propulsion, registry anew is insisted upon.

REGISTRY A NEW

Where the ownership of a ship is changed, the new owner may have the ship registered anew, but this is not essential. However, renewal of registry would be necessary if a ship reappeared which had been presumed lost and had had her original registry closed in consequence. So it would in the case of a ship, originally British, which had been sold to foreigners and subsequently bought back again. Such registration would entail application to re-use the ship's name, a declaration of ownership, certificate of survey, marking and carving, a certificate of seaworthiness, and payment of fees. The ship would be re-allocated her original official number – so long as a ship remains British that is never changed.

TRANSFER OF REGISTRY

Should an owner wish to transfer the registry of a ship from one port of registry to another, he must first obtain the approval of the Dept. Subject to such approval, registry may be transferred from one port in the U.K. to another on application to the registrar of the existing port of registry made by a declaration in writing of all the

persons appearing in the register to be interested as owners or mortgagees (without affecting the rights of those persons). On receipt of such application the registrar is required to transmit a notice to the registrar of the intended port of registry with a copy of all particulars relating to the ship and the names of all persons appearing to be interested. The ship's certificate of registry must be delivered up to the registrar either of the existing or intended port of registry, and if to the former, transmitted by him to the latter. On receipt of the documents mentioned, the registrar of the intended port of registry is required to enter in the register all the particulars and names transmitted to him and grant a fresh certificate of registry. The ship is then considered registered at the new port and the name of that port must be substituted for the former name on the stern of the ship.

The above is subject to any condition specified in a provision of section 4 of the 1988 Act regarding entitlement to registry being satisfied. (*e.g.* appointment of a representative person).

The 1988 Act inserted additional sections 53A and 53B in the 1894 Act. Section 53A makes provision using a procedure similar to that described above for transfer of registry from a U.K. port to a port in the Isle of Man, any of the Channel Islands or any colony (*i.e.* a relevant overseas territory) provided registration at the intended port is not precluded by an Order in Council under section 11 of the 1988 Act or any law in force in the territory in question.

Transfer of registry from a relevant overseas territory to a port in the U.K. is provided by section 53B using a similar procedure but subject to any condition specified in section 4 regarding entitlement of the ship to be registered being satisfied.

TRANSFERS OF SHIPS

When the ownership of a ship changes as a result of some voluntary act such as sale or deed of gift, the ownership is said to be "transferred". Transfers of ships which require to be registered can only be made by bill of sale. Thus, should a registered ship be "given" by one party to another, the recipient of such gift would have to "purchase" it for some nominal sum – say, 5p – for the purpose of executing a bill of sale. The function of this recording document is similar to the function of a title deed of real property, and it provides the evidence of entitlement on which a registrar can act. If the ship is to be sold to a foreign purchaser the registrar will close the British register. If sold to a British subject the purchaser will be registered as the new owner. The bill of sale must show the names of the parties, the consideration paid together with a receipt, and a description of the identity of the ship conforming to the information contained in the certificate of registry and the surveyor's certificate. It must also show that the vendor covenants with the vendee that he has power to transfer the ship and its

equipment, and that the ship is free from encumbrances other than those, if any, which appear by the registry of the ship. A qualified transferee cannot be registered until he has made a **Declaration of Transfer** containing a statement of his qualification to own a British ship and a declaration that to the best of his knowledge and belief, a majority interest in the ship is owned by persons qualified to own a British ship.

The transferor signs the Bill of sale, which is exempt from stamp duty, in the presence of a witness or witnesses and with it the ship passes to the purchaser with everything then on board necessary for the prosecution of the voyage, or whatever may afterwards be brought on board to replace what was there originally. The onus is then on the purchaser to have the change of ownership registered, or the ship registered anew, as the case may be, and the fact of this being done will be endorsed by the registrar on the bill of sale so as to show the date and hour of registration.

TRANSMISSION OF SHIPS

Involuntary transfer of the property in a ship through death or bankruptcy, and formerly through marriage, is known as "transmission". (As the result of a long process mainly effected by equity and various statutes culminating in the passing of the Law Reform (Married Women and Tortfeasors) Act, 1935, married women are now able to hold property of their own so that transmissions through marriage are no longer possible). If the ship or share is transmitted to a qualified person, then after authentication by **Declaration of Transmission** and production of evidence, the change of ownership must be registered in the usual way. It may happen, however, that a ship or share is transmitted to a person so that a majority interest in the ship is no longer owned by qualified persons. The law does not then permit him to take possession of the property. His proper procedure is to apply, within four weeks after the event which has given rise to the transmission, to the appropriate court (High Court in England) for an order for the sale of the property transmitted. The court may then make such an order and direct that the proceeds of sale, after deducting the expenses thereof, be paid to the person entitled under the transmission. Since a foreigner cannot execute a bill of sale in respect of a British ship the order of the Court is required to contain a declaration vesting in some person named by the Court the right to transfer the ship or share, and that person becomes lawfully entitled to perform the transfer as if he were the registered owner of the ship or share. If application is not made within the four weeks or such further time (not exceeding one year) as the Court may allow, the property is subject to forfeiture.

Since the vast majority of commercial ships are nowadays owned

by limited companies, transmissions of the kind described are seldom likely to occur except, perhaps, in respect of such craft as private yachts. Some special cases of transmissions arose when, through nationalisation, such bodies as the National Coal Board, the British Transport Commission, and the Regional Gas and Electricity Boards took over ships previously belonging to companies.

THE MANAGING OWNER

The managing owner of a registered ship must be a person qualified to own a British ship. His name and address must be registered by the registrar at the ship's port of registry. If there is no managing owner, then the name of the ship's husband or manager must be registered. If he is resident in the U.K. or a U.K. company, he can be treated as the representative person for the purpose of section 5 of the 1988 Act.

The term "managing owner" is regarded purely as a commercial term, not as a legal expression. In practice a managing owner may be an actual owner or part owner. On the other hand, he may be a person employed by the owner or owners to manage the ship. It is often the case that a director of a shipping company is registered as managing owner of the company's ships.

NATIONAL CHARACTER AND FLAG

The master of a ship must declare the nationality of the ship before he will be granted clearance or transire by H.M. Customs, and the nationality must be inscribed on the clearance form or transire.

Using the British flag or assuming the British national character on board a ship in which a majority interest is not owned by persons qualified to own a British ship renders the ship subject to forfeiture, unless it is done to escape capture by an enemy or by a foreign warship in the exercise of a belligerent right.

Concealment of British character or the assumption of foreign character by a British ship similarly renders the ship liable to forfeiture and the master, if he does anything, or permits anything to be done, for that purpose, is guilty of an offence and liable on summary conviction to a fine not exceeding level 5.

Where a ship is 24 metres or more in length and wholly owned by persons qualified to own a British ship, but is neither registered under the 1894 Act nor under law of any country outside the U.K., then although the ship is not entitled to any benefits, privileges, advantages or protection enjoyed by a British ship, the ship will be dealt with as if she were a British ship for the payment of dues, fees, other charges, liability to fines and forfeiture, and the punishment of offences committed on board the ship, or by any persons belonging to the ship.

The **red ensign** without defacement or modification is declared to be the proper national colours for all British ships except in the case of Her Majesty's ships or those allowed to wear other national colours in pursuance of a warrant.

If a British ship, without warrant, wears any colours except the red ensign or Union Jack with a white border, the master, owner, or other person responsible is liable on conviction on indictment to a fine, or on summary conviction to a fine not exceeding the statutory maximum. Any full-pay commissioned officer of the Royal Navy or military service, or any British officer of customs or consular officer, may board a ship and seize colours hoisted contrary to the Act.

Obligation to display National Colours. The act provides that national colours must be shown: –

- (1) on receiving a signal from one of Her Majesty's ships,
- (2) when entering or leaving a foreign port,
- (3) in a ship of 50 tons gross or more, when entering or leaving a British port. (Not to ships on Small Ship Register).

The penalty for non-compliance is a fine not exceeding **level 3**, but this does not apply to fishing boats registered under the 1988 Act.

It should be noted that the act does not make any distinction between day and night with respect to the obligation to show colours. The section has often been interpreted, rightly or wrongly, to mean that when entering, or leaving port colours should be displayed whenever there is sufficient light for them to be distinguishable. Nowadays, in view of the fact that floodlighting, searchlights and other forms of effective illumination may be employed, it would seem to be good practice to comply strictly with the letter of the law and show national colours when entering or leaving port at any hour of the day or night.

The practice of hoisting the red ensign at the fore-yard or other suitable position by foreign ships in British ports, and the flag of the country visited by British ships in foreign ports, seems to be more widespread than it used to be. No official objection is raised to this use of a "courtesy flag" provided, of course, that it is displayed in such a position that it will not give a misleading impression of the nationality of the ship concerned. On at least one occasion recently the master of a ship came under severe criticism in a port abroad for neglecting this "courtesy", but most seamen would probably agree that that is going too far.

BLUE ENSIGN

Regulations for Wearing the Blue Ensign. British merchant ships are allowed to wear the Blue Ensign plain and undefaced, under the authority of a Warrant issued by the Secretary of State for Defence, subject to the following conditions being fulfilled: –

The officer commanding a ship other than a fishing vessel must be an officer on the retired or emergency list of the Royal Navy or a Commonwealth Navy, or an officer on the active or retired lists of any branch of the Reserves of such navies. If the rank held on one of these lists by the officer is below that of Commander, at least one other officer in the ship's company must be an officer on one of the lists mentioned.

Before hoisting the Blue Ensign, the officer commanding the ship must be in possession of a warrant.

The officer in command of a ship who fails to fulfil the above conditions, unless failure is due to death or other circumstances over which he has no control, will no longer be entitled to hoist the Blue Ensign in the ship. The Blue Ensign is in no circumstances to be worn if the officer to whom the warrant was issued is not in command of the ship or if the ship changes to foreign ownership.

Before the Blue Ensign may be hoisted in a vessel other than that for which the warrant was originally granted but in the same ownership, the officer should report the name, official number, tonnage and trade of the vessel to the Ministry of Defence.

Officers commanding Her Majesty's ships, British Consuls in foreign ports and Customs Officers in the Commonwealth, are empowered to ascertain that ships wearing the Blue Ensign are provided with warrants, and that the foregoing conditions and regulations are complied with.

The Captain of one of Her Majesty's ships meeting a ship wearing the Blue Ensign may, in order to ascertain that these instructions are being strictly obeyed, send on board at any convenient opportunity an officer not below the rank of Lieutenant. The restriction as to rank of the boarding officer is in no way to limit or otherwise affect the authority or the duties of naval officers either under the Merchant Shipping Acts or in time of war.

If it should be found that although the ship is provided with a warrant, the above regulations are not complied with, a report should be made to the Ministry of Defence.

If it is found that the ship is wearing the Blue Ensign without a warrant, the Blue Ensign should be seized, and the case reported to the Ministry of Defence.

A list of the officers (with their shipping companies) to whom warrants have been issued will be prepared annually by the Ministry of Defence for publication in the Spring Edition of the "Navy List".

Relinquishing the Blue Ensign. The warrant to hoist the Blue Ensign must be returned by the officer to whom it is granted to the Ministry of Defence when he ceases (a) to command a vessel belonging to the owners named on the warrant, (b) to belong to any of the naval forces specified above.

The Royal Standard. In the event of a visit by Her Majesty the Queen to a merchant ship, the appropriate place for the Royal Standard to be worn is at the mainmast head.

TONNAGE

It is important to distinguish between two entirely different classes of tonnage figures, viz., (1) those which relate to weight (actual tons of 2,240 lb. or tonnes of 1,000 kg.), and (2) those which relate to measurement.

In the former class there are: –

- light displacement,
- load displacement,
- deadweight carrying capacities when loaded to tropical, summer, and winter load lines respectively.
- deadweight at some particular mean draught.

The latter class includes: –

- underdeck tonnage,
- gross tonnage,
- net register tonnage,
- Suez Canal tonnage,
- Panama Canal tonnage.

Light Displacement is the total weight of the hull, machinery, fittings, spare parts and all permanent equipment, and (in the case of a steamship) water in boilers up to the working level.

Load Displacement is the weight of the ship when loaded to the depth of her seasonal load line. The load displacement at the depth of the summer load line in sea water is the figure normally quoted.

Deadweight Carrying Capacity may be defined as the difference between the light and load displacements, so that for instance: –

Tropical Deadweight is the difference between light displacement and the displacement when submerged in sea water to the depth of the tropical load line.

Summer Deadweight, Winter Deadweight and the deadweights at other assigned load lines may be defined in a similar way.

Deadweight at any particular draught is the difference between the light displacement and the displacement at that draught.

N.B. – Since the light displacement does not include fuel, consumable stores, feed water, and so on, these weights must therefore be included in the deadweight. Hence, the deadweight carrying capacity is not an

indication of the weight of cargo a vessel can lift. Her cargo carrying capacity will be the deadweight less the weights of fuel, stores, etc.

BRITISH AND INTERNATIONAL TONNAGE

The International Convention on Tonnage Measurement of Ships 1969 came into force on 18 July 1982. In order to give effect to the Convention for British ships. The Secretary of State made the Merchant Shipping (Tonnage) Regulations 1982 (SI 1982 No. 841) under powers given by section 1 of the M.S. Act 1965.

The Convention applies to ships of 24 metres in length or over which are: –

- (a) new ships, whose keels are laid on or after 18 July 1982;
- (b) existing ships which have alterations or modifications substantially varying their existing gross tonnage after 18 July 1982;
- (c) existing ships, if the owner requests re-measurement; and
- (d) all ships with effect from 18 July 1994.

Details of tonnage measurement and certification of such ships which are to be registered in the United Kingdom under Part I of the 1894 Act are contained in Part.II and Schedules 2, 3 and 4 of the regulations, which are described on pages 120-125.

Existing ships built before 18 July 1982, of 24 metres in length or over, registered in the United Kingdom under Part I of the 1894 Act will, until 17 July 1994, continue to have their tonnages measured in accordance with the regulations previously in force as set out in Schedule 5 and Appendices 1 to 4 to the new regulations which are described here on pages 110-120.

All ships, including pleasure yachts, of less than 24 metres in length, which are to be registered under Part I of the 1894 Act will continue to have their tonnages measured in accordance with the regulations previously in force as set out in Schedule 5 and Appendices 1 to 5 to the new regulations and described here on pages 110-120.

The measurements for tonnage are to be taken by a surveyor appointed by a Certifying Authority (C.A.) which means the Secretary of State, any person authorised by him, and includes Lloyd's Register of Shipping, and the British Committees of Bureau Veritas, Det Norske Veritas, Germanischer Lloyd and the American Bureau of Shipping.

Certificate of British Tonnage. The Certifying Authority issues to the owner of a qualifying existing ship, or the owner of any ship less than 24 metres in length, the tonnage of which has been ascertained in accordance with the regulations, a Certificate of British Tonnage showing (a) name, port of registry and official number; (b) registered dimensions; (c) gross tonnage and tonnage of each of the components

thereof; (d) registered tonnage and deductions and allowances made; (e) where applicable particulars of spaces the tonnage of which is excluded in ascertaining reduced or alternative tonnages; (f) the position in which any tonnage mark assigned is to be placed. Measurements are to be expressed in feet and decimal fractions of a foot and tonnage is measured in terms of cubic capacity, 100 cubic feet representing 1 ton.

There are three forms of these certificates, as follows: –

Surveys 53 for a ship to which no tonnage mark has been assigned.

Surveys 53A for a ship to which alternative tonnages and a tonnage mark have been assigned.

Surveys 53B for a ship with permanently reduced tonnages and with a tonnage mark placed corresponding to the load line marks which have been assigned on the assumption that the second deck is the freeboard deck. In this case the position of the tonnage mark is in line with the deepest load line to which the ship may be loaded (i.e., normally the tropical fresh water load line).

Gross Tonnage. Subject to the provisions in respect of modified or alternative tonnages, the gross tonnage is the sum of: –

- (a) underdeck tonnage;
- (b) tonnage of space between second deck and upper deck;
- (c) tonnage of permanently closed-in spaces on or above upper deck including breaks situated above the line of the deck but excluding (i) tonnage of hatchways, (ii) tonnage of framed-in spaces on or above upper deck which contain any part of propelling machinery or which light or ventilate such spaces, (iii) other spaces as given in separate list further on.
- (d) "excess of hatchways" (i.e., aggregate tonnage of all hatchways less $\frac{1}{2}$ of 1 per cent of gross tonnage excluding such aggregate);
- (e) tonnage of framed-in spaces on or above upper deck which contain any part of propelling machinery or which light or ventilate such spaces if (i) owner has made written application for inclusion of such spaces in propelling machinery space, (ii) they are permanently marked to show their purpose and (iii) they are certified by a surveyor of ships as safe, seaworthy, properly constructed, reasonable in extent and unusable for any other purpose.

Permanently Closed-in Spaces on or above Upper Deck. These include: –

- (a) Poop, bridge or forecastle, unless opening in end bulkhead extends from deck to deck for one half or more of breadth of deck in way of bulkhead.
- (b) Deckhouse, unless opening in boundary bulkheads extends from deck to deck for one half or more of length of bulkhead and is 4 feet wide or more.
- (c) Side to side structure, unless opening in ship's side extends for one half or more of length of space it serves and exceeds in height one third of distance from deck to deck in way of opening or 2 feet 6 inches, whichever is the greater.
- (d) Passage way at ship's side, unless it is 4 feet wide or more and open to weather at one or both ends.
- (e) Recess, unless it extends from deck to deck for three feet or more of its width and is exposed to weather.
- (f) Any space having opening in deck over being a deck exposed to weather, unless area of opening is one quarter or more of deck area over space.

Underdeck Tonnage. This is the sum of (a) tonnage of space below tonnage deck bounded by (i) tonnage deck, (ii) upper surface of double bottom tanks, open floors or ceiling, (iii) inner face of timbers, frames or sparring (with certain limitations in special cases and excluding breaks above line of tonnage deck); (b) tonnage of shaft bossings and appendages forming part of hull below tonnage deck.

Closed-in Spaces on or above Upper Deck not included in Gross Tonnage. These are: –

- (a) dry cargo space, unless in break above line of upper deck.
- (b) machinery and condenser space;
- (c) wheelhouse, chart room, radio and navigational aids spaces;
- (d) skylights, domes and trunks for light or ventilation;
- (e) chain lockers, anchor gear and capstan spaces;
- (f) space for storing safety equipment or batteries;
- (g) companions and access hatches protecting stairways and openings over stairways;
- (h) galley and bakery;
- (i) washing and sanitary accommodation for crew or master;
- (j) workshops and store rooms for use of pumpmen, engineers, carpenters and boatswains, and lamp room;
- (k) water ballast tanks not usable for other purposes;
- (l) shelter space for use free of charge by deck passengers in ships on voyages not exceeding 10 hours duration;
- (m) sheltered promenade space, glassed in and unfurnished except for deck chairs or portable seating in ships making international voyages.

The above must be certified by a surveyor as reasonable in extent, properly constructed and permanently marked to show their purpose.

Register Tonnage. This is the tonnage obtained by deducting from the gross tonnage

- (a) the tonnage of the spaces listed below,
- (b) the allowance for propelling machinery space. No deduction may be made in respect. of any space which has not first been included in the gross tonnage.

Spaces to be Deducted. These are: –

- (a) master's accommodation;
- (b) crew accommodation, except space for storage of fresh water and space for storage of provisions, being in the latter case space in excess of 15 per cent of the aggregate of (i) master's accommodation, and (ii) crew accommodation other than space for provisions and water;
- (c) wheelhouse, chart room, radio and navigational aids spaces;
- (d) chain lockers, anchor gear and capstan spaces;
- (e) space for storing safety equipment or batteries;
- (f) workshops and store rooms for use of pumpmen, electricians, carpenters and boatswains, and lamp-room;
- (g) donkey engine and boiler spaces if outside propelling machinery space and connected to main pumps;
- (h) space occupied by main pumps if outside propelling machinery space;
- (i) sail room in sailing ships of not exceeding 2 1/2 per cent of gross tonnage;
- (j) water ballast tanks not usable for other purposes so however that the total tonnage to be deducted when added to water ballast spaces not included in gross tonnage does not exceed 19 per cent of gross tonnage.

To qualify for deduction, crew accommodation must comply with the statutes and regulations relating thereto, and other spaces must be certified to be reasonable in extent, properly constructed, and permanently marked to show their purpose.

Allowance for Propelling Machinery Space. For ships propelled by screws this is determined as follows: –

If tonnage of space is 13 per cent or over but less than 20 per cent of gross tonnage, allowance is 32 per cent of gross tonnage.

If tonnage of space is less than 13 per cent of gross tonnage, allowance is that lesser percentage of gross tonnage multiplied by 32/13.

If tonnage of space is 20 per cent or more of gross tonnage, allowance is 1 3/4 times tonnage of space.

For ships propelled by paddle wheels the allowance is determined as follows: –

If tonnage of space is 20 per cent or over but less than 30 per cent of gross tonnage, allowance is 37 per cent of gross tonnage.

If tonnage of space is less than 20 per cent of gross tonnage, allowance is that lesser percentage of gross tonnage multiplied by 37/20.

If tonnage of space is 30 per cent or more of gross tonnage, allowance is 1 1/2 times tonnage of space.

In no case save that of tugs may the allowance exceed 55 per cent of that portion of the tonnage remaining after making the other deductions from gross tonnage. All deductions are subject to the space being certified as adequate and permanently marked to show purpose.

Modified Gross and Register Tonnages. In ships where (a) greater than minimum freeboards have been assigned under the Load Line Rules, (b) the load lines are not higher than they would have been if freeboards and load line positions had been calculated treating the second deck as the freeboard deck, the C.A. on the shipowner's application may assign modified gross and register tonnages. These will be ascertained in the normal way except that (i) for references to the upper deck there will be substituted references to the second deck and (ii) the space between the second deck and the upper deck will not be a component of the gross tonnage. Such ships must be marked on each side with a tonnage mark placed in line with the uppermost load line to which the ship may be loaded, but subject to the foregoing in a position determined in accordance with Appendix 4 to Schedule 5 of the regulations. (See reference to Appendix 4 further on).

Alternative Tonnages. The C.A. may on the shipowner's application assign to the ship as an alternative to its gross and register tonnages ascertained in the normal way the modified tonnages referred to above. In this case also a tonnage mark must be placed on each side of the ship in a position to be determined by reference to Appendix 4 to Schedule 5 of the Regulations. (See reference to Appendix 4 further on). When the ship is so loaded that the tonnage mark is not submerged then the modified tonnages apply. If the mark is submerged then the tonnages obtained in the normal way apply. Thus, such a ship will have two sets of tonnage figures.

Remeasurement of a Registered Ship. A ship registered in the United Kingdom under Part I of the 1894 Act before 1 March 1967, which is to be remeasured for tonnage under present regulations, and which has space on or above the ship's upper deck which by virtue of openings in it was not included in the ship's gross tonnage under the law in force prior to 1 March 1967, shall not have such space included

in the ship's new gross tonnage whether the openings have been closed or not, if there has been no change in the purpose for which the space is used since the date on which the ship's tonnage was last measured.

Meanings of Terms. The following are extracts from that section of the Regulations devoted to interpretation.

"dry cargo space" means space appropriated for the carriage of cargo other than liquid or gaseous matter in bulk;

"propelling machinery space" means space below upper deck (or second deck for modified tonnages purposes) for main or auxiliary machinery, and includes (a) ventilation and other trunks, (b) boiler space, (c) shaft tunnels, (d) store rooms and workshops up to a specified limit, (e) settling tanks within specified limits, and light and air spaces on or above upper deck if included in gross tonnage at owner's request;

"second deck" means the deck next below the upper deck and which is continuous between peak bulkheads with all hatchways fitted with substantial and durable covers;

"tonnage deck" means the second deck except in single deck ships in which case it means the upper deck;

"upper deck" means the uppermost complete deck exposed to sea and weather with all openings in weather portions fitted with permanent means of closing; in an open ship it means the upper edge of the upper strake of the gunwhale;

"the Principal Act" means the Merchant Shipping Act 1894.

Dimensions. for the purpose of ascertaining the underdeck tonnage (by Simpson's first rule) the length of the tonnage deck is measured in a straight line in the middle plane of the ship between the points at the forward and after ends where the underside of the deck meets the inner face of the frames, timbers, or sparring as the case may be. This length is referred to as the "tonnage length".

Depths are measured in the middle plane of the ship from the underside of the tonnage deck to the top of the open floor or double bottom, deducting therefrom the average thickness of ceiling, if fitted, and one third the round of beam (with corrections if the top of the double bottom rises or falls from the middle plane).

Breadths are measured horizontally to the inner face of the timber, frame or sparring, as the case may be.

Tonnage Mark. This consists of a horizontal line 15 inches long and one inch wide upon which for identification purposes is an inverted equilateral triangle, each side 12 inches long and one inch wide, having its apex on the mid-point of the horizontal line. In the case of a ship intended to operate in fresh or tropical waters (not being a ship with modified tonnages only) an additional horizontal line may, on owner's

DIAGRAM (A)

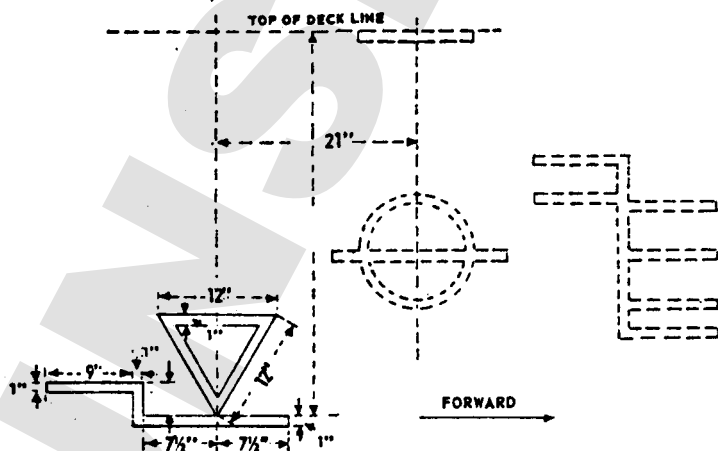
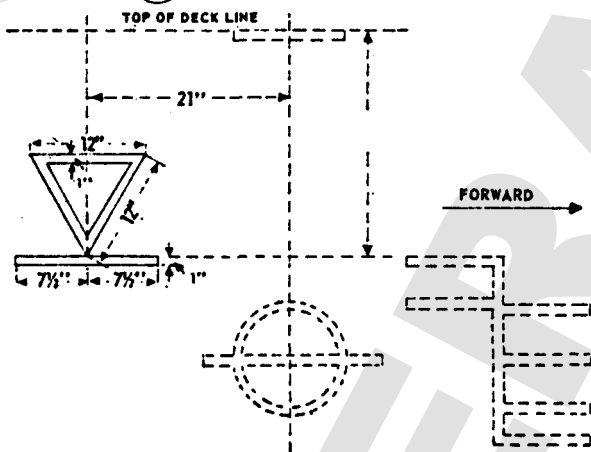


DIAGRAM (B)



Dimensions in inches	1"	7 1/2"	9"	12"
Corresponding dimensions in millimetres	25 mm	190 mm	230 mm	300 mm



UNITED KINGDOM

SURVEYS 53A

BRITISH TONNAGE CERTIFICATE

FOR SHIPS TO WHICH A TONNAGE MARK HAS BEEN ASSIGNED

NAME OF SHIP	PORT OF REGISTRY	OFFICIAL NUMBER
WILD AUK	LONDON	343017
REGISTER DIMENSIONS	492.6 ft x 70.0 ft x 26.9 ft	

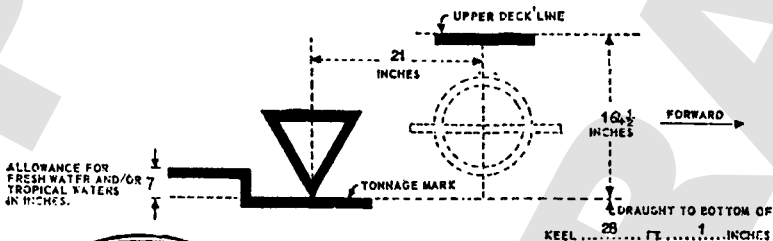
I, the undersigned Surveyor appointed by the Board of Trade, hereby certify that I have measured the above ship in accordance with Rule I of the Merchant Shipping (Tonnage) Regulations, 1967, and by this Rule:-

When the Tonnage Mark (or the appropriate line for freshwater and/or tropical waters) is submerged the
 GROSS TONNAGE is: 9709.34 tons (27477.43 cubic metres) and the
 REGISTER TONNAGE is: 5429.26 tons (15364.81 cubic metres).

When the Tonnage Mark (or the appropriate line for freshwater and/or tropical waters) is NOT submerged the
 GROSS TONNAGE is: 7290.34 tons (20631.66 cubic metres) and the
 REGISTER TONNAGE is: 3255.69 tons (9214.17 cubic metres).

A summary of the respective tonnages is given overleaf, together with an account of the spaces which have not been included in the above tonnages.

The TONNAGE MARK is marked on each side of the ship as follows:-



Dated at GLASGOW
 this 27 day of March 1972.
 Surveyor.

application, be placed above such tonnage mark at a distance of one forty-eighth of the moulded draught to that tonnage mark. This line must be 9 inches long and one inch wide measured from a one inch wide vertical line at the after end of, and perpendicular to, that tonnage

mark. This additional line is taken to be the tonnage mark when the ship is operating in fresh or tropical waters.

The lines and triangles must be painted in white or yellow on a dark ground or black on a light ground, and cut in, centre punched or welded on the ship's sides.

Position of Tonnage Marks (**Appendix 4**). The distance at which the tonnage mark is to be placed below the line where the underside of the second deck stringer plate meets the ship's side plating amidships (or equivalent line if the deck is stepped) is obtained from a Tonnage Mark Table in Schedule 5 to the Regulations. The arguments for finding the distance are L_t and the ratio L_t/D_s .

**SUMMARY OF THE PARTICULARS OF TONNAGE
WHEN THE TONNAGE MARK IS SUBMERGED**

GROSS TONNAGE		NO. OF TONS	DEDUCTIONS ALLOWED	NO. OF TONS
Under tonnage deck		5856.56	On account of space required for propelling power	3106.99
Space or spaces between decks		2794.43		
Turret or trunk		=	Muster	48.83
Forecastle		=	Crew Accommodation	936.11
Bridge space		314.99	Navigational Spaces	59.73
Upper BRIDGE		264.16	Safety Equipment	
Break			Workshops and Storerooms	21.07
Side houses			Donkey Engines and Boiler	
Deck houses		381.08	Pump Rooms	
Spaces for machinery and light and air, under Reg 4(1) (a) of the Merchant Shipping (Tonnage) Regulations 1967		96.12	Self Boom	
Excess of hatch ways			Water Ballast	107.35
GROSS TONNAGE	Cubic metres			
	27477.43	9709.34		
	Deductions, as per centre	4280.08		
REGISTER TONNAGE		15164.80	Total	4280.08
<p>The tonnage of the engine room spaces below the upper deck is 1567.51 tons.</p> <p>The tonnage of the total spaces framed in above the upper deck for propelling machinery and for light and air is 367.09 tons.</p>				

The undermentioned cargo spaces above the upper deck are not included in the above tonnages

Forecastle Length 51.0 ft

88.64 Tons

It is the distance in feet on the second deck between the points at the forward and after ends where the underside of the deck meets the inner surface of the frames, ceiling or sparring in the middle plane of the ship (or equivalent length if the deck is stepped).

Ds is the depth in feet amidships from top of keel to the point at which the underside of the second deck stringer plate meets the ship's side plating (or equivalent depth if the deck is stepped).

Values of Lt are given at 10-foot intervals from 220 to 800 feet and Lt/Ds ratios at unit intervals from 12 to 20. For intermediate values the relevant distance is obtained by interpolation or extrapolation and in all cases the distance is corrected to the nearest half-inch. (If Lt is 220 feet or under the distance is 2-0 inches for all values of Lt/Ds).

Where load lines have been assigned the tonnage mark is placed so that the apex of the triangle is 21 inches abaft the centre of the load line disc. In no case may the tonnage mark be placed above the deepest load line to which the ship may be loaded.

WHEN THE TONNAGE MARK IS NOT SUBMERGED

GROSS TONNAGE		NO. OF TONS	DEDUCTIONS ALLOWED	NO. OF TONS
Under tonnage deck		5856.56	On account of space required for propelling power	2988.98
Space or spaces between decks			Master	48.83
Turret or trunk			Crew Accommodation	936.11
Forecastle			Navigation Spaces	
Bridge space		314.99	Safety Equipment	
Below Upper Bridge		264.16	Workshops and Storerooms	
Break			Donkey Engine and Boiler	
Side houses			Pump Rooms	
Deck houses		381.08	Sail Room	
Spaces for machinery and light and air under Reg 4(1)(e), of the Merchant Shipping (Tonnage) Regulations 1967		473.55	Water Ballast	60.53
Excess of hatchways				
GROSS TONNAGE	Cable metres			
	20631.66	7290.34		
	Deductions, as per contra	4034.45		
REGISTER TONNAGE	9214.17	3255.89	Total	4634.45
The tonnage of the engine room spaces below the second deck is 1237.57 tons.				
The tonnage of the total spaces framed in above the second deck for propelling machinery and for light and air is 473.55 tons.				

The undermentioned cargo spaces above the second deck are not included in the above tonnages.

FORECASTLE	LENGTH	51.0ft	88.84 tons
No 1 Tween Deck	Length	66.5ft	256.94 tons
No 2 "	"	77.6 "	454.39 "
No 3 "	"	65.5 "	417.84 "
No 4 "	"	65.0 "	423.67 "
No 5 "	"	80.2 "	400.91 "

Where load lines have not been assigned the tonnage mark is placed at the middle of the length Lt and in such case the line of the upper deck is shown by a deck line corresponding in form to that required by

the Load Line Rules and placed centrally to a vertical line bisecting the triangle of the tonnage mark.

Diagrams A and B. The former illustrates how the tonnage mark appears on a ship to which alternative tonnages have been assigned, whilst the latter shows the appearance of the tonnage mark for a ship assigned modified tonnages only.

Tonnage Measurement of Yachts. For pleasure yachts under 45 feet (13.7 metres) in length overall which are to be registered under Part 1 of the 1894 Act the system of tonnage measurement introduced in 1975 is continued by Part IV of, and Appendix 5 to, Schedule 5 of the M.S. (Tonnage) Regulations 1982. It is provided there that measurement is to be carried out by surveyors appointed by a Certifying Authority, or measurers appointed by the Royal Yachting Association or the Yacht Brokers, Designers and Surveyors Association. After measurement, the tonnage of such a yacht is calculated by multiplying together its overall length, breadth outside of planking and internal depth, and multiplying the resultant figure by 0.045. The volume, divided by 100, of any side-to-side break in the line of the deck, is then added to the previous figure to give both the gross and register tonnage of the yacht. In the case of a catamaran or trimaran, the tonnage of each hull is measured separately and the sum of such tonnages is the yacht's tonnage.

INTERNATIONAL CONFERENCE ON TONNAGE MEASUREMENT OF SHIPS, 1969

Recognising that the establishment of a universal system of tonnage measurement for ships engaged on international voyages should constitute an important contribution to maritime transport, a conference was held in London in June 1969, upon the invitation of the Inter-Governmental Maritime Consultative Organization, for the purpose of drawing up an International Convention on Tonnage Measurement of Ships.

The governments of some forty-eight states were represented by delegations at this Conference, and several others were represented by observers as were some shipping associations and canal authorities.

The Conference adopted three recommendations arising from its deliberations, viz.: –

- (1) Acceptance of the International Convention on Tonnage Measurement.
- (2) Uses of gross and net tonnages.
- (3) Uniform interpretation of definitions of terms.

With the deposit at I.M.C.O. in July 1980 of Japan's instrument of acceptance, this Convention has been ratified by 44 countries whose

combined fleets of merchant shipping total 72 per cent of the world's fleet in terms of gross tonnage. In accordance with the terms of Article 17 of the Convention it therefore entered into force on 18 July 1982. It should be noted that it applies immediately only to new ships, existing ships which undergo substantial alterations, and existing ships if their owners so request. For other existing ships it will not apply until 12 years after the above date in 1994.

Definitions. For the purpose of the Convention, unless expressly provided otherwise:

- (1) "Regulations" means the Regulations annexed to the Convention;
- (2) "Administration" means the Government of the State whose flag the ship is flying;
- (3) "international voyage" means a sea voyage from a country to which the convention applies to a port outside such country, or conversely;
- (4) "gross tonnage" means the measure of the overall size of a ship determined in accordance with the provisions of the Convention;
- (5) "net tonnage" means the measure of the useful capacity of a ship determined in accordance with the convention;
- (6) "new ship" means a ship the keel of which is laid, or which is at a similar stage of construction, on or after the date of coming into force of the Convention;
- (7) "existing ship" means a ship which is not a new ship;
- (8) "length" means 96 per cent of the total length on a waterline at 85 per cent of the least moulded depth measured from the top of the keel or the length from the fore side of the stem to the axis of the rudder stock on that waterline, if that be greater. In ships designed with a rake of keel the waterline on which the length is measured shall be parallel to the designed waterline;
- (9) "Organization" means the Inter-Governmental Maritime Consultative Organisation.

Application.

- (1) The Convention shall apply to the following ships engaged on international voyages:
 - (a) ships registered in countries the Governments of which are Contracting Governments;
 - (b) ships registered in territories to which the Convention is extended;
 - (c) unregistered ships flying the flag of a state the Government of which is a Contracting Government.
- (2) The Convention shall apply to:
 - (a) new ships;
 - (b) existing ships which undergo alterations or modifications

which the Administration deems to be a substantial variation in their existing gross tonnage;

(c) existing ships if the owner so requests; and

(d) all existing ships, twelve years after the date on which the Convention comes into force, except that such ships, apart from those mentioned in (b) and (c) of this paragraph, shall retain their then existing tonnages for the purpose of the application to them of relevant requirements under the existing International Conventions.

(3) Existing ships to which the Convention has been applied in accordance with sub-paragraph (2) (c) of this Article shall not subsequently have their tonnages determined in accordance with the requirements which the Administration applied to ships on international voyages prior to the coming into force of the Convention.

The proviso in paragraph (2) (d) above is intended to eliminate the need for structural alterations to existing ships as a result of an increased tonnage for the purposes of the application of International Conventions relating to safety, such as the International Convention for the Safety of Life at Sea, 1974. For instance, an existing ship of 499 tons gross tonnage under the existing tonnage regulations may continue to be exempt from the 1974 Safety Convention after 12 years from the date of coming into force of the Tonnage Convention. The use of tonnage for other purposes, such as taxes and dues, is not within the scope of the Tonnage Convention and is, therefore, dealt with by Recommendation 2 of that Convention.

Exceptions. The Convention shall not apply to ships of war and ships less than 24 metres in length and nothing within the Convention shall apply to ships solely navigating the Great Lakes of North America, part of the River St. Lawrence, the Caspian Sea or parts of the Plate, Parana and Uruguay Rivers.

Application to United Kingdom registered ships. Part I and II of the M.S. (Tonnage) Regulations 1982 give effect to the 1969 tonnage Convention for new ships and certain existing ships of 24 metres in length and over registered under Part I of the 1894 Act from 18 July 1982, and to all such ships 24 metres in length and over from 18 July 1994. Part I (regulations 1 and 2) revokes the 1967 regulations and defines terms used in Part II. These terms include:

"cargo spaces" which are enclosed spaces marked "CC" appropriated for the transport of cargo to be discharged from the ship;

"enclosed spaces" are those spaces, other than excluded spaces, bounded by the ship's hull, by fixed or portable partitions or bulkheads, or by decks or coverings other than awnings.

Gross tonnage (GT). Regulation 6 states that the gross tonnage of a ship shall be determined by the following formula:

$$GT = K_1 V$$

where: V = Total volume of all enclosed spaces of the ship in cubic metres,

$K_1 = 0.2 + 0.02 \log_{10} V$ (or as tabulated in Schedule 3 of Regs.).

Net tonnage (NT). Regulation 7 states that the net tonnage of a ship shall be determined by the following formula:

$$NT = K_2 V_c (4d/3D)^2 + K_3 (N_1 + N/10)$$

in which formula:

(a) the factor $(4d/3D)^2$ shall not be taken as greater than unity; (b) the term $K_2 V_c (4d/3D)^2$ shall not be taken as less than 0.25 GT,

(c) NT shall not be taken as less than 0.30 GT, and in which:

(d) when $N_1 + N_2$ is less than 13, N_1 and N_2 shall be taken as zero.

V_c = total volume of cargo spaces in cubic metres,

$K_2 = 0.2 + 0.02 \log_{10} V_c$ (or as tabulated in Schedule 3),

$K_3 = 1.25 (GT + 10,000/10,000)$;

D = moulded depth amidships in metres as defined in Regulation 2,

d = moulded draught amidships in metres as defined in Regulation 2 (see below),

N_1 = number of passengers in cabins with not more than 8 berths,

N_2 = number of other passengers.

GT = gross tonnage of the ship as determined in accordance with the provisions of Regulation 6.

The moulded draught (d) referred to above shall be one of the following:

(a) for ships assigned load lines in accordance with the Load Line Rules, the draught corresponding to the Summer Load Line (other than timber load lines);

(b) for passenger ships, the draught corresponding to the deepest subdivision load line assigned in accordance with the M.S. (Passenger Ship Construction) Regulations;

(c) for ships to which no load line has been assigned but the draught of which is restricted by the Secretary of State, the maximum permitted draught;

(d) for other ships, 75 per cent of the moulded depth amidships.

Measurement of Tonnage. Regulation 4 specifies that gross and net tonnages shall be calculated in accordance with regulations 6 and 7. All measurements used in the calculations of volumes shall be taken in metres to the nearest centimetre. Gross and net tonnages are to be expressed as whole numbers, decimals being rounded off downwards.

Volumes. Regulation 5 requires all volumes used in the calculation of gross and net tonnages to be measured, irrespective of the fitting of insulation or the like, to the inner side of the shell or structural boundary plating in ships constructed of metal, and to the outer surface of the shell or to the inner side of the structural boundary surfaces in ships constructed of any other material. Volumes of appendages are to be included in the total volume, but volumes of spaces open to the sea excluded.

Segregated ballast oil tankers. Where segregated ballast tanks complying with the MARPOL Convention 1973 and Protocol of 1978 are provided in oil tankers, an entry may be made on the International Tonnage Certificate indicating the total tonnage of these tanks.

Issue of Certificates. Regulations 9, 10 and 11 deal with certification. The Certifying Authority shall, upon receipt of the appropriate fee, issue to the owner of every ship registered in the United Kingdom under the 1894 Act, the tonnages of which have been obtained under regulations 6 and 7, an International Tonnage Certificate (1969) in the form shown in the regulations certifying the tonnages and containing the following particulars:

- (a) the name, port of registry and official number of the ship;
- (b) its length, breadth and moulded depth;
- (c) its gross and net tonnages;
- (d) the date on which the keel was laid or the ship was at a similar stage of construction or date on which the ship underwent major alterations or modifications.

Cancellation of Certificates. Where alterations are made in the arrangement, construction, capacity, use of spaces, number of passengers the ship is permitted to carry, assigned load line or permitted draught of the ship such as would cause an increase in the gross or net tonnage, the existing certificate shall cease to be valid and shall be cancelled by the certifying Authority.

Change of net tonnage. When alterations in the values of V , V_c , d , N_1 or N_2 result in an increase in the net tonnage a new International Tonnage Certificate (1969) showing the increased net tonnage shall be issued. Where alterations in those values or changes in

the position of the load lines result in a decrease in the net tonnage, a new certificate showing the decreased net tonnage shall not be issued until 12 months have elapsed from the date on which the current certificate was issued unless the ship is being re-registered in the U.K. or has major alterations which change her assigned load line, or is a passenger ship employed in the special trades such as the pilgrim trade.

SUEZ CANAL TONNAGE

Canal transit dues are charged on net tonnage ascertained in accordance with the system of measurement recommended by the International Tonnage Commission assembled at Constantinople in 1873. A shipowner who wishes to have a ship measured under the rules of the Commission and to have a special certificate issued can apply on Form Surveys 6 and pay the required fee to the superintendent of a mercantile marine office. On receipt of the application the surveyor will apply to the Principal Surveyor for Tonnage for the formulae and papers of the previous measurement of the ship. When the measurement is made and the exempted spaces have been marked (in the manner referred to later) the Tonnage Certificate will be issued.

The 100 cu. ft. "ton" is used as the unit of measurement as in British tonnage, but the system of measurement differs in many respects. Hence for ships intending to navigate the Suez Canal and Danube a special tonnage certificate is required. Any alteration in tonnage after the issue of a certificate is taken into account when assessing the amount of dues payable.

Exempted and deducted spaces may not be used during canal transit for the carriage of passengers, goods, bunker coal or stores. If they are so used the whole of the space is added to the net tonnage permanently and, in the words of the official Rules "can nevermore be exempted from measurement". However, if the ship were sold the new owner could apply to have the space exempted again. It appears that such applications have met with success.

Dues are charged on any double bottom space partly or wholly used to carry bunker or cargo oil, but an exception to the above rule is made in this case and the addition is not permanent.

The canal authority's officials may verify whether cargo or passengers are being carried in any space not included in the certified net tonnage, also whether spaces which ought to be included in the net tonnage are correctly determined. Ten per cent of the Suez Canal net tonnage is added to that tonnage to take account of containers carried on deck.

Ships not provided with tonnage certificates have a tonnage figure determined provisionally on arrival at the Canal terminus, being measured in conformity with special rules, and this figure remains in force until a proper certificate is tendered on the occasion of a subsequent transit.

Merchant ships not earning freight and carrying only fuel for their own consumption, and their crews, with provisions for the crew are considered as being in ballast. A maximum of 20 tons weight of perishable foodstuffs is allowed, or a volume not exceeding 10 tons measurement. Ships which land passengers or goods before passing through the canal and picking them up afterwards are not considered to be in ballast. To claim the benefit of the ballast rate fuel must not exceed 125% of the certified engine room space, and should be in proper bunkers, but special permission may be applied for to have fuel on deck or in holds. Steps must be taken so that the total volume of all bunkers on board can be easily ascertained.

On arrival at the Canal terminus a ship must be entered at the Transit Office and dues paid. Information required will be the name and nationality of the ship, name of master, names of owners and charterers, ports of sailing and destination, draught, number of passengers, a statement of the crew, and the capacity of the ship as shown in the Canal Certificate. The master will receive a copy of the Rules of Navigation.

Transit dues are fixed from time to time at so much per ton, and ships in ballast are allowed a substantial reduction. Half dues are charged for half transit, but no further subdivision is allowed and Ismailia is considered to be the half-way mark. Separate pilotage dues are not payable as they are included in the transit dues. Special rates are applicable to vessels towed or convoyed by approved tugs. There are no passenger dues. All dues and charges are payable in advance in cash, and if an amount paid in advance is not sufficient the balance must be made before transit.

SYSTEM OF MEASUREMENT OF SUEZ CANAL TONNAGE

Underdeck Tonnage. Except in certain special cases this is obtained in the same way as British underdeck tonnage.

Gross Tonnage. This consists of the underdeck tonnage plus every permanent covered and closed-in space on or above the tonnage deck without any exception.

In considering what are covered and closed-in spaces, spaces may be divided into three classes, viz.: –

- (a) spaces covered only by planks separated by intervals exceeding one inch,
- (b) spaces in side-to-side erections (in the lowest or any other tier), completely covered but having large openings without coamings at either or both ends,
- (c) parts of spaces completely covered, such as shelter decks, open forecastles, bridges and poops.

To claim exemption a space must be exempted in the ship's national tonnage.

Spaces of class (a) are completely exempted.

Spaces of class (b) are named "open" spaces and their partial exclusion is conditional upon the permanent openings at the end of the erection being equal to or greater than one half of the breadth of the deck in the way of them. The part not included in the gross tonnage is that part of the erection not exceeding in length half breadth of the deck. But if within this limit of length the width of the clear opening is less than the half breadth of the deck, the length of open space allowed is reduced to that part of the length for which the standard breadth is maintained. If coamings are fitted, or if the openings are of less than standard breadth, the whole space is included in the gross tonnage. If two side-to-side erections in the same tier are separated by a distance of less than half the breadth of the deck, they are measured in the gross tonnage whatever the size of openings may be.

Spaces of class (c) are classed as exempted spaces as follows: –

Shelter-deck Spaces. The whole space is included in the gross tonnage except the part immediately abreast of the openings (if any) in the sides of the ship. Such openings must be opposite each other and unclosable. Air spaces within shelter-decks are measured into the engine room space and deducted together with 75% of their volume.

Poops, Bridges, and Forecastles. The exemptions allowed are: –

- (a) such length of poop measured from the inside of the stern timber at half height of poop as is equal to 1/10th of the length of the ship;
- (b) the portion of the bridge in the way of machinery air spaces, but this may not extend beyond the forward stokehold bulkhead and after engine room bulkhead;
- (c) such length of forecastle measured from the inside of the stem at half height of forecastle as is equal to 1/8th of the length of the ship;
- (d) in all the above superstructures, those portions in the way of openings in the walls of the ship which are opposite each other and unclosable.

Poop and Bridge combined, or Forecastle and Bridge combined.

The exemptions consist of: –

- (a) that length only which corresponds to the engine and boiler space as in (b) above;
- (b) spaces as in (d) above.

If the ship has more than one tier of superstructures, the above exemptions apply in their entirety to the lowest tier only. Tiers above the lowest have exempted only such portions as are in the way of openings in the side plating of the ship which face one another and are not fitted with any means of closing.

N.B.— Cargo or stores may be carried in an "open" space provided additional dues are paid thereon, but they may not be carried in an exempted space. The boundaries of exempted parts of poops and forecastles are required to be marked by a permanently and securely fixed plate on each side of the vessel. The centres of the plates are marked with a star (*) indicating the exact limit of the exempted space in agreement with the particulars on the back of the Canal Tonnage Certificate. The inscription on the plate reads, "This space.....feet in length from the inside of the stem (stern timber) at the half height of the space to this mark, is exempted from Suez Canal tonnage on the ground that no cargo or stores are carried therein". No plates are required in the exempted zone of a bridge space. Means must be provided for gaining access to the exempted parts in the event of adjacent parts being filled with cargo.

Net Tonnage. Deductions allowed in arriving at the net registered tonnage are: —

1. **Propelling Space.** The shipowner may choose the Danube Rule allowing $1\frac{1}{4}$ times the actual engine room for screw steamers, or $1\frac{1}{2}$ times for paddle steamers; or the actual measurement of the engine room plus permanent bunkers. In either case the limit is 50% of the gross tonnage except in tugs. Light and air spaces do not form part of the engine room unless they are situated in a continuous shelter-deck, 'tween-deck, bridge, poop, or other first tier erection.

2. **Crew Spaces and Navigation Spaces.** Deductions under this head are limited to a maximum of 10% of the gross tonnage, and to be eligible for deduction the spaces must be permanently marked to show the purpose to which they are exclusively appropriated. The spaces include: —

Spaces exclusively occupied by officers and crew.

Captain's accommodation, officers' smoking room, offices for chief officer and chief engineer.

Doctor's cabins (so long as they are actually occupied by doctors), consulting room, hospital, infirmary, surgery, operating room, laboratory.

Wireless operator's cabin, stewards' cabins (if stewards are solely for officers and crew).

Cabins of engineers, storekeepers and water tenders.

Mess rooms (but not if available for passengers).

Lavatories for use of crew only.

Bath rooms (not available to passengers).

Galley, pantry, scullery, bakery (in non-passenger ship), laundry, drying room, space for heating-boilers, refrigerating machinery (excluding cold storage and store rooms).

Distilling apparatus and disinfecting apparatus.

Wardrobes, oilskin and lifebelt lockers.

Ventilators used neither for cargo nor passengers.

Accommodation for night watchman if signed on and not employed for cargo or passengers, also fire-fighting personnel.

Chart house and Captain's spare room on bridge.

Searchlight space, spaces for submarine telephone, direction finder, sounding gear, gyro-compass, wireless, radar, signal lamps.

Lookout houses, emergency generators, fire-extinguishing installations.

Steering engine house, capstan and anchor gear space.

N.B.— Some of these spaces are exempted in British tonnage, but by the Suez Canal rules they are first included and then deducted. A donkey boiler house in a closed space on the upper deck is not deducted, nor are passengers' galleys, lavatories, W.C.'s, luggage rooms, boatswain's stores, and sail rooms.

PANAMA CANAL TONNAGE

Rules have been adopted by U.S.A. authorities for assessing net or register tonnage for the calculation of tolls and other charges to be paid by trading vessels passing through the Canal, and special certificates are issued setting forth the necessary particulars.

Panama Canal Gross Tonnage. This includes all spaces below the upper deck and all permanently covered or close-in spaces on or above that deck.

Panama Canal Net Tonnage. This is derived by making deductions from the gross tonnage.

Spaces above the tonnage deck are classed as one or other of: —

- (1) permanent covered and closed-in spaces,
- (2) exempted spaces,
- (3) deducted spaces.

Those defined as (1) form part of the gross tonnage.

Those defined as (2) do not, but the tonnage of the space is recorded on the back of the certificate so that, in the event of the space being used for carriage of cargo when entering the canal, it may readily be assessed for dues. As under the Suez Regulations, certain exempted spaces — if used for cargo, stores or fuel during canal transit — are added to the Canal Tonnage for the rest of the ship's career. This does not apply to open spaces at the ends of permanently covered-in superstructures or spaces covered by a deck supported by stanchions.

Those defined as (3) must first be included in the gross tonnage to be eligible for deduction therefrom, and must be appropriated solely for the purpose specified in the rules.

When the sum of those deducted spaces together with the

propelling space is deducted from the gross tonnage, what remains is the net tonnage.

Spaces comprising gross tonnage are all those included in British gross tonnage plus all spaces used or intended for the navigation or the service of the vessel, or for the use or possible use of passengers. Double bottom spaces are exempted from measurement except when used, designated or intended for carrying cargo or fuel. If used for feed water or stores, they are exempted.

Underdeck tonnage is the same as British, but all 'tween-deck spaces between the tonnage deck and the uppermost full-length deck are fully included unless there are openings in the side walls of the ship at least three feet in height. In that case the portion of the 'tween deck opposite such openings is exempted. Hence, an "open shelter-deck" ship will have only a very small part of the shelter-deck space exempted from measurement. Spaces within open poops, bridges, forecastles, and other superstructures are excluded from measurement on the same conditions as laid down in the Suez Canal regulations, but the Panama rules do not exempt the zone abreast of the machinery opening in the bridge space, nor spaces in poops or forecastles other than "open" spaces measured in from the ends.

Spaces framed in around funnels and engine casings in the lowest tier of side-to-side erections above the upper deck are included but those above the lowest tier are exempt. Also exempted are companionways, domes, skylights, etc., and double bottom spaces exclusively used for water ballast.

Deducted spaces come under three headings, viz.: –

(a) crew accommodation,

(b) closed-in spaces used in working the ship,

(c) propelling spaces.

Under (a) the deductions are in respect of the total tonnage of spaces for the exclusive use of officers and crew, including clerks, pursers, stewards, and others whose duties are partly or wholly concerned with the care of passengers. Hospitals, mess rooms, bath rooms, washrooms, W.C.'s, lavatories, galleys, bakeries, dynamo, and condenser spaces are included in the deductions.

Under (b) deductions are made of the tonnage of chartroom, wheelhouse, steering gear and capstan spaces, donkey boiler space (if above the upper deck or the boiler is connected with the main pumps), sail room (in sailing ships), boatswain's store, water ballast spaces other than double bottom compartments.

Under (c) the deduction is the space occupied by engines, boilers, settling tanks, lubricating oil tanks, shaft tunnels, light and air spaces below the first tier and space for working the engines. The maximum allowed is 50 per cent of gross tonnage.

Dues are payable on deck cargo.

Warship tolls are based on Displacement tonnage at the time of application for passage through the Canal.

A ship may be measured for Panama Canal tonnage in the United Kingdom at the same time as her national tonnage is measured and the Panama Tonnage Certificate is obtainable here.

CLASSIFICATION

Apart from, and in addition to, official national registration, the vast majority of ships are "classed" or registered with one or other of the Classification Societies or "Shipping Registers". Such registration is not compulsory, but is attended with so many advantages that an unclassed ship is nowadays a comparative rarity. In the absence of these registers much difficulty would be experienced by marine underwriters, chartering brokers, bankers, merchants and shippers, and others who need a ready access to the latest and most reliable information regarding the ships in which they are interested. Shipowners, too, would be at a great disadvantage if there existed no reliable organisation to ensure that their vessels were constructed, repaired, and maintained in accordance with the highest prevailing standards both as regards materials and workmanship no matter in what part of the world such operations take place.

Well over ninety per cent of British tonnage and more than a third of the world's tonnage is classed in Lloyd's Register of Shipping which, since 1949, has been united with its former rival British register which was known as the British Corporation. Other registers which are recognised by marine underwriters are: –

American Bureau of Shipping.

Bureau Veritas.

Germanischer Lloyd.

Japanese Marine Corporation.

Norske Veritas.

Registro Italiano.

LLOYD'S REGISTER OF SHIPPING

Lloyd's Register of Shipping should not be confused with the Corporation of Lloyd's Underwriters. It is the latter which is familiarly referred to as "Lloyd's of London" and the former which gives point to the expression "At Lloyd's". Though it is probably true to say that the two organisations share a common origin, they have long been distinctly separate entities, although the Underwriters are strongly represented on the Committee of the Society.

Lloyd's Register is an independent authority, non-profit making, and relying entirely for its income on the fees charged for surveys and other services rendered. It is controlled by a committee representing shipowners, ship and engine builders, foremasters, underwriters, the

Institute of London Underwriters, the London General Shipowners' Society, and the technical committees of the Royal Institution of Naval Architects and Shipbuilders.

The various functions of Lloyd's Register of Shipping are: –

(1) The survey and classification of merchant vessels, yachts, tugs, fishing vessels, and other craft.

(2) The publication of: –


Register of Ships, issued annually,
Lloyds Register of Yachts, published annually,
Register of ships (Subsidiary Sections),
Register of Offshore Units, Submersibles and Diving
Systems,
Rules and Regulations for the Classification of Ships,
Rules for Inland Waterways Vessels,
Rules for Floating Docks,
Rules for Mobile Offshore Units,
Rules for Submersibles and Diving Systems,
Rules for Ships for Liquefied Gases,
Rules for Yachts and Small Craft,
Geometric Properties of Rolled Sections and Built Girders,
Freight Container Certification Scheme,
Refrigerating Machinery Certification Scheme,
List of Approved Welding Consumables for use in Hull
Construction.
List of Approved Fuses,
List of Type Tested Circuit-breakers,
Cargo Handling Gear Code,
Rules for the Survey and Classification of Refrigerated
Stores,
Provisional Rules for the Application of Glass Reinforced
Plastics to Fishing Craft,
Guidance Notes and Requirements for the Classification of
Air Cushion Vehicles,
List of Type Approved Control and Electrical Equipment,
Guidance Notes for Lifts in Ships.


- (3) Supervision of the testing of anchors and chains under the provisions of the Anchors and Chain Cables Acts.
- (4) Supervision of the testing at the places of manufacture of steel for use in the construction of ships and boilers, and of large ship and engine forgings and castings.
- (5) The assignment of freeboard to vessels of all types, whether classed or not, under the M.S. (Load Lines) Act and the corresponding statutes of other countries.
- (6) The survey of refrigerating machinery and appliances.
- (7) The survey and measurement of ships classed with the Society for the purpose of obtaining their tonnages under powers given by the M.S. (Tonnage) Regulations 1982.

The Society also undertakes a large amount of non-marine work chiefly in connection with power stations and oil refineries, and a number of highly specialised Lloyd's surveyors are engaged in ship and machinery research.

Conditions for Classification of Ships. Ships built in accordance with the Society's Rules and Regulations will be assigned a class in the Register book, and they will continue to be so classed as long as they are found, upon examination at the required surveys, to be maintained in accordance with the rules. Compliance with the Society's requirements for both hull and machinery is a condition for classification.

The Rules are framed on the basis that ships will be properly loaded and handled. They do not, unless stated or implied in the class notation, provide for special distributions or concentrations of loading, but the Committee may require additional strengthening to be fitted in any ship which, in their opinion, would otherwise be subjected to severe stresses due to particular features in the design, or where it is desired to make provision for exceptional loaded or ballast conditions. It is also to be understood that the Rules are framed on the basis that ships will not be operated in environmental conditions more severe than those agreed for the design basis and approval, without the prior agreement of the Society. Any damage, defect or breakdown, which could invalidate the conditions for which a class has been assigned, is to be reported to the Society without delay.

Character Symbols. All ships, when classed will be assigned one or more character symbols. For the majority of ships, the character assigned will be 100A1 or 100A1. The character symbols used have the following meanings: –

-  This mark will be assigned to new ships constructed under the Society's Special Survey, in compliance with the Rules, and to the satisfaction of the Committee.
- 100 This character figure is assigned to all ships which are considered suitable for sea-going service.
- A This character letter is assigned to all ships which have been built or accepted into class in accordance with the Society's Rules and Regulations, and which are maintained in good and efficient condition.
- 1 This character figure is assigned to ships having on board in good and efficient condition, anchoring and/or mooring equipment in accordance with the Rules.

Where the equipment is found to be seriously deficient in quality or quantity, the ship's class will be liable to be withheld.

Class notations (hull). When considered necessary by the Committee, or when requested by an Owner and agreed to, a class notation

will be added to the character of classification assigned to the ship. This class notation will consist of one of, or a combination of, a type notation, a cargo notation, a special duties notation and/or a service restriction notation. For Example: –

✠100A1 Oil tanker Baltic Service F.P. above 65°C in No. 4 tanks
Ice Class 2.

Class notations (machinery). The following class notations may be assigned as appropriate: –

✠LMC Assigned when the propelling and essential auxiliary machinery has been constructed, installed and tested under Society's Special Survey, rules and regulations.

✠LMC Propelling and auxiliary machinery constructed under survey of a recognised authority to rules equivalent to those of the Society. In addition, the whole of the machinery has been installed and tested under the Society's Special Survey in accordance with the Rules.

UMS Notation assigned when the ship can be operated with the

CCS machinery spaces unattended. The control engineering equipment has been arranged, installed and tested in accordance with the rules.

IGS Machinery may be operated with continuous supervision from a centralized control station.
Notation assigned when a ship intended for carriage of oil in bulk, or for carriage of liquid chemicals in bulk, is fitted with an approved system for producing gas for inerting the cargo tanks.

Class notations (refrigerated cargo installations).

✠Lloyd's RMC Notation assigned when a refrigerated cargo installation has been constructed, installed and tested under Special Survey in accordance with the rules.

✠Lloyd's RMC (LG) Notation assigned to a classed liquefied gas carrier or tanker, in which reliquefaction or refrigeration equipment is approved and fitted for cargo temperature and pressure control where equipment has been constructed installed and tested in accordance with the Rules.

Special features. When a special feature in the design or construction of a ship or its machinery has been approved, an appropriate class notion may be entered in the Register Book.

Corrosion control. Where an approved method of corrosion control is fitted and an appropriate reduction in scantlings has been permitted, the notation (cc) will be entered in the Register Book.

Strengthening for Navigation in Ice. Where an ice class notation

is desired, additional strengthening is to be fitted in accordance with the requirements given in the Rules.

It is the responsibility of the Owner to determine which notation is most suitable for his requirements.

Dredgers, etc. There are special requirements for dredgers, hopper dredgers, sand carriers, hopper barges and reclamation craft. Certain classes and notations are assigned to such ships which are intended to make sea-going voyages either as part of their work or while transferring from one work area to another as part of their normal operations. Other classes are assigned to such ships which are intended to operate a restricted service, and still others for such ships which are intended to operate only within protected waters.

New construction surveys. Materials used in the construction of hulls and machinery or in the repair of ships already classed must be of good quality and free from defects and are to be tested under the supervision of the Society's surveyors. (Lloyd's Surveyors include naval architects, marine engineers, and electrical and metallurgical specialists). Steel is to be manufactured by an approved process at works recognised by the committee.

When it is intended to build a ship for classification with the Society, plans and particulars of hull and machinery are required to be submitted through the local surveyors for the approval of the Committee before work is commenced. Any subsequent modifications or additions to scantlings, arrangements, or equipment are also required to be submitted for approval. Where the proposed construction is novel in design or involves the use of unusual material, special tests or examinations before and during service may be required and a suitable notation inserted in the Register Book.

New ships built under special survey are, when classed, entitled to the distinguishing mark ✠ inserted before the character in the Register Book, thus ✠ 100 A 1. In a similar way new machinery constructed under special survey is indicated thus ✠ L.M.C.

During the construction from commencement of the work until the completion of the ship and final test of the machinery under working conditions, the surveyors are required to examine the material and workmanship and are to indicate, and require the rectification of, any items not in accordance with the Rules or the approved plans, or any material, workmanship, or arrangement found to be defective or unsatisfactory.

Date of Build The date of completion of the special survey during construction of ships built under the Society's inspection will normally be taken as the date of build to be entered in the Register Book. If however, the period between launching and completion or commissioning is, for any reason, unduly prolonged, the dates of launching

and completion or commissioning may be separately indicated in the Register Book. If a ship on completion is not immediately put into commission, but is laid up for a period, the Committee may direct an examination of the ship to be made in dry dock by the Society's surveyors. If hull and machinery are reported in all respects free from deterioration the subsequent special survey will date from the time of such examination.

N.B.— The *date of build* for the purpose of Lloyd's Register classification regulations should not be confused with the *year of build* for the purpose of the official registration of ships. The latter is determined by the following rule: —

"If a ship is launched in the first six months of a year, that year is to be inserted in the surveyor's certificate under the heading 'when built'. If launched during the second half of the year, that year should be inserted as the year when built if the ship is either registered or completed in that year, otherwise the following year should be inserted".

Ships not built under Survey. A special set of rules is formulated to be applied to such ships. The application for classification is required to be supported by plans showing the main scantlings and arrangements of the actual ship and any proposed alterations. If such plans cannot be obtained or be prepared by owners, facilities must be given for the Society's surveyors to take the necessary information from the ship. Ships of recent construction receive special consideration.

Periodical Surveys. All steel ships classed with the Society are subject to survey in accordance with the requirements of the Rules. Owners are expected to notify the Society whenever a ship can be examined in dry dock or on a slipway. Ships should be examined in dry dock approximately once every two to two and half years. The date of the last examination is recorded in the supplement to the Register Book. Annual surveys should, whenever practicable, be held concurrently with statutory annual or other load line surveys.

Special Surveys. These became due at four-yearly intervals, the first 4 years from the date of build or date of Special Survey for Classification, and thereafter 4 years from the date of the previous special survey. When it is inconvenient for owners to fulfil all the requirements of a special survey at its due date, the Committee of the Society will be prepared to consider its postponement, either wholly or in part, provided that the surveyors are afforded an opportunity, about the due date, of assessing the general condition of hull and machinery. For this purpose the Committee will normally call for a general examination of the ship, including drydocking, of sufficient extent to be assured that her condition is satisfactory for the period of grace

desired, which is not to exceed 12 months from the due date. Ships which have satisfactorily passed a special survey will have a record entered in the supplement to the Register Book indicating the date and place of such survey.

Continuous Surveys. When, at the request of the owners, it has been agreed by the Committee that the complete survey of the hull may be carried out on the Continuous Survey basis, all compartments of the hull should be opened up for survey and testing in rotation with an interval of 5 years between consecutive examinations of each part. If the examination during Continuous Survey reveals any defects, further parts are to be opened up and examined as considered necessary by the Surveyor. Ships which have satisfactorily completed the cycle will have a record entered in the Supplement to the Register Book indicating the date of completion.

Surveys of Machinery. (This relates to main and auxiliary engines, boilers, essential appliances, pumping arrangements and electrical equipment). Complete Surveys of machinery become due at four yearly intervals, the first one four years from the date of build or date of first classification recorded in the Register Book, and thereafter four years from the date of the previous Complete Survey. Whether or not they are commenced prior to their due date, they are not to extend over a period greater than 12 months without approval. On satisfactory completion of the survey an appropriate record will be made in the Supplement to the Register Book. When a complete survey of the machinery is not carried out at one time the date recorded in the Supplement will be that on which the major portion of the survey is carried out. If it is found that any part of the machinery should be again examined before the due date of the next survey, a certificate for a limited period will be granted in accordance with the nature of the case.

Continuous Survey of Machinery. When, at the request of owners it has been agreed by the Committee that the complete survey of the machinery may be carried out on the Continuous Survey basis, the various items of machinery should be opened for survey in rotation, so far as practicable, to ensure that the interval between consecutive examinations of each item will not exceed five years. In general, approximately one-fifth of the machinery should be examined each year.

In such cases a record indicating the date of completion of the Continuous Survey cycle will be made in the Supplement to the Register Book.

If any examination during Continuous Survey reveals defects, further parts are to be opened up and examined as considered necessary by the Surveyor and the defects are to be made good to his satisfaction.

Upon application by owners the Committee may agree to an

arrangement whereby, subject to certain conditions, some items of machinery may be examined by the Chief Engineer of the ship at ports where the Society is not represented or, where practicable, at sea, and a limited confirmatory survey carried out at the next port of call where an Exclusive Surveyor is available. Particulars of the arrangement may be obtained from the Society's Head Office.

Where an inert gas system is fitted on board a ship, the system is to be surveyed at intervals not exceeding two years.

Regulations relating to Special Hull Surveys. It is not within the purpose of this book to give details of the requirements of the Regulations relating to special hull surveys but, needless to say, such requirements will increase in stringency with the advancing age of the ship. The Regulations give full particulars of what is required in the case of ships under 5 years old. Those together with certain additional requirements apply to ships between 5 and 10 years old, and still further examinations are demanded at the surveys of ships over 10 years old. At the first special survey held after the ship is 24 years old and at every 12 years thereafter, or at the next special survey after the expiration of the latter period, the full requirements for ships over 10 years old have to be complied with together with numerous others. Special rules are laid down for petroleum tankers.

Boiler, Steam Pipes, and Screw Shaft Surveys. Water tube boiler supplying steam to the main propelling machinery (other than cylindrical boilers having corrugated or plain furnaces in conjunction with water tubes) and steam heated steam generators are to be surveyed at two-yearly intervals. All other boilers (except domestic boilers with a heating surface not more than 5 square metres and a working pressure not more than 3.5 bar gauge) are to be surveyed at two-yearly intervals until they are 8 years old and subsequently annually. At intervals of 6 years from the date of build a selected number of main and auxiliary steam pipes supplying steam for essential purposes at sea are to be removed for internal examination and hydraulically tested to twice their working pressure. Screw shafts and tube shafts are to be drawn periodically for examination. Where shafts are fitted with continuous liners or running in oil, and of approved construction, they normally become due for survey at intervals of 5 years for single screw ships and 5 years for ships having two or more screws. All other shafts should be drawn at intervals of 2 years.

Refrigeration. Refrigerated cargo installations which comply with the Rules and are favourably reported on by the surveyors are assigned an appropriate class, which will be retained provided the installation is found in good and efficient condition at the periodical loading port and other surveys provided for by the Rules.

Repairs and Alterations. All repairs to hull, equipment, and machinery required in order that a ship may retain her class are to be carried out under the inspection of, and to the satisfaction of, the Society's surveyors. When effected at a port where there is no Lloyd's surveyor the ship is to be surveyed by one of the Society's surveyors at the earliest opportunity. Plans and particulars of proposed alterations are to be submitted for approval and such alterations carried out under the inspection of, and to the satisfaction of, the Society's surveyor's.

Certificates. When the required reports on completion of the special surveys of new ships, or existing ships submitted for classification, have been received from the surveyors and approved by the Committee, certificates of first entry of classification duly signed and countersigned will be issued to the builders or owners. Certificates of class maintenance in respect of completed periodical surveys will also be issued to owners on application. The Society's surveyors are permitted to issue provisional (interim) certificates to enable a classed ship to proceed on her voyage provided that in their opinion she is in a fit and efficient condition. Such certificates embody the surveyors' recommendations for continuance of class but are subject to confirmation by the Committee.

Withdrawal of Class. 1. When the class of a ship, for which the Regulations regarding survey have been complied with, is withdrawn in consequence of a request from the owners, the notation "LR class withdrawn – Owner's request" (with date) is made in the Supplement and, in due course, in the Register Book. After one year the notation will be altered to "Classed LR until" (with date).

2. When the Regulations as regards surveys have not been complied with and the ship thereby is not entitled to retain her class, the class will be withdrawn and the notation "Class withdrawn" (with date) will be made in the Supplement and the notation "LR class withdrawn" (with date) will be made in the next reprint of the Register Book. After one year the notation will be altered to "Classed LR until" (with date).

3. When it is found from reported defects that a ship is not entitled to retain her class, and the owners fail to repair such defects in accordance with requirements the class will be withdrawn and the notation "Class withdrawn – Reported defects" (with date) will be made in the Supplement and the notation "LR class withdrawn – Reported defects" (with date) will be made in the next reprint of the Register Book. After one year the notation will be altered to "Classed LR until" (with date).

4. Where a ship proceeds to sea with less freeboard than that approved by the Committee or where freeboard marks are placed higher on the ship's sides than the position assigned or approved, the ship's class will be liable to be withdrawn.

See page 148.

DIMENSIONS OF SHIPS

MOULDED DIMENSIONS

Length between Perpendiculars (L) is the length on the summer load water-line measured from the fore side of the stem or fore perpendicular to the after side of the stern post or after perpendicular. In a vessel without a stern post it is measured to the fore side of the rudder stock.

Moulded Breadth (B) is the breadth measured over the widest part of the frame at the middle of the length L.

Moulded Depth (D) is the depth measured from the top of the keel to the top of the deck beam at side at the middle of the length L. To avoid confusion the name of the deck to which the depth is measured should be stated, *e.g.* moulded depth to freeboard deck.

REGISTERED DIMENSIONS

These are sometimes called the identification dimensions, and are those stated in the Certificate of Registry for a British ship, being expressed in feet and tenths.

Registered or Identification Length is measured from the fore part of the stem head to the after side of the stern post, or fore side of the rudder stock if there is no stern post.

Registered or Identification Breadth is measured over the outside of the shell plating at the widest part (not necessarily at the middle of the length).

Registered or Identification Depth, or Depth in Hold, is measured from the top of the ceiling to the top of the deck beam at the centre line of the vessel at the middle of the length. This depth is measured to the tonnage deck.

The certificate of registry also shows in appropriate cases (a) depth in hold from upper deck to ceiling amidships, in the case of three decks and upwards, (b) depth from top of deck at side amidships to bottom of keel.



Lloyd's Register

CERTIFICATE OF CLASS

This is to certify that the

EXAMPLE (1988)

Lloyd's Register Number

Built by

NEWCASTLE SHIPBUILDERS PLC

At

NEWCASTLE-ON-TYNE

Date of Build

9th DECEMBER 1988

Registered Tonnages:

Gross

11,405 Net 6798

having been surveyed by the Society's Surveyors and reported by them to be in a fit and efficient condition in accordance with the Rules and Regulations of Lloyd's Register of Shipping, has been assigned the class:

100 A1

LHC

Chairman

Secretary

SPECIMEN

Date of Issue

1988

Lloyd's Register of Shipping
71 Fenchurch Street, London EC3M 4BS

NOTICE—This certificate is subject to the Terms and Conditions overleaf, which form part of this certificate.



**Lloyd's
Register**

CERTIFICATE OF CLASS
REFRIGERATED CARGO INSTALLATION

This is to certify that the

EXAMPLE (1988)

Lloyd's Register Number

Number of Refrigerated Cargo Chambers

3

Total Capacity

598 cu.m.

having been surveyed by the Society's Surveyors and reported by them to be in a fit and efficient condition in accordance with the Rules and Regulations of Lloyd's Register of Shipping, has been assigned the class:

LLOYD'S RMC

Chairman

Secretary

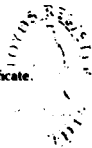
SPECIMEN

Date of Issue

1988

Lloyd's Register of Shipping
71 Fenchurch Street, London EC3M 4BS

NOTICE—This certificate is subject to the Terms and Conditions overleaf, which form part of this certificate.





Lloyd's Register of Shipping

CERTIFICATE OF CLASS

This is to certify that the **EXAMPLE (1981)**

Lloyd's Register No. *

Built by **SANOYASU DOCKYARD**
CO LTD

at **MIZUSHIMA**
Date **FEBRUARY 1981**

REGISTERED TONNAGES

Gross **19982**
Net **11923**

MOULDED DIMENSIONS

Length **100.00 m.**
Breadth **27.21 m.**
Depth **6.4 m.**

having been built in accordance with the Rules and Regulations under the Special Survey of the Society's Surveyors and reported by them on **6th FEBRUARY 1981** to be in a fit and efficient condition, has been assigned the class of

*** 100 A1 CHEMICAL TANKER**

in the Register Book subject to continued compliance with the requirements of the Society's Rules and Regulations.

Chairman

Secretary

SPECIMEN

Date of issue

1981

71 Fenchurch Street, London, EC3M 4BS

In providing services information or advice neither the Society nor any of its servants or agents warrants the accuracy of any information or advice supplied. Except as set out herein neither the Society nor any of its servants or agents (on behalf of each of whom the Society has agreed this clause) shall be liable for any loss damage or expense whatever sustained by any person due to any act or omission or error of whatsoever nature and howsoever caused of the Society its servants or agents or due to any inaccuracy of whatsoever nature and howsoever caused in any information or advice given in any way whatsoever by or on behalf of the Society, even if held to amount to a breach of warranty. Nevertheless, if any person uses the Society's services or relies on any information or advice given by or on behalf of the Society and suffers loss damage or expense thereby which is proved to have been due to any negligent act omission or error of the Society its servants or agents or any negligent inaccuracy in information or advice given by or on behalf of the Society then the Society will pay compensation to such person for his proved loss up to but not exceeding the amount of the fee (if any) charged by the Society for that particular service information or advice, or that part thereof which caused the loss.



Lloyd's Register of Shipping

CERTIFICATE OF CLASS

This is to certify that the machinery of *EXAMPLE (1981)*

Lloyd's Register No. Gross Tonnage *19,982* having been constructed in accordance with the Rules and Regulations under the Special Survey of the Society's Surveyors and reported by them on *21st JANUARY 1981* to be in good working condition, has been assigned the Class *LMC* in the Register Book subject to continued compliance with the requirements of the Society's Rules and Regulations.

Approved total power	rev/min of Engine
<i>11,200 b.h.p.</i>	rev/min of Propeller
<i>8,238</i>	

Chairman

Secretary

SPECIMEN

Date of issue

1981

71 Fenchurch Street, London, EC3M 4BS

Issued upon the terms of the Society's Regulations which provide that:

"In providing services information or advice neither the Society nor any of its servants or agents warrants the accuracy of any information or advice supplied. Except as set out herein neither the Society nor any of its servants or agents (on behalf of each of whom the Society has agreed this clause) shall be liable for any loss damage or expense whatever sustained by any person due to any act or omission or error of whatsoever nature and howsoever caused of the Society its servants or agents or due to any inaccuracy of whatsoever nature and howsoever caused in any information or advice given in any way whatsoever by or on behalf of the Society, even if held to amount to a breach of warranty. Nevertheless, if any person uses the Society's services or relies on any information or advice given by or on behalf of the Society and suffers loss damage or expense thereby which is proved to have been due to any negligent act omission or error of the Society its servants or agents or any negligent inaccuracy in information or advice given by or on behalf of the Society then the Society will pay compensation to such person for his proved loss up to but not exceeding the amount of the fee (if any) charged by the Society for that particular service information or advice, or that part thereof which caused the loss."

CLASSIFICATION SOCIETY

Ship's Name ss/ms.....Example.....Gross tons..7.190.....
 Soc.number.....Port...LON.....Report No. 300456.....
 First date.2.2.86... Recommended survey date..02-86..
 Last date.4.2.86..Port of Registry.Douglas..Date of build.1981-2

SPECIMEN

This is to Certify that I have surveyed part of the machinery and that all my recommendations have been carried out to my satisfaction. I am reporting accordingly and recommending to the Society's Committee that the machinery classification should be retained and the following survey records assigned:-

Fresh record of ABS (ex.g.)..2/86 when the safety valves have been set under steam.

CSM (with date) on completion of the survey.

Subject to the following conditions of class detailed below and/or as previously recommended.

Port inboard main engine lubricating oil pump (temporary repairs in way of air pump) being specially examined and dealt with as necessary by the end of August 1986.

W.G.Jones

10.2.86

Surveyor to Classification Society

Date

KEY TO ABBREVIATIONS

ABS	Auxiliary Boiler Survey	SGS	Steam Generator Survey
CSM	Continuous Survey of Machinery	SPS	Steampipe Survey
		TS	Tailshaft Survey
DBS	Domestic Boiler Survey	TS(CL)	Tailshaft Survey-Continuous
ES	Engine Special Survey		Liner
MBS	Main Boiler Survey	TSN	Tailshaft renewed
OF	Fitted for Oil Fuel (date)	TS(OG)	Tailshaft Survey-Oil Gland
	FP above 150 F.		

This Certificate is issued upon the terms of the Rules and Regulations of the Society.

EXTREME DIMENSIONS

Length Overall is the length measured from the foremost point of the stem or figurehead (excluding bowsprit, if any) to the after side of the taffrail, or cruiser stern.

Extreme Breadth is measured over the outside of the shell plating, or rubbing strakes, or paddle sponsons (if any).

Depth is measured from the top of the keel to the top of the deck amidships,

DRAUGHT, FREEBOARD AND TRIM, ETC.

Draught (d) is the distance of the lowest point of the keel below the water line.

Mean Draught is the half sum of the draughts at the forward and after perpendiculars, or at the stem and stern post.

Moulded Draught (d) is the distance of the top of the keel below the water-line.

Light Draughts are the draughts forward and aft when the vessel is floating complete with water in boilers, but without crew, bunkers, cargo, water ballast, solid ballast, fresh water, stores, or other loads.

Load Draught is the mean draught when the vessel is submerged to the depth of her seasonal load line. The Summer load line draught is the one quoted in Lloyd's Register Book. Tropical, Winter, and Winter North Atlantic load draughts can be deduced from the Summer draught by the application of simple rules (See Chapter 18).

Bulkhead Draught is the term sometimes used to describe the maximum permissible mean draught for a passenger steamer to which subdivision load lines have been assigned in accordance with the International Convention for the Safety of Life at Sea, 1974.

Freeboard (actual) is the vertical distance of the upper edge of the "deck line" above the existing water-line.

Mean Freeboard is the half sum of the freeboards measured on the port and starboard sides, respectively.

Minimum Seasonal Freeboard is the vertical distance of the upper edge of the "deck line" above the seasonal load line.

Trim is the difference between the forward and after draughts. If the former is the greater the vessel is trimmed "by the head". If the latter is the greater she is trimmed "by the stern". If the forward and after draughts are equal the vessel is said to be "on even keel".

Change of Trim is the sum of the changes of draught forward and aft if one increases and the other decreases as a result of adding, removing, or shifting weight. Should they both increase or both decrease by different amounts, it is the difference of the changes.

Transverse Inclinations. When a vessel is not upright she is said to have a "heel", a "list", or a "loll", according to circumstances. Inclination due to initial negative stability is by general agreement referred to as "loll". On the other hand, the terms "heel" and "list" seem to be used indiscriminately. It would, in the author's opinion, be an advantage if unnecessary confusion were avoided by associating "heel" exclusively with inclinations due to the application of external forces, and "list" with inclinations due to unsymmetrical distribution of weight within the ship.

SALE AND PURCHASE OF SHIPS

In connection with the sale and purchase of a ship the preliminary negotiations may, of course, take a variety of forms depending upon the particular circumstances. Here it will be sufficient to concentrate on a few of the more important aspects common to most cases.

An owner with tonnage to dispose of may insert advertisements in the shipping press, or he may instruct his broker to attempt negotiations with a limited number of possible purchasers. Direct negotiations between seller and buyer are not very usual, the services of a broker generally being considered essential. The seller will furnish the broker with full particulars of the vessel for sale and these will be entered into a form suitable for circulation amongst prospective purchasers. The form may show the name of the vessel or, if the owner does not wish to disclose the name at that stage, merely a folio number. To enable a possible purchaser to decide whether the ship will suit his requirements it is necessary that the particulars form should be very detailed. The kind of information required is indicated in the following list of items: –

- Deadweight capacity in tons.

- Load draught.

- Speed in knots.

- Daily consumption of fuel and type of fuel.

- Name of builders.

- Where and when built.

- Principal dimensions.

PORT INFO			1440			REGISTER OF SHIPS 1987/88		
14. No.	SHIP'S NAME	15. No.	CLASSIFICATION	16. No.	DATA	17. NO. TYPE/CLASS	18. NO. TYPE	19. NO. TYPE
Call Sign	Owner Name	20. No.	Sub	21. No.	Sub	22. No.	23. No.	24. No.
Officer in Charge	Manager	25. No.	Sub	26. No.	Sub	27. No.	28. No.	29. No.
Net. No.	Port of Registry	30. No.	Sub	31. No.	Sub	32. No.	33. No.	34. No.
		35. No.	Sub	36. No.	Sub	37. No.	38. No.	39. No.
		40. No.	Sub	41. No.	Sub	42. No.	43. No.	44. No.
		45. No.	Sub	46. No.	Sub	47. No.	48. No.	49. No.
		50. No.	Sub	51. No.	Sub	52. No.	53. No.	54. No.
		55. No.	Sub	56. No.	Sub	57. No.	58. No.	59. No.
		60. No.	Sub	61. No.	Sub	62. No.	63. No.	64. No.
		65. No.	Sub	66. No.	Sub	67. No.	68. No.	69. No.
		70. No.	Sub	71. No.	Sub	72. No.	73. No.	74. No.
		75. No.	Sub	76. No.	Sub	77. No.	78. No.	79. No.
		80. No.	Sub	81. No.	Sub	82. No.	83. No.	84. No.
		85. No.	Sub	86. No.	Sub	87. No.	88. No.	89. No.
		90. No.	Sub	91. No.	Sub	92. No.	93. No.	94. No.
		95. No.	Sub	96. No.	Sub	97. No.	98. No.	99. No.
		100. No.	Sub	101. No.	Sub	102. No.	103. No.	104. No.
		105. No.	Sub	106. No.	Sub	107. No.	108. No.	109. No.
		110. No.	Sub	111. No.	Sub	112. No.	113. No.	114. No.
		115. No.	Sub	116. No.	Sub	117. No.	118. No.	119. No.
		120. No.	Sub	121. No.	Sub	122. No.	123. No.	124. No.
		125. No.	Sub	126. No.	Sub	127. No.	128. No.	129. No.
		130. No.	Sub	131. No.	Sub	132. No.	133. No.	134. No.
		135. No.	Sub	136. No.	Sub	137. No.	138. No.	139. No.
		140. No.	Sub	141. No.	Sub	142. No.	143. No.	144. No.
		145. No.	Sub	146. No.	Sub	147. No.	148. No.	149. No.
		150. No.	Sub	151. No.	Sub	152. No.	153. No.	154. No.
		155. No.	Sub	156. No.	Sub	157. No.	158. No.	159. No.
		160. No.	Sub	161. No.	Sub	162. No.	163. No.	164. No.
		165. No.	Sub	166. No.	Sub	167. No.	168. No.	169. No.
		170. No.	Sub	171. No.	Sub	172. No.	173. No.	174. No.
		175. No.	Sub	176. No.	Sub	177. No.	178. No.	179. No.
		180. No.	Sub	181. No.	Sub	182. No.	183. No.	184. No.
		185. No.	Sub	186. No.	Sub	187. No.	188. No.	189. No.
		190. No.	Sub	191. No.	Sub	192. No.	193. No.	194. No.
		195. No.	Sub	196. No.	Sub	197. No.	198. No.	199. No.
		200. No.	Sub	201. No.	Sub	202. No.	203. No.	204. No.
		205. No.	Sub	206. No.	Sub	207. No.	208. No.	209. No.
		210. No.	Sub	211. No.	Sub	212. No.	213. No.	214. No.
		215. No.	Sub	216. No.	Sub	217. No.	218. No.	219. No.
		220. No.	Sub	221. No.	Sub	222. No.	223. No.	224. No.
		225. No.	Sub	226. No.	Sub	227. No.	228. No.	229. No.
		230. No.	Sub	231. No.	Sub	232. No.	233. No.	234. No.
		235. No.	Sub	236. No.	Sub	237. No.	238. No.	239. No.
		240. No.	Sub	241. No.	Sub	242. No.	243. No.	244. No.
		245. No.	Sub	246. No.	Sub	247. No.	248. No.	249. No.
		250. No.	Sub	251. No.	Sub	252. No.	253. No.	254. No.
		255. No.	Sub	256. No.	Sub	257. No.	258. No.	259. No.
		260. No.	Sub	261. No.	Sub	262. No.	263. No.	264. No.
		265. No.	Sub	266. No.	Sub	267. No.	268. No.	269. No.
		270. No.	Sub	271. No.	Sub	272. No.	273. No.	274. No.
		275. No.	Sub	276. No.	Sub	277. No.	278. No.	279. No.
		280. No.	Sub	281. No.	Sub	282. No.	283. No.	284. No.
		285. No.	Sub	286. No.	Sub	287. No.	288. No.	289. No.
		290. No.	Sub	291. No.	Sub	292. No.	293. No.	294. No.
		295. No.	Sub	296. No.	Sub	297. No.	298. No.	299. No.
		300. No.	Sub	301. No.	Sub	302. No.	303. No.	304. No.
		305. No.	Sub	306. No.	Sub	307. No.	308. No.	309. No.
		310. No.	Sub	311. No.	Sub	312. No.	313. No.	314. No.
		315. No.	Sub	316. No.	Sub	317. No.	318. No.	319. No.
		320. No.	Sub	321. No.	Sub	322. No.	323. No.	324. No.
		325. No.	Sub	326. No.	Sub	327. No.	328. No.	329. No.
		330. No.	Sub	331. No.	Sub	332. No.	333. No.	334. No.
		335. No.	Sub	336. No.	Sub	337. No.	338. No.	339. No.
		340. No.	Sub	341. No.	Sub	342. No.	343. No.	344. No.
		345. No.	Sub	346. No.	Sub	347. No.	348. No.	349. No.
		350. No.	Sub	351. No.	Sub	352. No.	353. No.	354. No.
		355. No.	Sub	356. No.	Sub	357. No.	358. No.	359. No.
		360. No.	Sub	361. No.	Sub	362. No.	363. No.	364. No.
		365. No.	Sub	366. No.	Sub	367. No.	368. No.	369. No.
		370. No.	Sub	371. No.	Sub	372. No.	373. No.	374. No.
		375. No.	Sub	376. No.	Sub	377. No.	378. No.	379. No.
		380. No.	Sub	381. No.	Sub	382. No.	383. No.	384. No.
		385. No.	Sub	386. No.	Sub	387. No.	388. No.	389. No.
		390. No.	Sub	391. No.	Sub	392. No.	393. No.	394. No.
		395. No.	Sub	396. No.	Sub	397. No.	398. No.	399. No.
		400. No.	Sub	401. No.	Sub	402. No.	403. No.	404. No.
		405. No.	Sub	406. No.	Sub	407. No.	408. No.	409. No.
		410. No.	Sub	411. No.	Sub	412. No.	413. No.	414. No.
		415. No.	Sub	416. No.	Sub	417. No.	418. No.	419. No.
		420. No.	Sub	421. No.	Sub	422. No.	423. No.	424. No.
		425. No.	Sub	426. No.	Sub	427. No.	428. No.	429. No.
		430. No.	Sub	431. No.	Sub	432. No.	433. No.	434. No.
		435. No.	Sub	436. No.	Sub	437. No.	438. No.	439. No.
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		460. No.	Sub	461. No.	Sub	462. No.	463. No.	464. No.
		465. No.	Sub	466. No.	Sub	467. No.	468. No.	469. No.
		470. No.	Sub	471. No.	Sub	472. No.	473. No.	474. No.
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		495. No.	Sub	496. No.	Sub	497. No.	498. No.	499. No.
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		505. No.	Sub	506. No.	Sub	507. No.	508. No.	509. No.
		510. No.	Sub	511. No.	Sub	512. No.	513. No.	514. No.
		515. No.	Sub	516. No.	Sub	517. No.	518. No.	519. No.
		520. No.	Sub	521. No.	Sub	522. No.	523. No.	524. No.
		525. No.	Sub	526. No.	Sub	527. No.	528. No.	529. No.
		530. No.	Sub	531. No.	Sub	532. No.	533. No.	534. No.
		535. No.	Sub	536. No.	Sub	537. No.	538. No.	539. No.
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		545. No.	Sub	546. No.	Sub	547. No.	548. No.	549. No.
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		555. No.	Sub	556. No.	Sub	557. No.	558. No.	559. No.
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		565. No.	Sub	566. No.	Sub	567. No.	568. No.	569. No.
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		575. No.	Sub	576. No.	Sub	577. No.	578. No.	579. No.
		580. No.	Sub	581. No.	Sub	582. No.	583. No.	584. No.
		585. No.	Sub	586. No.	Sub	587. No.	588. No.	589. No.
		590. No.	Sub	591. No.	Sub	592. No.	593. No.	594. No.
		595. No.	Sub	596. No.	Sub	597. No.	598. No.	599. No.
		600. No.	Sub	601. No.	Sub	602. No.	603. No.	604. No.
		605. No.	Sub	606. No.	Sub	607. No.	608. No.	609. No.
		610. No.	Sub	611. No.	Sub	612. No.	613. No.	614. No.
		615. No.	Sub	616. No.	Sub	617. No.	618. No.	619. No.
		620. No.	Sub	621. No.	Sub	622. No.	623. No.	624. No.
		625. No.	Sub	626. No.	Sub	627. No.	628. No.	629. No.
		630. No.	Sub	631. No.	Sub	632. No.	633. No.	634. No.
		635. No.	Sub	636. No.	Sub	637. No.	638. No.	639. No.
		640. No.	Sub	641. No.	Sub	642. No.	643. No.	644. No.
		645. No.	Sub	646. No.	Sub	647. No.	648. No.	649. No.
		650. No.	Sub	651. No.	Sub	652. No.	653. No.	654. No.
		655. No.	Sub	656. No.	Sub	657. No.	658. No.	659. No.
		660. No.	Sub	661. No.	Sub	662. No.	663. No.	664. No.
		665. No.	Sub	666. No.	Sub	667. No.	668. No.	669. No.
		670. No.	Sub	671. No.	Sub	672. No.	673. No.	674. No.
		675. No.	Sub	676. No.	Sub	677. No.	678. No.	679. No.
		680. No.	Sub	681. No.	Sub	682. No.	683. No.	684. No.
		685. No.	Sub	686. No.	Sub	687. No.	688. No.	689. No.
		690. No.	Sub	691. No.	Sub	692. No.	693. No.	694. No.
		695. No.	Sub	696. No.	Sub	697. No.	698. No.	699. No.
		700. No.	Sub	701. No.	Sub	702. No.	703. No.	704. No.
		705. No.	Sub	706. No.	Sub	707. No.	708. No.	709. No.
		710. No.	Sub	711. No.	Sub	712. No.	713. No.	714. No.
		715. No.	Sub	716. No.	Sub	717. No.	718. No.	719. No.
		720. No.	Sub	721. No.	Sub	722. No.	723. No.	724. No.
		725. No.	Sub	726. No.	Sub	727. No.	728. No.	729. No.
		730. No.	Sub	731. No.	Sub	732. No.	733. No.	734. No.
		735. No.	Sub	736. No.	Sub	737. No.	738. No.	739. No.
		740. No.	Sub	741. No.	Sub	742. No.	743. No.	744. No.
		745. No.	Sub	746. No.	Sub	747. No.	748. No.	749. No.
		750. No.	Sub	751. No.	Sub	752. No.	753. No.	754. No.
		755. No.	Sub	756. No.	Sub	757. No.	758. No.	759. No.
		760. No.	Sub	761. No.	Sub	762. No.	763. No.	764. No.
		765. No.	Sub	766. No.	Sub	767. No.	768. No.	769. No.
		770. No.	Sub	771. No.	Sub	772. No.	773. No.	774. No.
		775. No.	Sub	776. No.	Sub	777. No.	778. No.	779. No.
		780. No.	Sub	781. No.	Sub	782. No.	783. No.	784. No.
		785. No.	Sub	786. No.	Sub	787. No.	788. No.	789. No.
		790. No.	Sub	791. No.	Sub	792. No.	793. No.	794. No.
		795. No.	Sub	796. No.	Sub	797. No.	798. No.	799. No.
		800. No.	Sub	801. No.	Sub	802. No.	803. No.	804. No.
		805. No.	Sub	806. No.	Sub	807. No.	808. No.	809. No.
		810. No.	Sub	811. No.	Sub	812. No.	813. No.	814. No.
		815. No.	Sub	816. No.	Sub	817. No.	818. No.	819. No.
		820. No.	Sub	821. No.	Sub	822. No.	823. No.	824. No.
		825. No.	Sub	826. No.	Sub			

Extract from Lloyd's Register Book (Register of Ships)

Gross and net register tonnage.

Type of ship.

Material and rig, whether riveted or welded or both.

Number and type of masts.

Number and arrangement of decks.

Particulars of erections and superstructures.

Height between decks.

Number and capacity of ballast tanks.

Number and capacity of fresh water tanks.

Number of bulkheads.

Number and sizes of hatchways.

Number of holds (and deep tanks, if any).

Grain and bale capacity of each hold, 'tween-deck, and other compartments.

Total grain and bale space.

Particulars of passenger accommodation, if any.

Arrangement and capacity of bunkers.

Name of engine builders.

Description of main engines including N.H.P., I.H.P., number of cylinders, and length of stroke.

Principal auxiliaries.

Number, age, and description of boilers.

Heating surface and working-pressure of boilers.

Donkey engine and donkey boiler.

Type of steering gear and emergency steering.

Particulars of windlass, winches, and other deck machinery.

Number and S.W. Loads of derricks and/or cranes.

Radio installation and navigational aids installed.

Number of motor and other lifeboats and type of davits.

Where and when the vessel may be inspected.

Price asked.

Other remarks may be appended including, for instance, the date and place of the last classification survey and class assigned, if any. As a necessary precaution against the possible effects of misdescription it is usual to insert a clause to read "These particulars are believed to be correct but are not guaranteed".

When a possible purchaser comes along who is seriously interested he may request permission to make an inspection of the vessel, or he may make an offer "subject to inspection". In the former case it is probable that only a relatively superficial examination would be permitted, but when a definite offer has been made a full examination is likely to be agreed to involving the opening up of machinery. The buyer, before making a final decision to purchase, will usually instruct his marine and engineer superintendents or other experts to make a thorough examination of the vessel and report on her condition and capabilities. Some bargaining may ensue before terms and price are finally agreed, and when that stage is reached an agreement of sale will be drawn up, signed, and witnessed.

The details of contracts of sale are naturally subject to considerable variation, but the features described below are common to most.

The agreement indicates that on the date specified "A" has sold and "B" has purchased the vessel (named) of (so many) tons register, and as she now lies with all stores belonging to her on board and on shore for

the sum (stated); payment to be made by (person stated) within (so many) days from this date. A deposit of ten per cent to be paid on account of the purchase money on signing of this contract to (persons stated) to be held by them pending completion of the contract.

At this juncture the buyer will usually have inspected the outside of the hull above water as well as the interior of the vessel and her machinery, but not the ship's bottom. Therefore, a clause in the contract will provide that the purchasers may place the vessel in graving dock at their own risk and expense, and if she be then and there found damaged in the bottom the sellers are to make good the damage or cancel the contract at their option. If they opt to cancel they are to repay all expenses in connection with the docking.

An extremely important clause provides that, on payment of the whole of the purchase money agreed, a legal bill of sale, free from incumbrances, shall be executed to the purchasers at their expense, and the ship and all belonging to her shall be delivered to them. The purchaser of a British registered ship does not obtain a complete title of ownership until the bill of sale has been executed and recorded by the registrar at the ships' port of registry. If the transfer is being arranged by a broker it will be his duty to complete the transfer by seeing that this is promptly carried out.

When the balance of the purchase money has been paid and the bill of sale handed to the buyer the sale is completed, and the seller should guarantee that all debts against the vessel up to the date of completion will be paid prior to delivery of the vessel.

Should the buyer fail to pay the purchase money as agreed, the seller then has the right, by the terms of the contract, to resell the vessel by private or public sale. Moreover, the buyer will forfeit his deposit and will be liable for all loss and expense arising from the resale with interest.

If the seller does not produce the legal bill of sale, or if he fails to deliver the vessel as and when agreed, it is provided by the contract that he shall return the buyer's deposit and, unless the default has arisen from events over which he has no control, be liable for compensation for disappointment and loss of time.

A brokerage clause is generally included, stating the amount of brokerage due, and usually providing for it to be paid by the seller.

As well as the method of sale by private contract, ships can be sold by public auction, but this is comparatively rare except in the case of "forced sale" or in the case of a shipowning company being compulsorily wound up. A reserve price may be put up on the vessel at the risk, of course, of the seller being put to considerable expense to no purpose if a sale is not effected. Prospective purchasers may be permitted to inspect the vessel before the date of the auction or, alternatively, the seller may give a guarantee of the particulars of the vessel. In the absence of the guarantee or opportunity to inspect, it is

evident that buying at auction a vessel to be sold "as she lies" could be a very risky undertaking.

EMPLOYMENT OF SHIPS

It will hardly be necessary to remind readers of this book that a large number of vessels are employed in special ways. For instance, there are fishing vessels, tugs, salvage craft, dredgers, hoppers, ferries, ice-breakers, cable ships, and others, and in an entirely different category certain large vessels designed for the carriage of passengers exclusively either on regular routes or on pleasure cruises.

This section on employment, however, is concerned only with the employment of ships as carriers of goods, and in connection therewith it will be convenient to consider separately (a) dry cargo carriers, and (b) bulk liquid carriers.

DRY CARGO CARRIERS

The most common methods of employment are: –

1. Employment of the ship by her owners in a liner trade, i.e. "on the berth", or as a combined transport operator carrying containers.
2. Employment of the ship by a demise charterer.
3. Employment of the ship by a charterer under a simple time charter.
 4. Ship fixed by her owners for a voyage charter.
5. Ship hired by a charterer for a voyage or for a period of time and sublet in whole or in part to others.

Cargo Liners employed by Owners. A ship employed in this way is generally a unit in a fleet of vessels regularly engaged in a particular trade. The owners are usually a limited company and in many cases, also, members of one or other of the various Liner Conferences. The owners' remuneration consists of the freight earnings which depend on the kind and quantity of cargo carried, supplemented in some cases by passage money if the vessel carries fare-paying passengers as well as goods. All running expenses are paid by the owners who appoint the master and supply the crew. Information of intended sailings is circulated among shippers by means of "sailing cards" and by advertisement in national and local newspapers as well as in "Lloyd's List" and other official publications. The information given will generally include the following items: – the name of the ship. the port, dock, and berth where the vessel will load; the date when she will be ready to receive cargo;

the closing date (i.e., the date after which goods will not be accepted); the expected date of sailing; the port, or series of ports, to which the vessel will proceed – possibly indicating that she will call at other named ports if sufficient inducement offers, and possibly reserving the right to vary the route or alter the sailing date with or without notice; the name, address, telephone number and telegraphic address of the loading broker to whom requests to book space should be made. The owner of the ship is also the "carrier" and, as explained in Chapter 9, he will be to a limited extent a common carrier.

In many liner trades in recent years the ship has been employed more and more as part of a combined transport operation for carriage of goods from door to door. The ship is on the container berth for loading for named ports for a limited number of hours or days, but the cargo will be, or will have been, delivered to the ship already pre-packed in standard sized containers which have been loaded either at the goods manufacturers' works, or at the forwarding agents, or shipping company's inland depots, ready to be loaded by special cranes. An alternative to this practice is for the containers to be placed on a trailer and driven on board over a ramp in what is known as Roll-on Roll-off (RO-RO) operation.

Door to door container transportation raises a number of legal problems because of the different modes of transport and the different limits of liability for damages provided by the Conventions which apply to road or rail or sea carriage.

Demise Chartered Ship. If the ship is let on demise charter, the charterer appoints the master, supplies the crew, acts as carrier, and takes over the full control of the ship, employing her as if she were a unit of his own fleet. The shipowner's remuneration takes the form of hire money usually fixed at a certain rate per ton of summer deadweight per calendar month, and payable in advance. The owner may retain the right to require the removal of the master and chief engineer, if dissatisfied. The charterer's remuneration is the freight and passage money (if any) earned. When building cost are very high a shipowner with berth commitments he could not otherwise meet may resort to demise chartering in preference to ordering new tonnage. It may sometimes be necessary to demise charter a vessel to replace temporarily a ship that has been lost, or one that is laid up for extensive repairs.

The apportionment of expenses is usually as follows: –

- For owner's account: –

- Depreciation.

- Insurance, unless by agreement the charterer insures the vessel.

- Survey prior to delivery.

- Brokerage if incurred.

For charterer's account: –

Crew's wages, maintenance, repairs and stores.

Lubricating oil and water.

Bunkers, port charges, stevedoring costs, cost of hold cleaning, dunnage, ballast (if any).

Canal dues, towage, and pilotage.

Commissions and brokerage on cargo.

Claims against ship for loss of or damage to cargo.

All overhead expenses.

N.B.– As far as dry cargo ships are concerned the terms "demise charter" and "bareboat charter" are practically synonymous. However, as pointed out further on, there is an important distinction between the two terms with regard to tanker chartering.

Ship let on Simple Time Charter. In this case the shipowner appoints the master and supplies the crew, and is remunerated by hire money paid, usually at an agreed rate per month. The charterer, unlike the demise charterer, does not take over full control of the vessel.

Expenses are apportioned as shown below: –

For owner's account: –

Depreciation.

Insurance surveys, and all overheads.

Crew's wages, provisions, maintenance, repairs and stores.

Lubricating oil and water, unless otherwise agreed in the C/P.

Certain claims as agreed.

For charterer's account: –

Bunkers.

Port Charges.

Canal dues.

Stevedoring, hold cleaning, and dunnage.

Ballast (if any).

Water, unless supplied by owners.

Commissions and brokerage on cargo.

Claims not payable by owners under terms of C/P.

Ship fixed for Voyage Charter. Where a ship is fixed to carry a cargo under a voyage charter-party the shipowner appoints the master and crew, and acts as carrier – in this case a private carrier. Most commonly the contract will be for the carriage of a full cargo, but it may be for a part cargo. It may happen, for instance, that part of the space in a general ship is let to a charterer. If a "voyage berth charter" is fixed, the charterer places the ship on the berth as a general ship, in which case the exact nature of the cargo is not known in advance, though the charterer will be liable to the owner for deadfreight if he fails to load a full cargo. The majority of voyage charters, however, are

for the carriage of homogeneous cargoes like grain, timber, metallic ores, and so on.

All running expenses are borne by the owners unless the charter-party specially provides that all or part of the stevedoring charges are to be paid by the charterer. The freight rate agreed will naturally take into account the amount of these charges and by whom they are paid.

The shipowner's remuneration is the freight earned by carrying the cargo. Where the charterer is also the shipper his profit is the difference between the price he pays for the cargo and the price he ultimately sells it for, less expenses. In some cases, however, the charterer may be a broker who has undertaken to find a cargo for the ship to carry. Such a charterer's profit is the excess of the bill of lading freight over the chartered freight which is due from him to the shipowner. According to circumstances, the bill of lading freight will be collected from the consignee of the cargo by the shipowner's agent or by the charterer's agent. In the former case the owner will retain the chartered freight and pay over the surplus to the charterer. In the latter case the agent pays the charter freight to the owner and retains the balance.

Ships habitually employed on voyage charters are referred to as "tramps" as distinct from "liners" employed as general ships on more or less fixed routes.

A voyage charter-party may be arranged to cover two or more voyages.

Subletting. In both time charters and voyage charters it is not uncommon for the contract to be claused to permit the charterers to sublet the vessel in whole or in part on condition that they remain responsible to the shipowner for due performance of the original charter-party. Subletting in the case of a voyage charter usually means that other shippers book space in the ship from the charterer instead of directly from the shipowner.

BULK LIQUID CARRIERS

The vast majority of these vessels are designed for the carriage of bulk oil, but besides oil tankers there are other bulk liquid carriers for the transportation of such commodities as molasses and, very recently, so-called liquid gas (gas reduced to a very low temperature so as to liquefy it), and liquid chemicals.

Many oil tankers are owned by the major oil companies and are employed by those companies to carry crude oil from the oil fields to their various refineries, or to carry refined products from the refineries to the marketing depots.

In addition to the above, numerous large tanker fleets are owned by independent shipowners and are chartered by the oil companies under various arrangements as shown below: –

1. Charter for a single voyage.
2. Charter for a stipulated number of consecutive voyages.
3. Charter for consecutive voyages extending over a stipulated period of time.
4. Charter for consecutive voyages extending over a fixed period followed by a time charter for world-wide trading (generally on a long term basis, say, for several years).
5. Time charter for a number of years for world-wide trading for shipments of dirty oil.
6. Time charter for a number of years stipulating a maximum period of clean oil trading.
7. Bareboat charter.
8. Time charter by demise.

Oil companies may sometimes charter each other's tonnage as well as chartering vessels independently owned.

The above references to clean and dirty oil are important on account of the higher rate of corrosion suffered by tankers when carrying clean oils. Owners of newly built tonnage will generally insist that such vessels shall be operated in the clean petroleum trade for a certain maximum period only. For the same reason time charter rates for clean oil carriage are usually somewhat higher than the rates quoted for dirty oil on the same voyage.

Black Oil or Dirty Oil includes: –

- crude oil,
- heavy diesel oil,
- fuel and furnace oils,
- some grades of gas oil.

Clean Oil includes: –

- motor and aviation spirit,
- benzine,
- white spirit,
- tractor vaporising oil,
- kerosene,
- some grades of gas oil,
- some grades of high speed diesel oil.

Lubricating Oil is in a class by itself and is usually carried by ships specially built for the purpose.

The distinction between tanker demise and bare boat charters may be briefly explained as follows: –

Under a bareboat charter the owner puts the vessel at the disposal of the charterer for a period of time, frequently for a number of years, at an agreed rate of hire. The oil company which has chartered the vessel operate her in the same way as they operate units of their own

tanker fleet by appointing their own master and crew and paying all running expenses themselves.

A demise charter-party, however, contains a "management agreement" clause in pursuance of which the owners undertake to operate the vessel on behalf of the charterers in accordance with the charterer's instructions and in return for the annual payment of an agreed management fee. Accordingly, it is the shipowner who appoints master, officers, and crew, equips and supplies the vessel, and arranges for docking, surveys, repairs, and maintenance. The principal reason for this arrangement is that oil companies who find need to charter large numbers of vessels, in addition to operating their own, can take advantage of already existing operating organisations and are spared the difficulty and expense of expanding their own.

Ship's flag

Sekundarna literatura

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B05a Department for Transport (DfT)

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B01 Ship's flag

B01a UNCLOS PROVISIONS RELATING TO SHIPS' FLAG AND NATIONALITY

- * Every State, whether coastal or land-locked, has the **right** to have **ships flying its flag on the high seas** (Article 90).
- * Every State must fix the conditions for the **grant of its nationality** to ships, for the **registration of ships** in its territory, and for the **right to fly its flag** (Article 91).
- * Ships have the **nationality** of the State whose flag they are entitled to fly (Article 91).
- * There must be a **genuine link** between the State and the ship (Article 91).
- * Every State must issue to ships to which it has granted the right to fly its flag **documents** to that effect (Article 91).
- * Ships must sail under the flag of **one State** only and, save in exceptional cases expressly provided for in international treaties and UNCLOS, must be subject to its **exclusive jurisdiction** on the high seas (Article 92).
- * A ship may **not change its flag** during a voyage or while in a port of call, save in the case of a **real transfer of ownership or change of registry** (Article 92).
- * A ship which sails under the flags of two or more States, using them according to convenience, **may not claim any of the nationalities** in question with respect to any other State, and may be regarded as similar to a **ship without nationality** (Article 92).

B01b TYPES OF SHIP REGISTER

B01b.1 National registers

- are registers where there is a **genuine link** between the vessel's flag State and the owner or operator (as required by UNCLOS).
- are known also as "**closed registers**" and "**first registers**".
- include the first registers of most of the "traditional" shipowning nations including the UK, Norway, France, Denmark, Germany and many others.

B01b.2 Flags of convenience (FOCs)

- are also known (by shipowners) as "flags of necessity", "open registers" and "free flags".
- are deemed by the International Transport Workers' Federation (ITF) (see C05) to exist where **beneficial ownership and control** of the vessel is found to lie elsewhere than in the country of the flag the vessel is flying¹.
- are designated by the **ITF Fair Practices Committee**, which decides which flags are FOCs and which are not. This committee maintains a list of countries offering FOC facilities and from time to time adds countries to or deletes them from the list. The criteria for entry in the list are the "Rochdale Criteria", which were laid down by a British Committee of Inquiry into Shipping in 1970. The criteria include:
 - whether the country allows non-citizens to own and control vessels;
 - whether access to and transfer from the registry is easy;
 - whether taxes on shipping income are low or non-existent;
 - whether the country of registration does not need the shipping tonnage for its own purposes but is keen to earn the tonnage fees;
 - whether manning by non-nationals is freely permitted;
 - whether the country lacks the power (or the willingness) to impose national or international regulations on the shipowners using its flag.
- * In defining an FOC register, the ITF takes as the most important factor whether the nationality of the shipowner is the same as the nationality of the flag.
- * FOC ships are **beneficially owned** mainly in the USA, Greece, Hong Kong, and Western European States.
- * The list of **ITF-designated FOCs** can be viewed at www.itf.org.uk/seafarers/foc/foc.htm In April 2002 it included the following 30 flags: **Antigua and Barbuda, Aruba** (Netherlands), **Bahamas, Barbados, Belize, Bermuda**

¹ UNCLOS Article 91 provides that there must be a **genuine link** between the ship and the State whose flag the ship is entitled to fly, but fails to say what this means in practice.

(UK), **Bolivia, Burma/Myanmar, Cambodia, Canary Islands (Spain), Cayman Islands (UK), Cook Islands (New Zealand), Cyprus, Equatorial Guinea, German International Ship Register (GIS), Gibraltar (UK), Honduras, Lebanon, Liberia, Luxembourg, Malta, Marshall Islands (USA), Mauritius, Netherlands Antilles, Panama, São Tomé and Príncipe, Sri Lanka, St Vincent, Tuvalu and Vanuatu.**

- * Ships registered in the above countries which can demonstrate that they are **genuinely owned** in that country are not treated as FOCs. Equally, ships from countries not on the list will be treated as FOCs if the ITF receives information that they are beneficially owned in another country.
- * In deciding whether a particular ship is operating under a FOC, the ITF will **additionally consider on an individual basis** ships flying the flags of Hong Kong, Philippines (foreign-owned ships bareboat-chartered to the Philippines), and Singapore (foreign-owned ships without approved crew agreements). 18 ships flying the Kerguelen flag were declared in 2001 to be flying a flag of convenience.

B01b.3 Second registers

- are also known as **offshore registers** and **international ship registers**.
- are in some cases established under **separate legislation** as a second register in the “parent” State, e.g. the Norwegian International Shipregister (NIS), which is established in Norway to run alongside the Norwegian “first” register.
- are in other cases established in an **offshore territory** with legal links to the “parent” State, e.g. Kerguelen (linked to France), Isle of Man (linked to the UK); these registers may be termed **offshore registers**.
- first appeared in June 1987 with the establishment of NIS, immediate success of which prompted other countries to follow its example.
- are different from FOCs in that, while manning, taxation and other laws may be relaxed under the second register, shipowners must still have a **genuine link** with the flag State.
- have their **status** determined by the ITF (see C05), which considers whether ownership is genuinely from the flag “parent” State and whether there are agreements acceptable to that country’s trades unions.
- include the following **registers**: **Danish International Ship Register (DIS)** (Denmark), **Isle of Man (UK)**, **Kerguelen (France)**, **Madeira (Portugal)** and **Norwegian International Ship Register (NIS)** (Norway).

B01b.4 Bareboat charter registers

- * Several States, including the UK, have relaxed their ship registration legislation to allow for the bareboat chartering of ships into or out of the national flag. For the duration of the bareboat charter, but usually subject to a specified maximum term, the vessel is entered on the register of the bareboat charterer’s State (the “**bareboat charter registry**”) and flies that State’s flag, whilst **retaining her primary registration**. On the termination of the bareboat charter, the bareboat charter registry is cancelled and the vessel **reverts to her primary registry**².
- * BIMCO has warned owners³ that **serious consequences** may be faced by vessels sailing under more than one registry. Both international treaties (e.g. UNCLOS) and customary international law require that ships sail under the flag of **only one State**. (For UNCLOS Article 92 provisions see B01a.) A ship which sails under the flags of two or more States may not claim any of the nationalities in question with respect to any other State and may be treated as a **ship without nationality**. Consequently, in the course of enforcement of UN sanctions by multi-national naval fleets, any merchant ship which misrepresents its flag or registry to the Maritime Interception Forces will be treated as a **stateless vessel** and will be subject to the jurisdiction of the Maritime Interception Operation vessel’s flag State.
- * Ships on bareboat charter registers are sometimes known as “**dual register ships**”.

B02 Flag States

B02a DUTIES OF FLAG STATES

- * **UNCLOS Article 94** requires the flag State to effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag (i.e. to exercise “**flag State control**” over its ships), and to:
 - maintain a register of ships;

² For notes on bareboat charter registry under UK law, see D01f.

³ BIMCO Bulletin, February 1995.

- assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship; and
- take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, *inter alia*, to:
 - the construction, equipment and seaworthiness of ships;
 - the manning of ships, labour conditions and the training of crews, taking into account the applicable international agreements (e.g. STCW and ILO conventions);
 - the use of signals, the maintenance of communications and the prevention of collisions.
- * The above measures must include those necessary to ensure the following:
 - that the ship is surveyed by a qualified surveyor of ships and has on board such charts, nautical publications and navigational equipment and instruments as are appropriate for the navigation of the ship;
 - that the ship is in the charge of a master and officers who possess appropriate qualifications, in particular in seamanship, navigation, communications and marine engineering, and that the crew is appropriate in qualifications and numbers for the type, size, machinery and equipment of the ship;
 - that the master, officers and, to the extent appropriate, the crew are fully conversant with and required to observe the applicable international regulations concerning the safety of life at sea, the prevention of collisions, the prevention, reduction and control of marine pollution, and the maintenance of communications by radio.
- * In taking the above measures, the State is required to conform to generally accepted international regulations, procedures and practices and to take any steps which may be necessary to secure their observance.
- * A State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State must investigate the matter and, if appropriate, take any action necessary to remedy the situation.
- * Each State must cause an inquiry to be held by or before a suitably qualified person or persons into every marine casualty or incident of navigation on the high seas involving a ship flying its flag and causing loss of life or serious injury to nationals of another State or serious damage to ships or installations of another State or to the marine environment. The flag State and the other State must co-operate in the conduct of the inquiry.
- * **IMO resolution A.912(22)** on Self-Assessment of Flag State performance provides (in Annex 1 paragraph 4) that a **flag State should:**
 - take measures to ensure safety at sea and pollution prevention for ships entitled to fly its flag with regard to:
 - the construction, equipment and management of ships;
 - the principles and rules with respect to the limits to which ships may be loaded;
 - the prevention, reduction and control of pollution of the marine environment and the minimisation of the impact of accidental discharges of pollutants;
 - the manning of ships and the training of crews; and
 - the safety of navigation (including taking part in mandatory reporting and routeing systems), maintenance of communications and prevention of collisions;
 - promulgate laws which permit effective jurisdiction and control in administrative, technical and social matters over ships flying its flag and, in particular, relating to the inspection of ships, safety and pollution-prevention laws applying to such ships and the making of associated regulations; and
 - promulgate laws providing the legal basis for the establishment of a registry and maintain a register of ships flying its flag.

B02b ENFORCEMENT BY FLAG STATES

- * **UNCLOS Article 217** makes the following provisions.
 1. States must ensure compliance by vessels flying their flag or of their registry with applicable international rules and standards, established through the competent international organisation or general diplomatic conference, and with their laws and regulations adopted in accordance with UNCLOS for the prevention, reduction and control of pollution of the marine environment from vessels and must accordingly adopt laws and regulations and take other measures necessary for their implementation. Flag States must provide for the effective enforcement of such rules, standards, laws and regulations, irrespective of where a violation occurs.
 2. States must, in particular, take appropriate measures in order to ensure that vessels flying their flag or of their registry are prohibited from sailing, until they can proceed to sea in compliance with the requirements of the international rules and standards referred to above, including requirements in respect of design, construction, equipment and manning of vessels.
 3. States must ensure that vessels flying their flag or of their registry carry on board certificates required by and issued pursuant to international rules and standards referred to above. States must ensure that vessels flying their flag are periodically inspected in order to verify that such certificates are in conformity with the actual condition of the vessels. These certificates must be accepted by other States as evidence of the condition of the

vessels and must be regarded as having the same force as certificates issued by them, unless there are clear grounds for believing that the condition of the vessel does not correspond substantially with the particulars of the certificates.

4. If a vessel commits a violation of rules and standards established through the competent international organisation or general diplomatic conference, the flag State, without prejudice to Articles 218, 220 and 228, must provide for immediate investigation and where appropriate institute proceedings in respect of the alleged violation irrespective of where the violation occurred or where the pollution caused by such violation has occurred or has been spotted.
 5. Flag States conducting an investigation of the violation may request the assistance of any other State whose co-operation could be useful in clarifying the circumstances of the case. States must endeavour to meet appropriate requests of other States.
 6. States must, at the written request of any State, investigate any violation alleged to have been committed by vessels flying their flag. If satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, flag States must without delay institute such proceedings in accordance with their laws.
 7. Flag States must promptly inform the requesting State and the competent international organisation of the action taken and its outcome. Such information must be available to all States.
 8. Penalties provided for by the laws and regulations for States for vessels flying their flag must be adequate in severity to discourage violations wherever they occur.
- * **IMO resolution A.912(22)** on Self-Assessment of Flag State performance provides (in Annex 1 paragraph 5) that a **flag State should:**
- provide for the enforcement of its national laws, including the associated investigative and penalty processes;
 - take appropriate action against ships flying its flag that fail to comply with applicable requirements;
 - ensure the availability of sufficient personnel with maritime and technical expertise to carry out its flag State responsibilities, including:
 - the development and enforcement of necessary national laws;
 - the establishment and maintenance of minimum safe manning levels on board ships flying its flag and the provision of effective certification of seafarers;
 - the inspection of ships flying its flag to ensure compliance with the requirements of international instruments to which the flag State is a Party;
 - the reporting of casualties and incidents as required by the respective instruments; and
 - the investigation of circumstances following any detention of ships flying its flag.

B02c FLAG STATE ADMINISTRATIONS

- * Most flag States regulate their merchant shipping and enforce international maritime treaty obligations and national laws through the agency of a **marine Administration**. This is usually a national governmental organisation, e.g. US Coast Guard (USCG) in the case of the USA, Department for Transport (DfT) (UK), Australian Maritime Safety Authority (AMSA) (Australia), Norwegian Maritime Directorate (NMD) (Norway).
- * Flag of convenience countries sometimes **delegate** their marine administrative duties to a **commercial organisation**, e.g.:
 - Liberian International Ship & Corporate Registry (LISCR) operating the **Liberian register** from Virginia, USA;
 - International Registries, Inc. (IRI), operating the **Marshall Islands register** from Renton, Washington DC, USA; and
 - Vanuatu Maritime Services Ltd (VMSL), operating the **Vanuatu register** from New York, USA.
- * The **functions of a flag State Administration** are chiefly:
 - to set, monitor and enforce standards of safety and pollution prevention on vessels flying the State's flag;
 - to enforce international standards of safety and pollution prevention on foreign ships visiting the State's ports;
 - to draw up, set and enforce statutory merchant shipping regulations for the flag State;
 - to survey and inspect vessels in accordance with domestic and international regulations;
 - to set and enforce standards of competency amongst seafarers;
 - to investigate accidents involving ships flying the State's flag and ships of other flags when in the State's waters;
 - to approve equipment types for vessels under international regulations;
 - to advise on matters such as the loading of hazardous cargoes and many other safety matters;
 - to maintain a register of ships flying the State's flag.
- * Many flag State Administrations will, in addition, take on a responsibility to work for the **raising of standards** internationally and will lead the national delegation at international committees on which the flag State is

represented, e.g. IMO's Maritime Safety Committee (MSC) and Marine Environment Protection Committee (MEPC).

B02c.1 Flag State obligations relating to ship security

- * SOLAS regulation XI-2/3.1 provides that flag State Administrations must **set security levels** and ensure the **provision of security level information** to ships entitled to fly their flag. When changes in security level occur, security level information must be **updated** as the circumstance dictates.
- * Flag State Administrations have a number of **security-related responsibilities** for ships registered under their flags. These include:
 - **setting security levels** for ships entitled to fly their flag and **notifying** ships of the current security level;
 - providing **guidance** on the development of **Ship Security Plans**;
 - providing **guidance** on **security measures** for ships to implement at each security level;
 - providing **guidance** on the **reporting of attacks** on ships;
 - **approval of Ship Security Plans**;
 - **issuing International Ship Security Certificates (ISSCs)** to ships;
 - **notifying** other governments of **ship security alerts** from ships within their jurisdiction;
 - **specifying** requirements for **Declarations of Security**;
 - agreeing to **temporary measures** to be implemented if **security equipment fails**;
 - deciding whether or not to **delegate approval** of Ship Security Plans, verification of ship security systems, and issue of International Ship Security Certificates to Recognised Security Organisations (RSOs), and overseeing such delegations.
- * Flag State Administrations are permitted to delegate some of their responsibilities to **Recognised Security Organisations (RSOs)**. A **Recognised Security Organisation** means an organisation with appropriate expertise in security matters and with appropriate knowledge of ship and port operations authorised to carry out an assessment, or a verification, or an approval or a certification activity, required by SOLAS chapter XI-2 or by part A of the ISPS Code (SOLAS regulation XI-2/1.1). In practice, RSOs will normally include those **classification societies** authorised by the flag State Administration to carry out certain surveys and issue ship certificates on its behalf.

B02d OVERSEAS REPRESENTATION OF FLAG STATE ADMINISTRATIONS

B02d.1 Diplomatic missions and officials

- * A **diplomatic mission** is the office of a country's diplomatic representatives in another country. Major States generally maintain a diplomatic mission in each foreign State capital with which they have full diplomatic relations. The diplomatic mission of one Commonwealth member country, such as the UK, in another Commonwealth member country is a **High Commission**. In non-Commonwealth countries the diplomatic mission is generally an **Embassy**. High Commissions and Embassies perform the same functions and have the same status.
- * The **head of mission** in Commonwealth countries is a **High Commissioner** and in non-Commonwealth member countries is normally an **Ambassador**.
- * A **consular mission** is the office of a country's consular representative in another country, either in the capital city or in some other significant place. **Consulates** will generally be maintained by the more prosperous countries in each foreign capital where it is represented and in the more important cities and towns with which the country maintains trade links. Many consulates are therefore located in major ports, while the nearest consulate to a minor port may be in a distant inland town.
- * Consular missions are established in accordance with the provisions of the Vienna Convention on Consular Relations, 1963 which provides four different grades of consular representatives (in descending order of importance): **Consul-General**; **Consul**; **Vice-Consul**; and **Consular Agent**. Their offices are called Consulate-General, Consulate, Vice-Consulate and Consular Agency, respectively.⁴ In many ports the consulate of a foreign country is a commercial enterprise such as a shipping agency, and may have the status of **Honorary Consulate**.
- * **Consular representatives** undertake a more restricted range of duties than diplomatic representatives, their prime duty being to protect the interests of the nationals of their country in the host country. A **consul** is defined in The

⁴ In some Commonwealth countries, the senior consular missions of other Commonwealth countries are called Deputy High Commissions and the heads of these offices are called Deputy High Commissioners. However, the trend is for such offices to be called Consulate-General, etc.

Shorter Oxford English dictionary as “an agent, commissioned by a sovereign State to reside in a foreign town or port, to protect the interests of its subjects there, and to watch over its commercial rights and privileges”.

- * Consular representatives may be career officers (i.e. full-time employees of their government) or honorary officers (i.e. officers paid only an honorarium by the country they represent). Career officers are normally nationals of the country they represent and members of that country’s diplomatic or consular service. Honorary officers are usually permanent residents of the country in which they work and may be nationals of the country in which they live or of the country that they represent.
- * It is important for the master of a ship of any flag when at a foreign port to be able to identify and locate the **nearest consular mission of the flag State**, since he may require consular assistance in a variety of circumstances (see B02d.2 and I01j.1). Port agents maintain lists of local consular missions.
- * In some situations (e.g. loss of personal national identity documents, or personal arrest), where the master is not of the same nationality as the ship’s flag, the appropriate diplomatic mission to contact will be that of his **own country**.
- * A full list of **British Diplomatic Missions** can be viewed at: www.fco.gov.uk/directory/posts.asp

B02d.2 British Consuls

- * A **British Consul** is an official appointed by the Foreign and Commonwealth Office of Her Majesty’s Government to reside in a foreign port or place in order to protect the commercial interests of British subjects locally. The British Consul in a particular place should not be confused with the **British Council**⁵.
- * A British Consul also has a **duty to protect the interests of a British ship**, regardless of the nationality of its master or crew.
- * As “**proper officers**” under Merchant Shipping Acts and regulations (see B05b.3d), British Consuls have a wide range of **statutory duties in connection with merchant shipping**, including duties concerning:
 - engagement and discharge of crew, crew agreements, list of crew, and exemption provisions;
 - seamen’s wages and wages disputes;
 - relief and repatriation of seamen left behind;
 - returns and reports of births and deaths at sea;
 - inquiries into deaths;
 - Official Log Books;
 - manning of ships;
 - health, provisions and water;
 - seamen’s documents;
 - depositions (protests) and certified log extracts; and
 - many other matters.
- * British Consuls are **the representatives of British law** at their ports. They are also often in a position to render to British shipping interests valuable services which lie outside the administration of the law.
- * British Consuls have a duty to **report to the Department for Transport (DfT)** matters of **general commercial interest** to the UK Government such as changes in port regulations, port charges or general dues on shipping, strikes affecting shipping, new trading facilities, impending developments in commerce of any kind, epidemic diseases or conditions making it unsafe for British ships to enter or stay at the port. They also have a duty to **report to the Foreign and Commonwealth Office** when a British ship is **detained** or **arrested** by any foreign authority, and to adopt all suitable means for obtaining its release and indemnity.
- * British Consuls have a duty to **warn British shipmasters** of dangers in their ports, and to help masters by advising them of all **regulations in force** at their ports.
- * Whenever the master of a British ship attends the British Consulate at a large port to transact business, it is appropriate for the **Consul himself**, or the **Vice-Consul**, to deal with him.
- * In business transactions the consul has the powers of a **notary public** and of a **commissioner for oaths**. He is thus empowered to register **protests** by masters.
- * Consuls and Vice-Consuls are referred to as **proper officers** throughout British merchant shipping legislation. Broadly, a proper officer is any official performing the duties of a DfT Marine Office superintendent.
- * The equivalent official to a Consul at a port in a **British Overseas Territory**, such as Gibraltar, Port Stanley (Falkland Islands), etc., is a **Shipping Master**. Shipping Masters are also **proper officers** and carry out the same functions as Consuls under the Merchant Shipping Acts.

⁵ The **British Council** is the UK’s international organisation for educational and cultural relations, operating from 227 towns and cities in 109 countries worldwide. It connects people in those countries with learning opportunities and creative ideas from the UK, thus helping to build lasting relationships between the UK and other countries. It is a national, non-departmental public body, sponsored by the Foreign and Commonwealth Office and registered as a charity in the UK. Foreign seafarers may sit certain UK-administered examinations, including Certificate of Equivalent Competency examinations (see E02c.19), at their local British Council office.

- * A **Consular Fees Order** prescribes the current level of **fees** to be levied by consular officers in the exercise of their duties. The Order currently in force is **The Consular Fees Order 1999** (SI 1999/655), as amended by The Consular Fees (Amendment) Order 1999 (SI 1999/3132). In connection with **ships and shipping**, fees were levied at the time of writing as follows:
- Granting or considering whether to grant a **provisional certificate of registry**, whether the owner is a private individual or body corporate: £210.00.
 - Receiving a **return of the birth or death** of any person on board a ship and endorsing the agreement with the crew accordingly: £30.00.
 - Examining or arranging for the **examination of provisions or water**, payable by the party who proves to be in default in addition to the cost, if any, of survey: £30.00.
 - **Noting a marine protest** and furnishing one certified copy if required: £25.00; and for every further copy: £25.00.
 - **Extending a marine protest**, filing the original and furnishing one certified copy if required -
 - (a) for any number of words up to 200, excluding the declaratory clause: £60.00
 - (b) for every subsequent 100 words or less, in addition to the foregoing fees where applicable: £25.00
 - Making a **request**, or issuing or arranging for the **issue of a document**, in connection with a **survey of a ship** -
 - (a) for the purposes of SOLAS 74 or of MARPOL 73/78: £40.00.
 - (b) for any other purpose in addition to fee where applicable: £72.00.
 - Issuing a **bill of health**: £25.00.
 - **Preparing or signing, or both, any document**, whether required by the Merchant Shipping Acts or by the local authorities, **relating to the master or the members of the crew** of a ship, to their numbers, names or other details, or to their engagement, discharge, desertion or death except where -
 - (a) fee 43 is taken in addition to fee 35, or
 - (b) a death inquiry is held under section 271 of the Merchant Shipping Act 1995: £40.00.
 - **Signing and, if required, sealing any documents** at the request of the master of the ship except where-
 - (a) this is required under the Merchant Shipping Acts, or
 - (b) fee 49 is taken: £40.00.
 - **Inspecting** -
 - (a) a **ship's papers** when required to enable a consular officer to do any matter or thing in respect of a ship except where fee 49 is taken in addition to fee 35: £30.00;
 - (b) the **marking of a ship**, irrespective of the number of visits, in addition to fee 35: £30.00.

B03 English law

English law has formed the model for the law of many flag States, especially Commonwealth countries. It is the preferred jurisdiction of many foreign parties to maritime contracts who wish to resolve their disputes. Aspects of English law that are relevant to shipmasters are outlined in this section. Since offences under UK merchant shipping legislation may in certain circumstances be tried in Scottish courts, the structure and procedures of Scottish courts are also outlined in this section.

B03a CLASSES OF LAW CONCERNING SHIPMASTERS

- include **common law**, **equity**, **statute law**, **case law**, **civil law**, **criminal law**, **European Community law**, and **Admiralty law**.

B03a.1 Common law

- is defined in The Shorter Oxford English Dictionary as “the unwritten law of England, administered by the King’s courts, based on ancient and universal usage, and embodied in commentaries and reported cases. (Opp. to *statute law*)”.
 - comprises **ancient customs**, **judicial decisions** (or **precedents**) and **enacted laws**.
 - is recorded in **law reports** and **legal textbooks**, but not in statutes.
- * A **judicial precedent** is a decision of a court (i.e. a judgement), normally recorded in a **law report**, and often in legal textbooks, and used as an authority in reaching a similar decision in a subsequent case. A decision of the House of Lords is binding on the Court of Appeal and all lower courts and a decision of the Court of Appeal is

binding on all lower courts. A decision of the High Court is binding on all lower courts, but a decision of any lower court does not create a binding precedent. By the **doctrine of precedent**, where a lower court is bound by a previous decision of a higher court, it is only bound by those parts of the judgement forming the **principle** of the decision (called by lawyers the *ratio decidendi*), and is not bound by additional comments of the judge.

- * The body of law as set out in **judicial decisions** is sometimes referred to as **case law**. A case, the decision in which establishes an important principle of the law, becomes known as a **leading case** and will usually be quoted in legal textbooks. For example, a leading case concerning the definition of an “arrived ship” was *Oldendorff (E.L.) and Co. v. Trader Export SA (1973)*, in which was established the test: “Had the ship reached a position within the port where she was at the immediate and effective disposition of the charterers?”

B03a.2 Equity

- is **law based on principles** formulated by early Chancellors **for correcting injustices** arising where the common law was strictly adhered to.
- supplements the common law.
- is applied in all civil courts where it takes precedence in the event of a conflict with common law.

B03a.3 Statute law

- is the body of UK **law contained in statutes**, i.e. Acts of Parliament and orders, rules and regulations made under statutes. (These are printed and published by the government’s stationery office, HMSO⁶ and sold at Stationery Office bookshops.)
- is now the chief source of English law.

B03a.4 Civil law

- is law primarily concerned with the **rights and duties of individuals and companies** towards each other. It is made by judges in the civil courts and includes the **law of contract**, the **law of tort**, the **law of property**, the **law of succession**, **family law**, and **admiralty law**.
- is dealt with mostly by the **civil courts** which have a separate system and procedure from the criminal court system and procedure. Its object is not the punishment of the wrongdoer but to give a remedy to the persons wronged. There are no penalties in civil law, but the “losing” party could be ordered to pay damages, or perform a contract, or not do something that he would otherwise do, etc.

B03a.5 Criminal law

- is that part of the law which characterises certain kinds of wrongdoings as **offences against the State** which are punishable by the State. These offences do not necessarily violate the rights of any individual.
- is mostly **laid down in parliamentary statutes** (i.e. primary legislation) such as the Merchant Shipping Acts, and **secondary legislation** such as Merchant Shipping Regulations.
- is recorded for the reference of lawyers, judges and academics in textbooks such as *Archbold*.
- is mostly enforced in the UK by the police and is dealt with by the **criminal courts**.

⁶ **HMSO** should not be confused with **The Stationery Office Limited** (tSO) the private sector company which acquired the trading functions of HMSO following privatisation in 1996. HMSO oversees the printing and publication of all UK legislation and related official materials in traditional print formats and via the internet. It also regulates the use, licensing of re-use of all information produced by government which is protected by Crown copyright.

B03a.6 European Community legislation

- **applies in the UK** as a consequence of the UK's membership (since 1 January 1973) of the European Union⁷ (EU).
- is applied in all EU member States by the **European Court of Justice** (ECJ) in accordance with the provisions of various treaties, e.g. the Treaty of Rome, which are binding on member States. The ECJ plays an important part in the UK's judicial system, most notably in the field of employment law. Under Article 234 of the Treaty of Rome, any UK court may refer questions on points of EU law to the ECJ, and the decision of the ECJ will be binding on the national court and in other, future cases. A decision of the ECJ relating to a case in one EU member States will be binding in all other member States. The ECJ is not bound by its own previous decisions, however.
- stands alongside UK statute law, common law and equity in the UK, but **takes precedence** over them where there is any conflict.
- can be viewed on the **Eur-Lex website** at <http://europa.eu.int/eur-lex/index.html>
- * Chief instruments of EC law include **Regulations, Directives** and **Decisions**.
- * **EC Regulations** are binding in all EU member States without requiring any implementation or adoption by national parliaments. They apply directly and take precedence over national law. They may create rights which are enforceable by individuals in their national courts. An example is Council Regulation (EC) No 3051/95 of 8 December 1995 on the safety management of roll-on/roll-off passenger ferries (ro-ro ferries).
- * **EC Directives** are instructions to EU member States to adapt their national law to conform with EC requirements. EC Directives (and their forerunners, EEC Directives) are binding, but leave EU member States a choice as to the method by which the requirements of the Directive are met. In the UK this may be through an Act of Parliament or through delegated legislation, such as a Statutory Instrument. Several **EC Directives concerning merchant shipping** have been implemented in the UK by Merchant Shipping regulations, e.g. EC Directive 95/21/EC concerning the port State control of shipping in EC ports, implemented by the MS (Port State Control) Regulations 1995 and Council Directive 98/18/EC on Safety Rules and Standards for Passenger Ships, implemented by the MS (Passenger Ships on Domestic Voyages) Regulations 2000 (SI 2000/2687). For an **index of Directives** referred to in the text of this book, see B04d.
- * **EC Decisions** are binding in their entirety on those to whom they are addressed, whether they be EU member States, companies or individuals. Decisions of the European Court of Justice are binding on the highest courts of EU member States; thus the UK House of Lords must accept a European Court Decision as binding. An example is Commission Decision of 30 September 1996 on the publication of the list of recognised organisations which have been notified by member States in accordance with Council Directive 94/57/EC.

B03a.7 Admiralty law

- is the distinct body of civil law (both substantively and procedurally) that deals mainly with **navigation and shipping** matters including **collisions, salvage, damage to cargo, maritime liens** and **arrest** of ships. **Piracy** is also a matter of admiralty law.
- is dealt with in the UK by the **Admiralty Court** (see B03b.7). The word "admiralty" in this context has nothing to do with the Ministry of Defence.
- * The law of many maritime nations includes a body of admiralty law, and in some countries, e.g. South Africa and Canada, it is very similar to English admiralty law. In the admiralty law of certain other countries, e.g. China, there are marked differences from what is considered the international norm. P&I club bulletins occasionally draw the attention of club members to these differences, where relevant to members' operations.

⁷ **EU member States** are currently Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom (15). Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia (10) are scheduled to join the EU in June 2004. The EU is the result of a process of co-operation and integration, which began in 1951 between 6 countries. After four waves of accessions there are now 15 Member States in the EU and it is preparing for its fifth enlargement. The name "EU" came into use on 1 November 1993 when the Maastricht Treaty entered into force. The EU unites under one "roof" the three "pillars" of European co-operation: the European Community (EC) (including the single market and single currency), the Common Foreign and Security Policy, and the area of Justice and Home Affairs (JHA) co-operation. **European Community (EC) law** is applicable in all EU Member States.

B03b UK COURTS, LEGAL PROCEEDINGS AND PENALTIES

B03b.1 Criminal courts and procedures

- administer and apply the existing **criminal law** but **cannot make new criminal law**, since it can only be made by Parliament.
- use two **procedures** for dealing with criminal cases: **summary procedure** and **solemn procedure**.
- * The legislation creating a particular offence will also determine how that offence may be tried. Certain offences are triable only by lower courts, using summary procedure while other offences are triable by either higher or lower courts (these offences being known as “**either way offences**”). Many breaches of UK merchant shipping legislation are “either way offences”.

B03b.1a Summary procedure and summary conviction

- * **Summary procedure** is used for trying cases involving relatively minor offences, such as minor breaches of road traffic regulations or merchant shipping regulations. A criminal prosecution is normally begun in the name of the **Crown** (i.e. the State) through the **police** and the **Crown Prosecution Service (CPS)** or, in Scotland, the **Procurator-Fiscal**. The decision whether or not to press the prosecution is not the concern of the victim. For an offence to be summarily triable, the legislation creating the offence must provide for a penalty on **summary conviction**; most merchant shipping offences are summarily triable.
- * If it is decided by the CPS or Procurator-Fiscal that there is sufficient evidence to take the case to court, the case might cited as: *R. v. Munro*. (“R” stands for Regina, i.e. the Queen.) The Crown, signified by Regina, **prosecutes** Munro (the defendant, or, in Scotland, defender). The defendant, if not already in custody, is **summonsed** to appear before the court, which consists of magistrates (or in Scotland, usually a sheriff but in some cases magistrates) sitting without a jury. The **magistrates or sheriff decide questions of both fact and law**. Magistrates (who are Justices of the Peace or JPs) are not usually qualified in law and are mostly lay persons who may hear only minor cases and may impose lesser sentences than may judges or sheriffs. Magistrates and sheriffs may **commit** an accused for **trial at a higher court** (e.g. the Crown Court in England or Wales, or the High Court in Scotland).
- * If the defendant is found guilty of the offence there is a **summary conviction**. The defendant may then be punished by one of a range of sentences that the court is allowed by statute to impose. For most criminal offences a magistrate or sheriff may impose a maximum fine of £5,000 (the “**statutory maximum**” for many merchant shipping offences) or a maximum prison sentence of 3 months (but in some circumstances, 6 months).
- * Numerous provisions of merchant shipping legislation provide for a **fine on summary conviction**. This may be stated as a particular sum (e.g. “£1000”), or as “**fine of the statutory maximum**” (meaning the maximum allowed to be imposed for the particular offence being tried), or as a certain “**level on the standard scale**” (see B03b.3c).
- * For **two offences** a shipmaster may be fined up to **£250,000** on summary conviction (see B03b.3d).
- * For **eleven offences** a shipmaster may be fined up to **£50,000** on summary conviction (see B03b.3e).
- * For **two offences** a shipmaster may be fined up to **£25,000** on summary conviction (see B03b.3f).

B03b.1b Solemn procedure and conviction on indictment

- * **Solemn procedure** is used for trying cases involving the more serious offences. Breaches of some pieces of legislation does not carry a sentence on **conviction on indictment**, and can therefore only be dealt with by summary procedure.
- * The defendant is **indicted** to appear before the court, which consists of a **judge** sitting with a **jury** of 12 members of the public (or 15 in Scotland). The judge decides questions of law and directs the jury accordingly. The jury decides questions of fact (i.e. whether the defender is telling the truth) and whether he is guilty of the charge, or not.
- * If the jury find the defendant guilty, a **conviction on indictment** results and the judge passes a sentence. Acts of Parliament and statutory instruments (SIs) lay down the maximum sentence for most criminal offences. For breaches of merchant shipping legislation a judge may normally impose an **unlimited fine** and/or a maximum sentence of **2 years’ imprisonment** on summary conviction.
- * **Penalties** for breaches of particular regulations are prescribed in the SI, e.g. regulation 15(1) of the MS (Musters, Training and Decision Support Systems) Regulations 1999 (SI 1999/2722), which provides that “if, in respect of a ship, there is a breach of any of the requirements of these Regulations the master and the owner shall each be guilty of an offence punishable on summary conviction by a fine not exceeding the statutory maximum or, on conviction on indictment, by imprisonment for a term not exceeding two years, or an unlimited fine, or both”.
- * If the case merits a more severe penalty than the judge can impose, he can send the case to a **higher court**.

- * **Appeals** against sentence are heard in a higher court than that passing the sentence. The **appeal judges** can lower or raise the sentence, or quash it.
- * Information on the work of certain courts in England and Wales, including the High Court and Crown Courts, is provided on the **Court Service website** at www.courtservice.gov.uk
- * Information on **Scottish courts** can be viewed at www.scotcourts.gov.uk and www.district-courts.org.uk

B03b.1c Ranking of criminal courts in England and Wales

- * In ascending order of authority the ranking of criminal courts in England and Wales is:
 1. Magistrates’ Court;
 2. Crown Court;
 3. Court of Appeal (court of appeal only);
 4. House of Lords (court of appeal only).

B03b.1d Ranking of criminal courts in Scotland

- * In ascending order of authority the ranking of criminal courts in Scotland is:
 1. District Court⁸;
 2. Sheriff Court;
 3. High Court of Justice;
 4. High Court of Justiciary in Edinburgh.

B03b.2 Legal proceedings in criminal cases under Merchant Shipping Act 1995

- * **Primary legislation relating to legal proceedings** against persons committing offences on or in connection with UK ships is contained in Part XII of the Merchant Shipping Act 1995, sections 274 to 291, as shown in the following table.

Section	Section title	SBC reference
274	Time limit for summary offences	B03b.2a
275	Time limit for summary orders	-
276	Summary offences: Scotland	B03b.2b
277	Offences by officers of bodies corporate	B03b.2c
278	Offences by partners, etc. in Scotland	B03b.2c
279	Jurisdiction in relation to offences	B03b.2e
280	Jurisdiction over ships lying off coasts	B03b.2f
281	Jurisdiction in case of offences on board ship	B03b.2g
282	Offences committed by British seamen	B03b.2h
283	Return of offenders	B03b.2i
284	Enforcing detention of ship	B05d.4d
285	Sums ordered to be paid leviable by distress on the ship	I02f
286	Depositions of persons abroad admissible	B05f.2
287	Admissibility in evidence and inspection of certain documents	D05d.1
288	Admissibility of documents in evidence	D05d.1
289	Inspection and admissibility in evidence of copies of certain documents	D05d.1
290	Proof, etc of exemptions	-
291	Service of documents	I02e

B03b.2a Time limit for summary offences

- * **Section 274(1) of Merchant Shipping Act 1995** provides that, subject to sections 274(2) and 274(3) no person may be convicted of an offence under the Act in **summary proceedings** unless the proceedings were commenced within **six months** beginning with the date on which the offence was committed, or in a case where the accused was out of the UK during that period, the proceedings were commenced within **two months of his first arrival in the UK** and within **three years** from the date on which the offence was committed. Section 274(2) provides that section 274(1) does not apply in relation to any **indictable offence**.
- * Under section 274(3), the time limits in section 274(1) will not prevent a conviction for an offence in summary proceedings begun within **three years** from the date on which the offence was committed and within -
 - **six months** from the day when evidence which the MCA considers is sufficient to justify a prosecution for the offence came to their knowledge; or

⁸ For a note on section 276, Merchant Shipping Act 1995 relating to the district court, see B03b.2b.

- **two months** from the day when the accused was first present in the UK after the end of the six-month period mentioned in the last sub-paragraph if throughout that period the accused was absent from the UK.

B03b.2b Summary offences in Scotland

- * **Section 276 of the Merchant Shipping Act 1995** provides that, in Scotland, all prosecutions in respect of offences under the Act in respect of which the maximum penalty which may be imposed does not exceed imprisonment for a period of three months or a fine of level 4 on the standard scale, or both, may be tried in “a summary manner” (i.e. summary proceedings) before the district court.

B03b.2c Offences by officers of bodies corporate and Scottish partners

- * **Section 277(1) of the Merchant Shipping Act 1995** provides that where a body corporate is guilty of an offence under the Act or any instrument made under it, and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, he as well as the body corporate will be guilty of that offence and will be liable to be proceeded against and punished accordingly. Section 277(2) provides that where the affairs of a body corporate are managed by its members, section 277(1) will apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate. These provisions are found (usually immediately after the main “Offences and Penalties” regulation) in a few modern SIs, notably Regulations giving effect to EC Directives on health and safety matters applying to ships operating in the EU⁹.
- * **Section 278** makes a similar extension of criminal liability where a partnership or unincorporated association in Scotland is guilty of an offence under the Act.

B03b.2d Offences committed due to the act or default of another person

- Some SIs¹⁰ contain a regulation (usually found immediately after the main Offences and Penalties regulation) providing that where the commission by any person of an offence is due to the act or default of **some other person**, that other person will be guilty of the offence and may be charged with and convicted of the offence whether or not proceedings are taken against the first-mentioned person.

B03b.2e Jurisdiction in relation to offences

- * **Section 279(1) of the Merchant Shipping Act 1995** provides that, for the purpose of conferring jurisdiction, any offence under the Act (e.g. an offence committed on a ship outside the UK, perhaps in waters under the jurisdiction of another State) will be deemed to have been committed in any place in the UK where the offender may be for the time being, and any matter of complaint will be deemed to have arisen where the person complained against may be for the time being.

B03b.2f Jurisdiction over ships lying off coasts

- * **Section 280(1) of the Merchant Shipping Act 1995** provides that where the area within which a court in any part of the UK has jurisdiction is situated on the coast of any sea or abuts on or projects into any bay, channel, lake, river or other navigable water the court will have jurisdiction as respects offences under the Act over any vessel being on, or lying or passing off, that coast or being in or near that bay, channel, lake, river or navigable water and over all persons on board that vessel or for the time being belonging to it.

B03b.2g Jurisdiction in case of offences on board ship

- * **Section 281 of the Merchant Shipping Act 1995** provides that where any person is charged with having committed any offence under the Act, then -
 - if he is a **British citizen** and is charged with having committed the offence **on any UK ship on the high seas, in any foreign port or harbour, or on any foreign ship to which he does not belong**; or

⁹ Examples of such SIs are the MS & FV (Manual Handling Operations) Regulations 1998 (SI 1998/2857), the MS & FV (Personal Protective Equipment) Regulations 1999 (SI 1999/2205) and the MS & FV (Safety Signs and Signals) Regulations 2001 (SI 2001/3444).

¹⁰ Examples are the MS (Prevention of Oil Pollution) Regulations 1996 (SI 1996/2154), the MS (Dangerous Goods and Marine Pollutants) Regulations 1997 (SI 1997/2367) and the MS (Carriage of Cargoes) Regulations 1999 (SI 1999/336).

- if he is **not a British citizen** and is charged with having committed the **offence on any UK ship on the high seas**,
- and he is found within the jurisdiction of any court in the UK which would have had jurisdiction if the offence had been committed on a UK ship (within the limits of its ordinary jurisdiction to try the offence), that court will have jurisdiction to try the offence.

B03b.2h Offences committed by British masters and seamen

- * Under **Section 282(1) of the Merchant Shipping Act 1995**, any act in relation to property or person done in or at any place (ashore or afloat) **outside the UK** by any master or seaman employed in a UK ship, which, if it had been done in any part of the UK, would be an offence under the law of any part of the UK, will -
 - be an offence under that law; and
 - will be treated for the purposes of jurisdiction and trial, as if it had been done within the jurisdiction of the Admiralty of England.
- * This provision also applies in relation to a person who **had been employed** as a master or seaman in a UK ship within the period of **three months** expiring with the time when the act was done. It also applies to **omissions** (e.g. omissions to perform specified duties under regulations) as they apply to acts.

B03b.2i Return of offenders

- * **Section 283 of the Merchant Shipping Act 1995** gives powers to proper officers to return to the UK masters and seamen who are alleged to have committed offences outside the UK.
- * **Section 283(1)** provides that the powers conferred on a British consular officer by subsection 282(2) are exercisable in the event of any complaint being made to him -
 - that any offence against property or persons has been committed at any place (ashore or afloat) outside the UK by any master or seaman who at the time when the offence was committed, or within three months before that time, was employed in a UK ship; or
 - that any offence on the high seas has been committed by any master or seaman belonging to any UK ship.
- * Section 283(2) gives the proper officer power to **inquire** into the case upon oath, and if the case requires it, to take **any steps in his power** for the purpose of placing the offender under the necessary **restraint** and **sending him by UK ship** as soon as practicable in safe custody **to the UK** for proceedings to be taken against him.
- * Under section 283(3) the consular officer may, subject to subsections 283(4) and (5), **order the master of any UK ship which is bound for the UK** to receive and carry **the offender and witnesses to the UK**. The proper officer must endorse any relevant particulars on the ship's **Crew Agreement** as required by the MCA.
- * Under section 283(4) a consular officer may not exercise the power conferred by subsection 283(3) unless **no more convenient means of transport** is available or it is available only at **disproportionate expense**.
- * Under section 283(5) no master of a ship may be required under subsection 283(3) to receive more than **one offender for every 100 tons of his ship's registered tonnage** (i.e. net tonnage) or **more than one witness for every 50 tons** of his ship's registered tonnage.
- * Section 283(6) provides that the master of any ship to whose charge an offender has been committed under subsection 283(3) must, on his ship's arrival in the UK, give the offender into the custody of some **police officer or constable**.
- * Section 283(8) provides that the **expense** of imprisoning an offender and of **carrying him and witnesses** to the UK otherwise than in the ship to which they respectively belong must be paid out of **money provided by Parliament**.
- * Under section 283(9) references in section 283 to carrying a person in a ship include affording him **subsistence** during the voyage.

B03b.2j Restriction on UK jurisdiction over oil pollution offences outside UK limits

- * **Regulation 38(1) of the MS (Prevention of Oil Pollution) Regulations 1996** (SI 1996/2154) provides that no proceedings for breaches of the "discharge regulations" (regulations 12, 13 or 16) by a non-UK ship, where the discharge was in the internal waters, territorial waters or EEZ of another State will be instituted (in the UK) unless:
 - that State, the flag State or a State damaged or threatened by the discharge requests proceedings to be taken; or
 - the discharge has caused or is likely to cause pollution in the internal waters, territorial sea or controlled waters of the UK.
- * Where proceedings as above in respect of an offence by a non-UK ship have been commenced but not concluded, and the State concerned requests their suspension, then the proceedings will be suspended and the DfT will send all the case documents, etc. to the other State (regulation 38(2)).
- * It will be a **defence** under regulation 38(3) for a person charged with an offence as above to show:

- that the ship is not a UK ship; and
- the discharge took place outside the UK, its territorial waters and the controlled waters of the UK; and
- the ship was in a port in the UK at the time of institution of proceedings due to stress of weather or other reason beyond the control of the master, owner or charterer.

B03b.2k Admissibility of depositions of persons abroad

- * **Section 286** provides that if the **evidence** of any person is required in the course of legal proceedings but that person cannot be found in the UK, any **deposition** that he may previously have made outside the UK in relation to the same matter will, subject to certain conditions, be admissible in evidence. For a deposition to be admissible in evidence it must have been taken on oath before a justice or magistrate in any colony or a British consular officer in any other place, must be authenticated by the signature of the justice, magistrate or consular officer, and must, in the case of criminal proceedings, have been taken in the presence of the accused.
- * For notes on the **use of documents in legal proceedings**, see D05d.

B03b.3 Penalties

B03b.3a Penalties provisions in Merchant Shipping legislation

- * A vast number of provisions of Merchant Shipping legislation, whether sections of Acts or regulations in statutory instruments, create offences that carry a **criminal penalty**. Where several duties are laid down in the legislation there may be different penalties for breach of different duties. Any penalty must be clearly stated before it can be enforced by the courts.
- * Any section of an Act containing duties will probably carry a penalty for breach of those duties, but the penalty will not usually be in a clearly-headed and separate section of the Act; the relevant section must therefore be carefully read to ascertain the penalty, if any.
- * In Merchant Shipping and other statutory instruments the regulation containing the penalty or penalties is usually clearly headed “**Offences and Penalties**” or in some cases “**Penalties**”, and is most often found at the end of the regulations, often preceding a further regulation allowing one or more **defences**.
 - Every offence must be **triable** in some form of court proceedings, i.e. either summary procedure (see B03b.1a) or solemn procedure (see B03b.1b). Some offences are triable only in summary proceedings in which case the penalty will refer to “**summary conviction**”. Many offences are indictable and are therefore triable “either way”, i.e. either in summary procedure or solemn procedure, and in this case the penalty provision will also lay down a penalty “**on conviction on indictment**”.

B03b.3b Fines not exceeding the statutory maximum

- The penalty on summary conviction for breach of a statutory provision may be specified in the relevant piece of legislation as “**a fine not exceeding the statutory maximum**”. The **statutory maximum** is currently **£5000**.

B03b.3c Standard scale of fines

- * For breaches of most pre-1982 UK legislation a **fixed sum penalty** on summary conviction, e.g. a maximum fine of £50, was prescribed. Whenever amendment became necessary in order to raise the specified fines to realistic sums reflecting current levels of wealth, numerous pieces of legislation required individual amendment, which was difficult, slow and costly.
- * **Section 37 of the Criminal Justice Act 1982** (CJA 1982) introduced a **standard scale of fines** consisting of **five levels**, each equating to a monetary sum which could be amended periodically to reflect changes in national income levels. Every piece of legislation providing for a fine of a specified level on the standard scale can be amended by means of one piece of legislation which amends the CJA 1982. In post-1982 legislation, fines specified as penalties on summary conviction are either a fine of the **statutory maximum** (see B03b.3b) or a fine of a specified level on the standard scale.
- * The current levels of the standard scale came into effect on 1 October 1992 and are as follows:
 - Level 1:** £200;
 - Level 2:** £500;
 - Level 3:** £1000;
 - Level 4:** £2500;
 - Level 5:** £5000.

* The courts are required by law to have regard to the **means of the accused** when determining the level of the fine to be imposed in any particular case.

B03b.3d £250,000 offences by masters

* Masters breaching UK merchant shipping legislation are liable to a maximum fine on summary conviction of **£250,000** for **two offences** which are both related to oil pollution, as shown in the following table.

Offence (with offender shown in bold)	Legislation contravened	Penalties provision and penalties on summary conviction (SC) & conviction on indictment (COI)
Failure by ship to comply with any requirement of regulation 12, 13 or 16 (the “discharge regulations”). (Owner and master)	Regulations 12, 13 or 16, MS (Prevention of Oil Pollution) Regulations 1996	Reg. 36(2), as amended by reg. 8, MS (Prevention of Oil Pollution) (Amendment) Regulations 1997. SC: A fine not exceeding £250,000. COI: A fine.
Oil or mixture containing oil is discharged into UK national waters which are navigable by sea-going ships. ((a) Owner or master , unless he proves that the discharge took place and was caused as in (b). (b) If the discharge is from a ship but takes place in the course of a transfer of oil to or from another ship or a place on land and is caused by the act or omission of any person in charge of any apparatus in that other ship or that place, the owner or master of that other ship or, as the case may be, the occupier of that place .)	Section 131(1), Merchant Shipping Act 1995	S.131(3), Merchant Shipping Act 1995 as amended by s.7(1), Merchant Shipping and Maritime Security Act 1997. SC: A fine not exceeding £250,000. COI: A fine.

B03b.3e £50,000 offences by masters

* Masters breaching UK merchant shipping legislation are liable to a maximum fine on summary conviction of **£50,000** for **eleven offences**, as shown in the following table. Five of these are listed in **M.1255** as being offences under Merchant Shipping Act 1979; these have been transferred to, and added to by, the Merchant Shipping Act 1995 and the Merchant Shipping and Maritime Security Act 1997.

Offence (with offender shown in bold)	Legislation contravened	Penalties provision and penalties on summary conviction (SC) & conviction on indictment (COI)
Master or owner of a ship which is not a British ship does anything, or permits anything to be done, for the purpose of causing the ship to appear to be a British ship.	Section 3(1), Merchant Shipping Act 1995	Section 3(6). SC: A fine not exceeding £50,000. COI: Max. 2 years imprisonment or a fine or both. Ship liable to forfeiture under section 3(1).
Master or owner of a British ship does anything, or permits anything to be done, for the purpose of concealing the nationality of the ship. (Master, owner and any charterer)	Section 3(1), Merchant Shipping Act 1995	Section 3(6). SC: A fine not exceeding £50,000. COI: Max. 2 years imprisonment or a fine or both. Ship liable to forfeiture under section 3(4).
Master fails to render assistance to and stay by the other ship following a collision.	Section 92(1)(a), Merchant Shipping Act 1995	Section 92(4)(a). SC: A fine not exceeding £50,000 or max. 6 months imprisonment or both. COI: Max. 2 years imprisonment or a fine or both.
Ship in a UK port, or a UK ship in any other port, is dangerously unsafe. (Master and owner/charterer/manager)	Section 98(1), Merchant Shipping Act 1995	Section 98(3). SC: A fine not exceeding £50,000. COI: Max. 2 years imprisonment or a fine or both.
Ship enters or remains in a temporary exclusion zone or a part of such a zone in contravention of Section 100B(1) or (3). (Owner and master)	Section 100B(1) or (3), Merchant Shipping Act 1995.	Section 100B(6) ¹¹ . SC: A fine not exceeding £50,000. COI: Max. 2 years imprisonment or a fine or both.
Contravention of, or failure to comply with, a section 137 direction ¹² as respects ship or cargo given following a shipping casualty. (Person to whom direction was given)	Section 139(1), Merchant Shipping Act 1995	Section 139(4). SC: A fine not exceeding £50,000. COI: A fine.
Intentionally obstructing any person (a) acting on behalf of the Secretary of State in connection with the giving or service of a section 137 direction or (b) acting in compliance with the direction or (c) acting under section 137(4) or (5). (Any person so obstructing)	Section 139(2), Merchant Shipping Act 1995	Section 139(4). SC: A fine not exceeding £50,000. COI: A fine.

¹¹ Section 100B was added to MS Act 1995 by virtue of Section 1 of the Merchant Shipping and Maritime Security Act 1997 (c.28).

¹² This means directions given by the Secretary of State’s Representative (SOSREP) in a salvage/pollution incident affecting in UK waters.

Ship enters or leaves, or attempts to enter or leave, a port or arrives at or leaves, or attempts to arrive at or leave, a terminal in the UK (or, if the ship is a UK ship, in any other country), without having a valid OPIC certificate in force. (Master or owner)	Section 163(5), Merchant Shipping Act 1995	Section 163(5). SC: A fine not exceeding £50,000. COI: A fine. Ship attempting to leave a port in the UK in contravention of section 163 may be detained.
Ship which has been detained, or as respects which notice of detention or an order for detention has been served on the master, proceeds to sea before it is released by a competent authority. (Master)	Section 284(2), Merchant Shipping Act 1995	Section 284(2). SC: A fine not exceeding £50,000. COI: A fine.
Failure to ensure that there is not on board a greater number of passengers than that stated on the ship's Passenger Ship Safety Certificate or Passenger Certificate. (Owner and master)	Regulation 23, MS (Survey and Certification) Regulations 1995	Reg. 24(5). SC: A fine not exceeding £50,000. COI: Max. 2 years imprisonment or a fine or both.
Infringement of Rule 10(b)(i) (duty to proceed with traffic flow in lanes of separation schemes). (Owner, master and any person for the time being responsible for the conduct of the vessel)	Regulation 4(1), MS (Distress Signals and Prevention of Collision Regulations 1996.	Regulation 6(1). SC: A fine not exceeding £50,000. COI: Max. 2 years imprisonment or a fine or both.

B03b.3f £25,000 offences by masters

- * Masters breaching UK Merchant Shipping legislation¹³ are liable to a maximum fine on summary conviction of **£25,000 for three offences** which are all related to pollution, as shown in the following table.

Offence (with offenders shown in bold)	Legislation contravened	Penalties provision and penalties on summary conviction (SC) & conviction on indictment (COI)
Breach of the requirements of regulations 4, 5, 6 or 7 (i.e. prohibited disposal of garbage outside Special Areas, prohibited disposal of garbage within Special Areas, prohibited disposal of garbage within 500 metres of fixed or floating installations, and breach of restriction on UK ships entering the Antarctic area). (Owner, manager, demise charterer and master)	Regulation 4, 5, 6 or 7, MS (Prevention of Pollution by Garbage) Regulations 1998	Reg. 14(2). SC: A fine not exceeding £25,000. COI: A fine.
Prohibited discharge of any noxious liquid substance, except where permitted by Schedule 2 of M.1703/NLS1. (Owner and master)	Regulation 5(a), MS (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996	Reg. 14(1), MS (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996 as amended by reg. 2, MS (Dangerous or Noxious Liquid Substances in Bulk) (Amendment) Regulations 1998. SC: A fine not exceeding £25,000. COI: A fine.
Contravention of requirement that tanks shall be washed, or prewashed, and the tank washings shall be dealt with, as prescribed in Schedule 2 of M.1703/NLS1. (Owner and master)	Regulation 5(b), MS (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996	Reg. 14(1), MS (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996 as amended by reg. 2, MS (Dangerous or Noxious Liquid Substances in Bulk) (Amendment) Regulations 1998. SC: A fine not exceeding £25,000. COI: A fine.

B03b.4 Civil courts

- deal with disputes involving **civil law**, e.g. concerning marriages, child custody, contractual breaches, copyright infringements, etc., i.e. non-criminal cases. The vast majority of cases heard are, in fact, divorce cases.
- **apply existing civil law** and, in some cases, **make new civil law**.

B03b.4a Civil court procedure

- * A **civil action** is started by a private individual or firm. They have the right to determine how far the action should continue.
- * A civil action might be cited as: *Jones v. Smith*. Jones (the plaintiff) sues Smith (defendant) for breach of contract, for example.
- * In England and Wales, civil cases are heard by circuit judges in the **county courts**. In Scotland, sheriffs and judges of the **Outer House of the Court of Session** usually sit alone, but may very occasionally sit with a jury of 12. The **plaintiff** (or pursuer in Scotland) brings an action against (i.e. sues) the **defendant** (defender in Scotland). In most cases, the remedy sued for is monetary damages.

¹³ A £25,000 fine on summary conviction is also provided for by section 5(1) of the Dangerous Vessels Act 1985 (see B04c.8) where a person (e.g. a master) contravenes or fails to comply with any directions given by a harbour master under section 1 (e.g. prohibiting entry or requiring removal of a ship).

- * A civil court cannot impose a fine or custodial sentence. If the action is successful, the result is a **judgement for the plaintiff** which may order the defendant to:
 - pay the plaintiff monetary **damages**;
 - **transfer property** to him;
 - refrain from doing something (**injunction** or, in Scotland, **interdict**); or
 - enforce the performance of a contract (**specific performance**).
- * An **appeal** against a judgement of a lower court may generally be heard by the next higher court.

B03b.4b Ranking of civil courts in England and Wales

- * In ascending order of authority the ranking is:
 - County Court;
 - High Court (of which the Admiralty Court is part);
 - Court of Appeal;
 - House of Lords.

B03b.4c Ranking of civil courts in Scotland

- * In ascending order of authority the ranking is:
 - Sheriff Court;
 - Outer House of the Court of Session;
 - Inner House of the Court of Session.

B03b.5 Differences in rules of evidence, etc. between criminal and civil systems

- * There are differences in the rules of evidence and procedure in the two systems. A criminal prosecution is more damaging to a person's character than failure in a civil action. Rules of evidence are therefore more strict in criminal cases, e.g. a confession is more carefully examined. In civil cases, by contrast, an admission is freely accepted.
- * The **standard of proof** is greater in criminal cases, but the accused must be proved **guilty beyond all reasonable doubt**. The plaintiff in a civil action will succeed **on the balance of probabilities**, i.e. if he can convince the court that he has only a marginally stronger case than that of the defendant.

B03b.6 Civil and criminal consequences of a wrong

- * The same series of events may give rise to both types of case. For example, a shipowner, as an employer, may be alleged to have left dangerous engine room machinery unguarded, causing injury to a seaman. Two types of issue arise. On one hand, failure to guard machinery, as a breach of a statutory requirement (see E08e.1), is a **criminal offence**: the employer may be prosecuted in a criminal court and if found guilty, may be punished. On the other hand, whether the employer caused loss to the injured seaman through negligence or failure to comply with his statutory duty may be determined in a separate **civil action** brought by the seaman in a civil court, where the seaman may claim damages from his employer.

B03b.7 The Admiralty Court

- * The **Admiralty Court of the Queen's Bench Division of the High Court of Justice** -
 - is a court in London with jurisdiction embracing **civil shipping matters**.
 - deals with cases concerning **collisions, salvage, navigation, loss of life or injury caused by ships, cargo loss, damage or delay, claims in rem, marine insurance, piracy**, etc.
- * The jurisdiction of the Admiralty Court does not extend to non-maritime matters.
- * A distinctive feature of the Admiralty Court's procedure is **action in rem**, i.e. against the thing, rather than action *in personam*, i.e. against a person or group of persons. For notes on **maritime liens**, see B03g.3.

B03c LAW OF CONTRACT

B03c.1 Nature of contracts

- * A **contract** is a legally binding agreement, i.e. one that will be enforced by the courts.
- * Everyday **domestic agreements** are not usually intended to be legally binding, and are therefore not contracts.
- * In a contract there must be ***consensus ad idem*** ("agreement on the same thing"), i.e. the contracting parties must agree to identical terms.
- * Agreement arises from **offer and acceptance**, but to be enforceable at law a number of **other elements** must be present (see B03c.3).

B03c.2 Categories of contract

- * A **voidable** contract is one that, because of misrepresentation, mistake, non-disclosure or undue influence, may be set aside by one of the parties, subject to certain restrictions (e.g. that both parties can be restored to their original positions and that the rights of a third party will not be upset if the contract is ended). A buyer of goods cannot, therefore, rescind the sale contract unless he can return the goods, and the seller cannot rescind if he has already sold the goods to a third party.
- * A **void** contract is one that has no legal force from the moment of its making, e.g. because of lack of capacity of the parties, or mistake.
- * An **illegal** contract is one that is prohibited by statute or is illegal at common law on the grounds of public policy and is automatically void since it is impossible to perform within the law.
- * An **unenforceable** contract, although valid, cannot be enforced because it is neither evidenced in writing not supported by a sufficient act of part performance. The contract might be not capable of proof, or not stamped (where stamping is required), or legal remedy may be barred by lapse of time.
- * A **valid** contract is one that does not fall into one of the above categories.

B03c.3 Elements of a contract

- * Every contract must be **entered into voluntarily** by **two or more parties** having legal **capacity** to contract and **intending** thereby to create a **legally binding relationship** between them.
- * Of the several **essential elements** in any contract, the most vital are:
 - **offer**;
 - **acceptance**; and
 - **consideration** (unless the contract is by deed).
- * The contract is concluded when one party makes an offer that is unconditionally accepted by the other party. The offer and acceptance may be made through the agency of one or more **brokers**.
- * If one party fails to keep its promise, the other is entitled to legal **remedy**.
- * Other **necessary elements** include
 - intention to create legal relations;
 - legal capacity;
 - legality;
 - possibility of performance;
 - sufficient certainty of terms; and
 - prescribed form.
- * **Intention to create legal relations**, i.e. to enter into a legally enforceable agreement, is necessary in a formal contract . (A purely social or domestic arrangement or agreement does not constitute a contract.)
- * **Legal capacity** is the legal right to enter into contracts. Under English common law some parties, including enemy aliens, convicts, infants and minors, lunatics and drunks, may not have the full legal capacity to contract, and a contract agreed by them may be unenforceable.
- * **Legality** of the contract is an important requirement. A contract that is prohibited by statute (e.g. a contract for the sale of prohibited goods, or a contract for the sale of goods to a country that is subject to an embargo) is an illegal contract. A contract that is illegal at common law on the grounds of public policy (e.g. a contract to commit a crime or a tort or to defraud the Inland Revenue, or a contract that prejudices national safety or the administration of justice) is an illegal contract. Illegal contracts are totally void, but neither party can recover any money paid or property transferred under it.

- * **Possibility of performance** If the performance of a contract is impossible when it was entered into, the whole contract becomes void.
- * **Sufficient certainty of terms** means that details of the contract must be stated (i.e. expressed) or ascertainable. There must be a precise meaning to the words, with no ambiguous clauses.
- * **Prescribed form** is necessary to make some contracts valid. In general no particular formality is required for the creation of a valid contract, and it may be oral, written, part-oral, part-written, or even implied from conduct. Some transactions are valid only if effected by deed (e.g. a transfer of shares in a British ship) or in writing (e.g. marine insurance contracts and promissory notes). Certain other contracts, although valid, can only be enforced at law if evidenced in writing.
- * The agreement must not be rendered void either by some inherent defect, such as **operative mistake**. Certain contracts, though valid, may be liable to be set aside by one of the parties on grounds such as **misrepresentation** or the exercise of **undue influence**.
- * A **misrepresentation** is an untrue statement of fact made by one party to the other in the course of negotiating a contract, that induces the other party to enter into the contract.
- * **Mistake** is a misunderstanding or erroneous belief about a matter of fact (mistake of fact) or a matter of law (mistake of law). A **mistake of law** has no effect on the validity of a contract, but a **mistake of fact** may make the contract voidable, i.e. liable to be set aside by one of the parties, subject to certain conditions.
- * **Duress** is pressure put on a person to act in a particular way, e.g. where a seafarer is ordered by the master of a ship changing articles during a voyage to sign a new crew agreement (i.e. a running agreement) before being discharged from the old one. Acts carried out under duress usually have no legal effect. A contract obtained by duress is voidable at law.
- * **Undue influence** is influence that prevents someone from exercising an independent judgement with respect to any transaction.

B03c.4 Contract terms

- * A written contract will usually set out the **rights, duties and obligations** of both parties in a set of terms dealing with matters of essential interest to the parties.
- * In carriage of goods contracts terms mainly cover the transport of the goods from one place to another and the keeping of the goods safe and undamaged during transport. For notes on **matters required to be covered by contractual provisions in crew agreements**, see E07c.1b.
- * Contract terms may usually be categorised as **conditions** (see B03c.4a) and **warranties** (see B03c.4b). A third, less important, categorisation is **innominate term** (see B03c.4c).

B03c.4a Conditions

- * A **condition** is an essential contractual term going right to the root of the contract. If a condition is breached by one party, the contract becomes void and need not be fulfilled by the other party. In principle, if a condition is breached, the contract may be revoked by the injured party and he need not complete it.
- * **Examples** of conditions are:
 - the (express) condition in a voyage charter that the vessel will be presented to the charterer at the agreed loading port during the agreed laydays; and
 - the (implied) condition in a marine insurance policy that the voyage will commence within a reasonable time of acceptance of the insurance and will be prosecuted with reasonable despatch throughout.

B03c.4b Warranties

- * Except in insurance law, where it has a different meaning, a **warranty** is a contractual term less essential than a condition, such that its breach would not have the effect of frustrating the contract and cause the whole contract to be revoked.
- * **Examples** of warranties are:
 - a charterer's warranty (to the shipowner) that the cargo loaded will not be dangerous to the ship; and
 - a shipowner's warranty (to his insurer) that the ship will be classed with a particular classification society and that class will be maintained.
- * A **breach of warranty** will, however, entitle the injured party to claim **damages** from the party breaching the warranty. If a warranty is breached, the contract remains in force but the injured party is entitled to claim damages from the party breaching the warranty. In practice, the distinction between conditions and warranties is often unclear and depends to a large extent on the contract's wording.

B03c.4c Innominate terms

- * An **innominate term** is a contractual term the identity of which as a condition or a warranty cannot be determined at the time the contract is made. Where an obligation in a contract is breached, the seriousness of that breach will determine the rights of the injured party, and only after that can it be determined whether the term was a condition or a warranty.

B03c.4d Implied terms

- * An **implied term** is a contractual term considered so obvious that it is unnecessary to express it in the contract. E.g. in (English) common law, in every contract of carriage of goods by sea there is an implied term that the carrier will provide a seaworthy ship.

B03c.4e Express terms

- * An **express term** is a contractual term which the parties consider materially affect their agreement, and is therefore expressed in the contract either **orally or in writing** (but most usually in writing). All the printed terms and conditions on a charter party form, in an employment contract document, etc. are thus express terms.

B03c.4f Standard terms and rider clauses

- * **Standard terms** of a contract are usually those of the offeror (e.g. an oil company as charterer) and are printed on a form of his choice (e.g. SHELLVOY 3). They may be amended by deletion or the addition of side clauses and rider clauses.
- * **Rider clauses** are typed clauses containing additional terms agreed by the parties. Charter parties commonly contain rider clauses covering matters not dealt with by the printed standard clauses. Where there is a conflict of terms, rider clauses supersede standard terms.

B03c.4g Side clauses, addenda and side letters

- * **Side clauses** are additional clauses or words containing amendments to clauses that are typed in the margins of the printed text of a standard contract, each having a line running to the precise point of insertion in the main text. They can radically alter the meaning of a printed clause and therefore require close scrutiny when reading any contract containing them. Charter parties commonly contain side clauses amending the printed words (see F04c.1).
- * **Addenda** to a contract, e.g. provisions of a charter party concerning the payment of freight or hire, may contain sensitive clauses that the parties do not, for reasons of security, want to be in the main charter party document.
- * A **side letter** may concern matters relating to the contract, such as a charterer's instructions to the master relating to the charter.

B03c.5 Discharge of contracts

- * **"Discharge"**, with reference to contracts (including crew agreements) means release from a legal obligation.¹⁴
- * A contract may be discharged by **performance, agreement, frustration or breach**.

B03c.5a Discharge by performance

- is the **carrying out** of the contractual obligations by both parties.

B03c.5b Discharge by agreement

- is where each party agrees that their obligations will be **waived**, e.g. where each party mutually agrees to cancel a future charter because of the non-availability of a ship or cargo.

¹⁴ When a seaman is discharged from a ship he is, in fact, being discharged from the contractual obligations of the crew agreement.

B03c.5c Discharge by frustration

- is where something occurs which is **not the fault of either party**, and was **not contemplated** by either of them, and **prevents the contract from being performed** as intended. It makes the contract void, since it is **impossible to perform** and therefore lacks an essential element for validity.

B03c.5d Discharge by breach

- occurs when **one party repudiates his obligation**, or disables himself from performing his part of the contract, or **fails to perform** his part of the contract on or by the agreed date.
- * A breach may be an **anticipatory breach**, i.e., occurring before the date for performance specified in the contract, or an **actual breach**.
- * An **actual breach** may occur in three ways:
 - by **non-performance**, e.g. where a ship is not at the agreed place on the agreed date to start a charter;
 - by **defective performance**, e.g. where a ship arrives late when time is important; or
 - through **untruth** as regards a term of the contract, e.g. where the true condition of a ship is concealed from a charterer.

B03c.6 Privity and assignment of contracts

B03c.6a Doctrine of privity

- * A contract is a private relationship between the parties to it, and no other party can acquire rights or incur liabilities under it. No party can acquire rights under a contract to which he is not a party, and no party can incur liabilities under a contract to which he is not a party. In other words, only the parties to a contract can sue and be sued on it. This is the common law **doctrine of privity**.

B03c.6b Transfer and assignment of contracts

- * In some cases, **rights and liabilities under a contract** may be **assigned**, i.e. transferred to a third party. Where a contract is originally between parties A and B, B may transfer the contract to party C and drop out of the contract so that it will then be between A and C. Party B will generally have no further rights or liabilities under the contract. This happens, for example, where goods are sold by an original consignee to a third party to whom the bill of lading is transferred (see F07b.7). The new consignee, as holder of an original bill of lading, has the right to claim delivery of the goods from the carrier, but may also be liable for unpaid freight, demurrage, etc.

B03c.7 Law and jurisdiction governing a contract

- * Every contract must be governed by the **law of some nation** or some set of **rules**. The governing law may be the law of the nation in which the contract was made or a nation mutually agreed by the parties to the contract. The nation or place in which disputes between the parties may be resolved is called the “**jurisdiction**”, and should also be clearly specified in the contract terms. The choice of law and jurisdiction should be clearly stated in the contract terms in a **Law and Jurisdiction Clause**. A typical Law and Jurisdiction Clause might read “*This contract shall be governed by English law and any disputes shall be determined in the United Kingdom*”.
- * The **preferred law** of parties to contracts of international carriage by sea is in many cases **English law**, and the preferred jurisdiction is often England or the UK¹⁵.
- * Contracts for the supply of goods or services in a foreign port will probably be governed by the law of the port State, and disputes may have to be referred to a local court¹⁶.
- * An agreement is often made to resolve disputes by **arbitration** in, for example, London or New York, rather than litigation in the courts; in this case an **Arbitration Clause** will be inserted in the contract and this should indicate the agreed **place** for the arbitration (see B03i.1). Some charter parties offer a choice of clauses providing, on the one

¹⁵ A Scottish ferry company's passenger ticket may provide that litigation arising out of the contract between a passenger and the company will be governed by Scottish law if the passenger brings the litigation in Scotland.

¹⁶ For example, the Law and Arbitration Clause in a contract for the sale of marine fuels at an Estonian port provides that any dispute must be submitted for resolution by the Court of Tallinn and that the laws of Estonia will govern the contract.

hand, for dispute resolution under **English law and arbitration in London** or, on the other, under **US law and arbitration in New York**.

- * Contracts of carriage evidenced by **bills of lading** usually contain a Paramount Clause (or “Clause Paramount”) providing that the contract will be governed by either the **Hague Rules** or **Hague-Visby Rules**, depending on which rules are compulsorily applicable under national law. Where national law applies neither of these rules the carrier usually inserts a clause making the Hague-Visby Rules applicable to the bill of lading contract (see F07c.2).

B03d AGENCY

B03d.1 Nature of agency

- * Any legal person (whether an individual, a firm, company, etc.) may appoint another legal person to **act on his behalf** in a particular matter, or in all his matters. The person thus appointed is an **agent**. The person on whose behalf the agent acts is his **principal**. The relationship between an agent and his principal is one of **agency**. The agency is created in most cases by **consent**, where the agent is given prior instructions to carry out a specific task or act in a certain capacity, but in some cases by later **ratification** of an act already performed (see B03d.3a).
- * An agent only needs to state that he is acting for a principal, and does not have to name the principal. An unnamed principal is called an **undisclosed principal**.

B03d.2 Agent's authority

- * The creation of an agency involves the giving of **authority** to the agent. The authority may be **actual authority** or **apparent authority** (also called **ostensible authority**).
- * **Actual authority** may be **express** or **implied**. **Express authority** is given by words (spoken or written), such as when an officer is appointed by letter to command of a ship. Authority is **implied** when it is inferred by the conduct of the parties and the circumstances of the case, such as when a shipmaster is appointed to command by a shipowner, who thereby impliedly authorises him to carry out, on the owner's behalf, all the usual things that fall within the scope of a master's position, e.g. engagement and discharge of crew, signing of bills of lading, and purchasing of provisions. An exception to this would be where the principal has expressly placed a restriction on the implied authority of the agent, e.g. where the master is expressly prohibited from signing bills of lading.
- * Where an agent's usual full authority is expressly restricted by his principal, but a third party, unaware of this restriction, is nevertheless brought by the agent into a contract with the principal, the agent has **apparent authority** (or **ostensible authority**) and the contract will (subject to the following conditions) be binding on the parties. There must be one or more representations (i.e. statements) by the principal or by the agent acting on his behalf. The representations must be of fact. They must be made to a third party, and the third party must rely on them.
- * Most agencies are created by the principal giving his agent **express instructions**, e.g. where a port agent is appointed by a shipowner to act during the forthcoming visit of a vessel, and is given certain instructions.

B03d.2a Breach of warranty of authority

- * An agent purporting to act on behalf of another party **impliedly warrants** that he has the authority to make contracts on behalf of his principal, i.e. he gives a **warranty of authority**.
- * Where an agent brings a third party into a contractual relationship with his principal, the third party is entitled to rely on the agent's apparent authority. If the agent has **acted outside his authority**, the third party, although unable to enforce the contract with the principal, can sue the agent for **breach of warranty of authority**. (The agent will have no liability to his principal, since a principal cannot be bound by an act which he has not authorised.)

B03d.3 Types of agent and agency

- * Agents are normally either **general agents** or **special agents**.
- * A **general agent** is an agent who has authority to act for his principal in **all matters** concerning a particular trade or business, or of a particular nature. Many **liner agents**, for example, act as general agent in a particular city or country for one or more carriers.

- * A **special agent** is an agent appointed for the carrying out of **particular duties** which are not part of his normal business activities. A special agent's authority is therefore limited by his actual instructions. Most **port agents** are special agents since their authority does not extend beyond their actual instructions. **Shipmasters** are similarly special agents for purposes of engaging and discharging crew, purchasing ships' stores and bunkers, and making salvage agreements in certain cases. If a special agent **acts outside his actual instructions** in some respect, his actions will not be binding on his principal.
- * Other types of agent include **brokers, auctioneers, factors, mercantile agents, and del credere agents**. A **broker**, such as a shipbroker or stockbroker, is an intermediary employed by a principal to arrange a contract with a third party in return for a commission or brokerage. He does not take possession of goods and does not deal in his own name. An **auctioneer** is the agent of the seller, with authority to sell to the highest bidder. A **factor** is an agent entrusted with a principal's goods (or documents of title representing goods) for the purpose of sale. A **mercantile agent** is similar to a factor but may also have authority to buy goods, or to raise money for his principal on the security of goods. A **del credere** agent is an agent for the sale of goods who agrees to protect his principal against the risk of the buyer's insolvency by undertaking liability for the failure of the buyer to pay the price.

B03d.3a Agency by ratification

- * A principal normally gives his agent the authority needed to act for him, and the authority thus comes before the act. Where an agent acts before obtaining the principal's authority, but the principal, on learning of the act, sanctions it, he thereby **ratifies** it and creates an **agency by ratification**. Certain conditions (which are not likely to be relevant to shipmasters) must be met for the ratification to be effective.

B03d.3b Agency of necessity

- * In certain **emergency circumstances** an agent may **act beyond his authority** without liability for actions he takes on behalf of the principal. This form of agency is called "**agency of necessity**".
- * Agency of necessity arises out of **exceptional circumstances**, e.g. fires, floods, war, imminent loss of a ship and/or cargo, etc. and **can only arise** when the following conditions are satisfied:
 1. there must be an **actual commercial necessity** for the agency (i.e. the **principal's property may be lost** if action on his behalf is not taken);
 2. there is **impossibility of communication** between agent and principal for the obtaining of instructions (e.g. cargo owners and owners of cargo containers cannot be contacted in the time available to the master of a disabled containership that is drifting towards a lee shore);
 3. the **agent acts bona fide** (i.e. in good faith) **in the best interests of the principal** (or **principals** where there is more than one, as in the case of many cargo-carrying ships).
- * Agency of necessity will only be implied in favour of a person who is **already a duly appointed agent** for a principal (as is the case with a shipmaster), but who **must exceed his authority** in an emergency situation.
- * It is for the **courts** to determine whether there was agency of necessity or not.
- * For notes on the **master as an agent of necessity**, see E04f.2 and H04a.

B03d.4 Duties of an agent to his principal

- * An **agent's duties** to his principal are:
 - to perform his duties **in person**¹⁷, using **ordinary skill and diligence**, and if he purports to have special skills, to use his **special skills** also;
 - to **obey lawful instructions** of his principal, and when he is not instructed on a particular matter, to act in his principal's **best interests**;
 - to **disclose all information** relevant to the agency to the principal, avoiding any conflict of interest;
 - to **maintain confidentiality** about matters communicated to him as agent, and not to disclose them to prospective third parties;
 - to keep **proper accounts** of all transactions and render them to his principal on request;
 - not to make **extra profits** from the agency without disclosing them to his principal.

¹⁷ It has been held that a person appointed as a sole agent has no authority to appoint a sub-agent. However, for normal business purposes an agent can delegate his duties to his own staff.

B03d.5 Duties of a principal to his agent

- * A **principal's duties** to his agent are:
 - to **pay the agent's commission** or remuneration in accordance with the terms of the contract.
 - to **indemnify or reimburse the agent** for any expenses, losses or liabilities properly incurred in the course of the agency.

B03d.6 Liabilities of principal and agent

- * A **principal** is generally liable for contracts arranged by his agent if within the agent's actual or apparent authority.
- * Where the agent had authority, the principal will always bound by the agent's acts; this even includes acts involving **fraud** carried out by the agent within his actual authority. The principal will also be liable for **torts** such as misrepresentations, deceit, negligence, etc., committed by the agent within his apparent authority. In these cases, where the principal has had to compensate a third party he can claim an **indemnity** from the agent.

B03d.7 Termination of agency

- * An agency may be **terminated** -
 - when the transaction for which the agent was hired is completed or the period for which the agent was hired is ended.
 - where either party gives notice that they are terminating the agency or where they both agree to end the agency. Certain types of agency cannot be revoked, however, e.g. where the agent has begun to perform his duty and has incurred a liability, or where a statute provides that the agency is not revocable.
 - by operation of law, such as on the death or the insanity of the principal or the agent, or on the bankruptcy of the principal or of the agent if it renders him incapable of performing his duties.

B03e LAW OF TORTS

B03e.1 Torts

- * A "**tort**" is a wrongful act or omission by a person (other than a wrong that is purely a breach of contract), for which damages may be sued for in a civil court by the person wronged.
- * **Torts recognised by law** include negligence, liability of occupiers of premises, strict liability, trespass to property, false imprisonment, nuisance, defamation, and miscellaneous torts of conspiracy, deceit and injurious falsehood.
- * **Tortious liability** is quite separate from any liability under contract and generally arises from the breach of a duty under law (either common law or statute law). Where, for example, a ship causes damage to another person's property (e.g. collision damage¹⁸ or pollution damage), the liability is tortious and the owner of the property suffering the damage may commence an **action in tort** to recover **damages** (i.e. he may **sue in tort**).
- * **To succeed in an action for tort** it must usually be shown that the wrong was done intentionally or negligently, but there are some torts of **strict liability**.
- * **The person chiefly liable** is the one who committed the tort, but under the **doctrine of vicarious liability** (see B03e.5) a person may be liable for a tort committed by another person.
- * **The usual remedy** for a tort is an **action for damages**, but an **injunction** (or in Scotland, an **interdict**) can be obtained to prevent repetition of the injury, e.g. a libel by a newspaper.
- * Some torts are also **breaches of contract**. Negligent navigation causing injury to a passenger, for example, is both the tort of negligence and breach of the contract to carry the passenger safely to the port of disembarkation. The passenger may sue the carrier either **in tort**, or **in contract**, or **both**.
- * **Negligence** (see B03e.2) and **strict liability** (see B03e.6) are probably the torts of most concern to shipmasters. Collisions and damage to quays, etc. are torts. The negligent positioning of the gangway by the bosun of the *Himalaya* (for which the master was ultimately responsible) in *Adler v. Dixon* (1954) (*The Himalaya*) (see F07b.9a) was a tort. A master who wrongly uses his power of restraint may be liable in tort for **false imprisonment** (see E04h.4). Damage to cargo carried on board would not be a tort, but a pure breach of contract.
- * **Many acts are crimes as well as torts**, assault being an obvious example. Reckless navigation is a crime but may also give rise to an action in tort if it causes injury to another person. The crime would be prosecuted like any other

¹⁸ Several torts might apply to a collision between ships, the tort of negligence being by far the most important.

- but it would be up to the injured person to seek compensation from the wrongdoer (i.e. the shipowner) by means of an action in tort.
- * The following table compares procedures in cases dealing with contract, tort and crime.

Contract	Tort	Crime
Rights and duties arise under the terms of a contract.	Rights and duties arise under the civil law (i.e. statute law and common law).	Rights and duties arise under the criminal law.
A duty is owed to the other party (or parties) to the contract.	A duty is owed towards persons generally.	Criminal conduct is prescribed by the criminal law. A duty is owed to the general public.
A civil action is brought by the party alleging breach of contract against the other party to the contract.	A civil action is brought by the person wronged against the alleged wrong-doer.	A prosecution is brought by the Crown Prosecution Service or Procurator-Fiscal against the alleged offender.
The case is cited as <i>Smith v. Jones</i> (1996).	The case is cited as <i>Smith v. Jones</i> (1996).	The case is cited as <i>R. v. Jones</i> (1996).
The successful party is awarded damages or other remedy sought, e.g. injunction or specific performance.	The successful party is awarded damages or other remedy sought, e.g. an injunction.	The guilty party is punished by imprisonment, fine or non-custodial sentence, e.g. community service.

B03e.2 Negligence

- * “**Negligence**” has been defined as “the omission to do something which a reasonable man....would do, or doing something which a prudent and reasonable man would not do”. It is committed whenever a person owing a legal duty of care to another person breaches his duty with the result that damage of some kind (e.g. physical or financial harm) is caused to the other person.
- * **Negligence** may also be described as “a failure to take reasonable care to avoid reasonably foreseeable risks of injury or damage to persons or property”. Liability does not, therefore, arise simply from the causation of damage, but is based on unreasonable behaviour. (Damage may be caused without liability in negligence or, indeed, without any legal liability to compensate at all.)
- * **To establish a claim for negligence** there must be:
 - a **plaintiff** who is entitled to claim;
 - a **defendant** who is responsible;
 - a **failure constituting negligence**; and
 - a **claimable damage** caused by that failure.
- * **To succeed in an action for negligence**, the plaintiff has to prove:
 - a legal **duty of care**;
 - a **breach** of this duty; and
 - the **damage suffered** in consequence of the breach.
- * In collision cases, **breach of the Collision Regulations** is likely to constitute good evidence of negligence.

B03e.3 Duty of care

- * There is no standard legal definition of a “**duty of care**”, and it has been held that “we may all be as careless (or negligent) as we wish, providing our carelessness does not cause harm, loss, injury or damage to another”. Whether a party in a particular case had a duty of care or not is a question of law that may have to be decided by a judge in a court action.
- * There are many situations where one person or party owes a duty of care to another, the most common arising on the **highways**. (All persons, whether drivers, riders or pedestrians, owe a duty of care to all other road users.) **Carriers** owe a duty of care to passengers and goods, **doctors** to their patients, **employers** to their employees, **teachers** to their students, etc. There are numerous situations where a duty of care arises, and thus **many forms of negligence**.
- * **A shipmaster owes a duty of care** -
 - to the **shipowner**, for the care of his ship;
 - to every **owner** of goods carried by the ship;
 - to the **crew members** and supernumeraries (for their health, safety and well-being);
 - to the **passengers**, for their safety;
 - to other **persons who have business on board** the ship, such as stevedores, surveyors, pilots, agents and suppliers; and
 - to the **environment** (for its protection from pollution).

B03e.4 Employers' liability

- * A **UK employer owes a duty of care to his employees** in that he must provide -
 - a reasonably **safe place of work**;
 - a reasonably **safe system of work**;
 - reasonably **safe machinery**; and
 - **competent fellow employees**.
- * Liability can be in **tort** for negligence, and for **breach of statutory duty** under various statutes providing for health and safety at work, e.g. the MS (Health and Safety at Work) Regulations 1997.
- * Under the **Employers' Liability (Compulsory Insurance) Act, 1969**, an employer (including a shipowner or manager) must obtain cover against liability for **bodily injury** or **disease** sustained by his employees in the course of, or arising from, their employment; this applies even where the injury is caused by defective equipment supplied by a third party¹⁹. A copy of the **insurance certificate** must be displayed at all premises where workers are employed. The employer is liable for **defective equipment** with which an employee is compelled to work in the course of his employment. Consequently a shipowner will be automatically liable to a crew member if he is injured by a defect in the ship, whether or not the shipowner has himself been negligent. For notes on the **Employers' Liability (Compulsory Insurance) Act, 1969** see C03c.4.
- * In most countries a shipowner is only liable for injuries to a **stevedore** if the shipowner or his employees have been negligent.

B03e.5 Vicarious liability

- * "**Vicarious liability**" is legal liability imposed on one person for torts or crimes committed by another, the aim of the doctrine being to ensure that employers pay the costs of damage caused by their business operations.
- * Vicarious liability is dealt with under two headings:
 - the **liability of a master for the torts of his servant** ("master" in this sense meaning "employer"; and
 - the **liability of a principal for the torts of an independent contractor**.
- * A **master-and-servant relationship** exists when one person employs another to do work for him on the basis that the servant is under the control of his employer as to the manner in which the work is to be done. Anyone employed under a "contract of service" (such as shipmasters and seamen) is a "servant", while their employers are "masters".
- * **The general rule for masters and servants** is that a master is vicariously liable for the torts of his servants committed during the course of their employment, whether the master authorised them or not. The liability applies in respect of:
 - a wrongful act or omission expressly or impliedly authorised by the master;
 - a wrongful act or omission which is an unauthorised manner of doing something authorised by the master;
 - a wrongful and unauthorised act or omission which is ratified by the master.
- * An **independent contractor** is under the control of his employer **as to what he must do**, but the employer cannot control the contractor's **method of work**. Independent contractors, e.g. stevedores, pilots, tug-owners, etc. work under a "contract for services", the principal in these examples usually being the shipowner or a charterer. The general rule here is that the principal is not liable for the torts of an independent contractor or of a servant employed by an independent contractor. (There are, however, some exceptions to this rule.)

B03e.6 Strict liability

- * "**Strict liability**" is, in criminal law, liability for a crime which is imposed **whether the defendant was at fault or not**, i.e. without the need to prove *mens rea*, or "guilty mind". ("*Mens rea*" is the state of mind which, to secure a conviction, the prosecution in a criminal case must usually prove the defendant to have had when committing the crime. *Mens rea* varies from crime to crime, and is either established by precedent or defined in the statute creating the crime.)
- * **An example of a crime of strict liability** is a breach of section 139 of the Merchant Shipping Act 1995, which provides that if a person given a Government direction under section 137 (following a shipping casualty threatening to cause harm to the environment, etc.) contravenes, or fails to comply with the direction, he shall be guilty of an offence. There are **no exceptions**, i.e. there is strict liability. Merchant shipping legislation creates numerous other offences of strict liability (sometimes called absolute liability) for such breaches of statutory duty.

¹⁹ Most UK shipowners obtain cover against their liability for **crew claims** from their **P&I club** (see G02a.3).

- * The rule of strict liability applies in certain civil cases also, where the defendant is liable for a tort or wrong regardless of whether there was any wrongful intent or negligence.
- * **An example of a tort of strict liability** is oil pollution damage caused by a ship. **M.1577** explains that the victims of oil pollution damage do not have to prove fault on the part of the shipowner to obtain compensation; the **shipowner will be strictly liable** for any damage caused by oil pollution.

B03e.7 Breach of statutory duty

- * An injured party may sue in tort for a breach of a duty imposed by legislation, i.e. a **statutory duty**. Most claims in this area concern industrial injuries arising under health and safety legislation. The employer may therefore be fined or imprisoned, as well as liable for damages.
- * Whether the injured party will succeed in his action or not may depend whether the governing legislation imposed any **strict liability**; if so, **no proof of negligence or wrongful intent** will be required.
- * Where a statute does not impose a strict liability, **negligence** will usually have to be proved by the plaintiff. He will have to prove:
 - that a statute was broken and the breach was a direct cause of the injury or damage;
 - that the plaintiff was a person from a class that the statute is intended to protect; and
 - that the injury complained of is one that the statute is intended to prevent.

B03f LAW OF CARRIAGE BY SEA

Certain aspects of general English law that are components of the law of carriage by sea (such as the laws of contract, agency, torts and liens), are covered elsewhere in Section B. Notes on aspects of English law that are particular to carriage of goods by sea, such as charter parties and bills of lading, can be found in Section F: The Ship's Employment.

B03g LIENS

B03g.1 Nature of and types of lien

- * A "**lien**" is the right to retain possession of property, either as security for the performance of an obligation or to secure satisfaction of a claim.
- * The lien may be **general**, when the property is held as security against all outstanding debts of the owner, or **particular**, when only the claims of the possessor in respect of the property held must be satisfied. Thus an unpaid seller may, in some contracts, be entitled to retain the goods until he receives the price, while a carrier may have a lien over goods he is transporting, and a repairer over goods he is repairing.
- * **Whether a lien arises or not** depends on the **contract** and the usual practice of the trade.
- * **A lien may be waived** by the holder.
- * **A lien can be lost**, e.g. when goods on which a carrier has a possessory lien are delivered to another party through a mistake of a shore terminal in whose custody the goods have been left after the ship sails.
- * If a purchaser of property is given notice of a lien, it binds him; otherwise he is not bound.
- * **Two classes of lien concern shipmasters:**
 - **possessory liens** (see B03g.2) and
 - **maritime liens** (see B03g.3).

B03g.2 Possessory lien

- * In common law **a carrier by sea has a possessory lien on goods in his possession** in three cases:
 - to recover **unpaid freight** (but not deadfreight, demurrage or damages for detention, for which a lien for recover must be specifically contracted for);
 - to recover **expenses incurred in protecting cargo** (since the master may have acted as an agent of necessity for the benefit of the cargo owner); and

- to recover a **General Average contribution due from cargo** (although in practice cargo is normally released once a General Average bond or guarantee has been signed, or security has been provided).
- * Possession of the goods may be **actual** (i.e. where the goods are on board the carrier's vessel) or **constructive** (i.e. where they are not on his ship but still under his control, e.g. in a warehouse, tank, container compound etc. awaiting delivery).
- * The common law right to exercise a possessory lien (i.e. a "**common law lien**") exists independently of contract. It is an **implied lien** and does not need to be expressly stated in the contract terms.
- * A **contractual lien** is one incorporated by a term into a contract. By means of a contractual lien a carrier by sea may and often does - extend his common law lien for freight to include unpaid **deadfreight**, **demurrage** and (sometimes) **damages for detention**.
- * A **Lien Clause**²⁰ is usually included in the terms of a **bill of lading** and a **charter party** (see F05e.2).

B03g.3 Maritime lien

- is a **claim against a ship**, her **cargo**, or **both**, as well as against the **freight** she will earn, in respect of a **service done to or injury caused by** any of them.
- is enforceable in the Admiralty Court (see B03b.7) by **proceedings in rem**, i.e. against the **property** involved (which is termed the *res*), and not against any person or persons who might own or manage or have possession of the property.
- can be enforced by **arrest and judicial sale**²¹ of the property (unless security is given).
- **travels with the ship or cargo** whenever possession of it changes, and is good against a bona fide purchaser without notice.
- **is not dependent on possession**.
- * **Examples** of maritime liens are:
 - the lien on a ship at fault in a **collision** in which property has been damaged;
 - the lien of a **salvor** on a ship and/or her cargo;
 - the lien of **seamen** on a ship for their wages;
 - the lien of a **master** on a ship for his wages and disbursements (i.e. his outgoings on behalf of the owners);
 - the lien of a **ship repairer** in respect of work done on a ship.

B03g.4 Seamen's lien for wages, etc.

- * Section 39(1) of the Merchant Shipping Act 1995 provides that a seaman's lien, his remedies for the recovery of his wages, his right to wages in case of the wreck or loss of his ship, and any right he may have or obtain in the nature of salvage will not be capable of being renounced by any agreement. This does not affect such of the terms of any agreement made with the seamen of a ship which is to be employed on salvage service as provide for remuneration to be paid to them for salvage services rendered by the ship (section 39(2)).

B03g.5 Master's lien for remuneration, disbursements and liabilities

- * The **master** of a ship will have the same lien for his **remuneration**, and all **disbursements** or **liabilities** properly made or incurred by him on account of the ship, as a seaman has for his wages (section 41, Merchant Shipping Act 1995).

B03g.6 Ranking of liens

- * There may be several claims against a ship, each giving rise to a maritime lien or possessory lien. E.g., a ship may have been in **collision** with a second vessel, and **salvage services** may have been rendered by a third vessel. The owners of the salvaged vessel may become insolvent while the vessel is at a **repair yard** in the port of refuge and may fail to pay the **master's wages and disbursements**, the **crew's wages**, the **ship repairer's bill** and **other bills** incurred from **suppliers**, **port authority**, **agent**, etc. Meanwhile, there may be undischarged **mortgages** on the ship.

²⁰ **Lien clauses** can also be found in the standard terms of car hire agreements, road carriers' delivery notes, etc.

²¹ Notices relating to "**judicial sales**" of ships, as a result of claimants exercising their liens, are sometimes carried in the back pages of *Lloyd's List*. Forthcoming sales are advertised, while some notices advertise for claimants to come forward in order to establish the priority of claims.

- All these claimants may exercise **individual liens**, as outlined above, but the total of their claims may well exceed the value of the ship. In these circumstances, the vessel would probably be **arrested and sold** by order of the court.
- * Obviously there will have to be some **priority** set for the discharging of the various liens when the sale proceeds are distributed to the claimants. There is **no statutory ranking** for maritime claims, and the priority is mainly at the discretion of the court.
 - * Normally, in the UK, the expenses of the **Admiralty Marshal** are paid first. **Maritime liens** will come next, before **mortgages and any statutory rights *in rem*** (i.e. against the ship or cargo, etc.) and **common law possessory liens**.
 - * A **salvage claim** will normally rank higher than other maritime liens, since the salvor has preserved the property and thereby the **fund** from which other claimants are claiming.
 - * **Wages liens** normally follow the salvor's lien, followed by **master's disbursements**.
 - * Among **several contractual liens**, and especially where there are several contractual liens for salvage services, the **later lien ranks first**, since it is the later act that has preserved the property for earlier claimants.
 - * Maritime liens arising for **damage arising from tort**, e.g. negligent navigation, normally rank equal to each other unless it can be proved that they arose at different times (e.g. where a ship has had a succession of collisions).
 - * Maritime liens arising from **tort** (e.g. negligent navigation) normally have priority over liens arising from **contracts agreed before the tort**, since contracts are entered into voluntarily. However, a **salvor's lien** attaching to a ship after a collision normally ranks higher than any damage liens resulting from the collision, for reasons explained above.
 - * The **ship repairer's lien**, which is a **common law possessory lien** and not a maritime lien, ranks lower than maritime liens attaching before the ship arrived at the repair yard. The repairer's lien will, however, rank before any later maritime liens arising while the ship is in his yard. His **lien will be lost** if the ship is allowed to leave the yard, but he will continue to have his statutory right *in rem*.

B03h ARREST OF SHIPS

B03h.1 Nature of arrest

- * “**Arrest**”, in relation to a ship, means “the detention of a ship by judicial process to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment” (Article 1(2), Arrest Convention 1952).
 - The main **reason** for arresting a ship (or any other maritime property, such as cargo) is to obtain satisfaction of the judgement in an admiralty action *in rem*, i.e. against the property (see B03g.3).

B03h.2 Arrest Convention

- * **The International Convention for the Unification of Certain Rules Relating to the Arrest of Seagoing Ships 1952** (the “**1952 Arrest Convention**”) was intended to smooth out the differences between the approaches to ship arrest in countries which have common law legal systems (such as the UK) and countries which have civil law legal systems (such as France)²². The Convention contains Articles (amongst others) dealing with definitions, powers of arrest, exercise of right of arrest, release from arrest, right of re-arrest and multiple arrest and protection of owners and demise charterers of arrested ships.
- * Article 2 of the 1952 Convention provides that a ship flying the flag of one of the contracting States to the Convention may be arrested in the jurisdiction of any of the contracting States in respect of any “maritime claim”, but in respect of no other claim. “Maritime claim” is defined in Article 1 as a claim arising out of one or more of the following: damage caused by any ship either in collision or otherwise; loss of life or personal injury caused by any ship or occurring in connection with the operation of any ship; salvage; agreement relating to the use or hire of any ship whether by charterparty or otherwise; agreement relating to the carriage of goods in any ship whether by charterparty or otherwise; loss of or damage to goods including baggage carried in any ship; general average; bottomry; towage; pilotage; goods or materials wherever supplied to a ship for her operation or maintenance; construction, repair or equipment of any ship or dock charges and dues; wages of masters, officers or crew; master's disbursements, including disbursements made by shippers, charterers or agents on behalf of a ship or her owner; disputes as to the title to or ownership of any ship; disputes between co-owners of any ship as to the ownership, possession, employment or earnings of that ship; the mortgage or hypothecation of that any ship.

²² While English admiralty law, for example, permits the arrest of a vessel only for a limited number of maritime claims, in civil law countries there is a *saisie conservatoire*, a discretionary right to detain all kinds of asset of the defendant until the final judgement is passed by the court.

- * Article 3 permits “sister ship arrest” except where the dispute concerns ownership, possession, employment, earnings or mortgaging of a ship.
- * Article 4 provides that a ship may only be arrested under the authority of a court or of the appropriate judicial authority of the Contracting State in which the arrest is made.
- * A new, improved, **1999 Arrest Convention** has not yet entered into force. It permits several new maritime claims including claims for:
 - special compensation under Article 14 of the 1989 Salvage Convention;
 - environmental and similar claims;
 - wreck removal;
 - insurance premiums and P&I club calls;
 - commissions and brokerage, including agency fees;
 - sale contract disputes.

B03h.3 Ship arrest procedure in the UK

- * **Arrest procedure** varies from nation to nation²³, but in many States, particularly those in which the law is based on English law, it is fairly similar to English procedure.
- * The **injured party** (the **plaintiff**, e.g. the owner of a vessel collided with), if his claim is not satisfied, may issue against the ship a **writ of summons** in the Admiralty Court in London (see B03b.7) or, for relatively modest claims, in a county court.
- * If the **defendant shipowner** fails to either satisfy the claim or to lodge an Acknowledgment of Service with the Court, the plaintiff can proceed with his court action to apply for a **warrant of arrest**. He must file an **affidavit** containing his grounds for arrest.
- * Judgement may be given without further notice to the defendant shipowner and the court may issue the **warrant for arrest**.
- * In actions for wages or possession of the ship where the ship is foreign, the **consul** representing the flag State is informed.
- * The **Admiralty Marshal** instructs a Customs officer to **arrest the ship**. (In London the arrest is made by the Marshal’s Officer in person.)
- * The mere threat of arrest will often be sufficient to prompt owners into volunteering security to satisfy a claim. This will usually be a bank or insurance company **guarantee**, or a P&I club **letter of undertaking**, paid directly to the claimant, not to the court. In the absence of a guarantee or undertaking, the claimant can request a **bail bond** to be made, which would empower the court to “call it in”. The amount of security must be reasonable.
- * Unless security is provided and service of the writ accepted by the defendant’s solicitors, so that the ship is released before receipt of the documents by Customs, the **Customs officer arrests the ship** by attaching a **Note of Action** to it, and carries out the Admiralty Marshal’s instructions for keeping the ship safely under arrest. The **Writ**, along with a **warning notice** to potential removers of the property, is not “nailed to the mast” today but is generally posted on some conspicuous part of the ship such as the wheelhouse windows. The **Warrant** from the Court simultaneously prevents the vessel from sailing or being interfered with without written notice from the Admiralty Marshal on pain of proceedings for contempt of court.
- * If the ship has not arrived, Customs will be instructed to arrest on arrival.
- * Once the ship is under arrest she is in the **custody or possession of the Admiralty Marshal** on behalf of the court. The warrant of arrest on the ship covers everything belonging to it as part of its equipment, but excluding items which do not belong to the defendant shipowner such as the crew’s property or passengers’ luggage. Any **cargo** on board will not be under arrest, and arrangements can usually be made with the Admiralty Marshal to continue any discharge operations (unless the claim was for salvage and the cargo is also to be arrested). If the ship was loading, the Marshal will probably warn the agent not to continue loading if the writ has been issued by mortgagees, in view of the likelihood of the ship being sold on order of the court.

B03h.4 Release from arrest

- * A ship under arrest can not be released unless the **plaintiff** agrees (which will normally be on the provision of adequate **security** for his claim) or the court orders the release. Release is normally granted on provision of a bank or insurance company **guarantee** or a P&I club’s **letter of undertaking**. The plaintiff may, however, insist on bail or payment into the court. A guarantee will prevent re-arrest in respect of the same claim.

²³ P&I club bulletins occasionally carry articles on arrest procedure in a particular country.

B03i ARBITRATION AND MEDIATION

B03i.1 Arbitration

- may be defined as the **resolution of a dispute between contracting parties by one or more arbitrators appointed by the parties**.
- is often resorted to by contracting parties in shipping matters (e.g. a shipowner and charterer, a shipper and carrier, or a salvor and owner of salvaged property) **in preference to litigating** in the courts.
- usually has the following **benefits over litigation**:
 - parties' choice of arbitrator(s);
 - arbitrators are usually experts in the field, e.g. where a professional shipbroker arbitrates a charter party dispute, or a professional marine engineer arbitrates a fuel quality dispute;
 - confidentiality of hearing - only the parties, their witnesses and legal advisers are entitled to be present;
 - faster settlement;
 - lower costs;
 - less formality;
 - anonymity of parties and arbitrators (in a London arbitration);
 - enforceability of arbitrators' decisions abroad (whereas court judgements are not likely to be enforceable in foreign courts).
- has the following **disadvantages** in relation to litigation:
 - difficult points of law may need to be referred to a court;
 - right of appeal may be restricted (depending on wording of the Arbitration Clause in the contract between the disputing parties).
- * The leading maritime arbitration centres are **London** and **New York**.
- * New York arbitrations are generally **published**, while it is up to the parties in London arbitrations to decide whether the arbitration decision should be published.²⁴
- * London maritime arbitrations are usually conducted by members of the London Maritime Arbitrators Association (LMAA) and are on the LMAA Terms. They are subject to the provisions of the **Arbitration Act 1996**.
- * **Appeals** from London arbitrations may usually be made to a court (in most cases the Commercial Court).
- * **LMAA website**: www.lmaa.org.uk

B03i.1a Arbitration clauses in shipping contracts

- * An **Arbitration Clause** is included in most standard charter party forms and usually provides that the parties agree, in the event of a dispute under the contract, to refer the matter to arbitration at a named place, and that a specified number of arbitrators will be appointed. The clause may provide that the arbitration shall be conducted in accordance with the terms of a recognised dispute resolution service, such as the terms of the London Maritime Arbitrators Association (LMAA).
- * BIMCO publishes a widely-used **Standard Law and Arbitration Clause**.

B03i.2 Mediation

- * **Mediation** is a voluntary, confidential, "without prejudice" process that uses a neutral third party to help the parties in dispute come to a mutually agreed solution without having to go to court. It differs from arbitration and the courts in that a binding decision is not imposed on the parties by an arbitrator or judge. The process allows disputing parties to work out their solution assisted by the mediator.
- * Mediation is, to the shipping industry, a relatively new "alternative dispute resolution" ("ADR") technique, but has gained widespread approval in other business sectors. To increase the shipping industry's awareness and use of mediation techniques in resolving disputes, BIMCO has developed a **Standard Dispute Resolution Clause** by incorporating a **Mediation Clause** into its widely used Standard Law and Arbitration Clause. Under the Mediation Clause either party may at any time, and from time to time, elect to refer the whole dispute or part of the dispute to mediation by serving on the other party a written notice calling on the other party to agree to mediation. If the other

²⁴ Summaries of London awards are published in Lloyd's Maritime Law Newsletter. Shipping journals such as *Fairplay International Shipping Weekly* and BIMCO Bulletin often feature reports of New York arbitrations, and occasionally of London arbitrations.

party does not agree to mediate, that fact may be brought to the attention of the arbitration tribunal and may be taken into account when the costs of the arbitration are allocated between the parties.

- * **Clause 53 of the International Hull Clauses** (01/11/02) (Dispute resolution) provides that if disputes between the Assured and the Underwriters are not settled amicably by negotiation, they may be referred to **mediation** or some other form of alternative dispute resolution.

B04 Merchant shipping legislation

B04a TYPES OF UK LEGISLATION

B04a.1 Components of UK legislation

- * **UK legislation** consists of laws made by, or under the authority of, Parliament, and comprises:
 - **statutes** or **primary legislation** (see B04a.2); and
 - **secondary legislation** (also called delegated or subordinate legislation) (see B04a.3).

B04a.2 Primary legislation

- **consists of statutes** known as **Acts**.
- **includes:**
 - **Acts of the UK Parliament;**
 - **Acts of the Scottish Parliament;** and
 - **Acts of the Northern Ireland Assembly.**
- **includes:**
 - **public acts**, such as the Merchant Shipping Act 1995 (c. 21);
 - **local acts**, such as the Mersey Docks and Harbour Act 1992 (c. x);
- may be **brought into force** either:
 - on such day as the relevant Secretary of State may appoint by order made by statutory instrument (i.e. called a **Commencement Order**). Different days may be appointed for different provisions or for different purposes. This was the procedure used for bringing Merchant Shipping Acts 1970 and 1988 into force; or
 - on the same day for all the sections of the act. (This was the procedure used for bringing the Merchant Shipping Act 1995 into force.)
- * The **full title** of each Act of Parliament includes the **chapter number** occupied by the Act in the **statute book** for that year. The Merchant Shipping Act 1995 (c.21), for example, occupies the twenty-first chapter in the statute book for 1995.
- * Since Acts do not always provide for the regulation of every detail of the subject dealt with, (especially where the subject is highly technical, such as shipping) the Act will often confer **powers** for the making of more detailed regulations, rules or orders by means of **statutory instrument** (see B04a.3a). Merchant Shipping Acts give the Secretary of State for Transport powers to make merchant shipping regulations concerning numerous matters in this way. Acts often specify details that need updating (fees, time limits, etc.) which is more easily done by statutory instrument.
- * An Act may contain provisions giving effect in the UK to one or more **international treaties** to which the UK is a contracting State. Section 224 of the Merchant Shipping Act 1995, for example, gives effect to the International Salvage Convention 1989, as set out in Part I of Schedule 11 to the Act. Section 183 similarly gives effect to the Convention Relating to the Carriage of Passengers and Their Luggage by Sea (the Athens Convention), which is set out in Part I of Schedule 6, while section 185 gives effect to the Convention on Limitation of Liability for Maritime Claims 1976, as set out in Part I of Schedule 7.
- * **Local acts** make statutory provisions that are applicable only within a particular locality in the UK. E.g. the Mersey Docks and Harbour Act 1992 is an Act to confer additional powers upon The Mersey Docks and Harbour Company; to amend the Mersey Docks and Harbour Act 1971 and the Mersey Docks and Harbour Act 1986; and for connected or other purposes.

- * **Acts of the UK Parliament**²⁵ can be viewed on the **HMSO website** at www.legislation.hmso.gov.uk/acts.htm
- * **Acts of the Scottish Parliament** (from 1999) can be viewed at www.scotland-legislation.hmso.gov.uk/legislation/scotland/s-acts.htm
- * **Acts of the Northern Ireland Assembly** (from 2000) are at www.northernireland-legislation.hmso.gov.uk/legislation/northernireland/ni-acts.htm
- * Courts cannot overturn the **validity** of an Act of Parliament, although judges may interpret the meaning of a provision of an Act.

B04a.3 Secondary, delegated or subordinate legislation

- is used to **supplement Acts** by prescribing the **detailed technical rules** required for their operation.
- is mostly **governmental**, but also includes legislation made by a variety of **non-governmental bodies** who have been given certain powers by Parliament, e.g. **by-laws** made by local authorities, etc., **Rules of the Supreme Court**, and **codes of conduct** of certain professional bodies.
- can be made (and amended where necessary) without taking up parliamentary time, and is thus **more flexible** than Acts.
- **includes:**
 - **Orders in Council** (e.g. The General Medical Council (Interim Orders Committee) (Procedure) Rules Order of Council 2000 (SI 2000/2053);
 - **orders** (e.g. The Control of Pollution (SOLAS) Order 1998);
 - **regulations** (e.g. The Merchant Shipping (Carriage of Cargoes) Regulations 1999);
 - **rules** (e.g. The Merchant Shipping (Formal Investigations) Rules 1985);
 - **schemes** (e.g. The Merchant Shipping (Compensation to Seamen - War Damage to Effects) (Revocation) Scheme 1997); and
 - **byelaws** (e.g. Harwich Harbour Byelaws 1994).
- * **Orders in Council** are **government orders of a legislative nature** made by the Crown and members of the Privy Council²⁶ and relate mainly to the regulation of certain professions and professional bodies (such as the General Medical Council). They include Orders amending the charters of various professional bodies, Orders approving Acts of British Overseas Territories, and Orders approving schemes of the Church Commissioners. Some Orders in Council are statutory instruments. Much Northern Ireland legislation is in the form of Orders in Council.
- * **Orders, regulations and schemes** -
 - comprise the vast bulk of secondary legislation, with **regulations** being the most common form.
 - are published by HMSO as **statutory instruments**²⁷.
 - are **made under powers** conferred by an enabling Act. The Merchant Shipping (Section 63 Inquiries) Regulations 1997, for example, were made under the powers conferred by section 65(1) of the Merchant Shipping Act 1995.

B04a.3a UK statutory instruments

- * **UK statutory instruments**, commonly referred to as “SIs” -
 - **consist** mostly of **Regulations** and **Orders**, a relatively small number being **Rules** or **Schemes** (see B04a.3a).
 - are **identified** by their **title** (e.g. The Merchant Shipping (Prevention of Oil Pollution) Regulations 1996), and the **year and number** of publication, e.g. 1996 No. 2154 (in the case of the Regulations referred to). SIs also have an ISBN number.
 - are **printed, published and sold** by **The Stationery Office** (TSO) under the authority and superintendence of the Controller of Her Majesty’s Stationery Office, who is also the Queen’s Printer of Acts of Parliament²⁸. **TSO website:** www.tso.co.uk
 - are also published in **downloadable** form on the HMSO website (see below). At present only SIs published since 1 January 1987 are on the website.

²⁵ Full texts of all new Public General Acts from 1988 onwards, and all new Local Acts from 1991 onwards, are available on the HMSO website, as originally passed by the UK Parliament. New Acts are usually published on the website simultaneously with or, at least within 24 hours of their publication in printed form. Documents that are especially complex in terms of size or typography may take longer to prepare.

²⁶ The **Privy Council** is an ancient British body with limited statutory powers of legislation. It advises the Sovereign on certain judicial and other non-political matters, e.g. the grant of Royal Charters. At the meetings of the Privy Council, government ministers who are Privy Councillors obtain the Queen’s formal approval to a number of Orders which have already been discussed and approved by them. Privy Council website: www.privycouncil.org.uk

²⁷ Before 1948, instruments were known as Statutory Rules and Orders, abbreviated to SR & O.

²⁸ In 1987, 2279 United Kingdom SIs were published by HMSO. By 1997 the number had grown to 3114. In 2001, 4150 UK SIs were published. In 2002, just over 3047 were published up to 17 December.

- * **Merchant shipping SIs** are usually drafted by DfT lawyers in consultation with MCA staff and are normally signed on behalf of the Secretary of State for Transport by the Parliamentary Under-Secretary of State for the DfT.
- * Some SIs, such as Commencement Orders, are not subject to any Parliamentary procedure, and simply come into force on the date stated in them. However, most SIs are brought into effect only after they have been **laid before Parliament** in one of two procedures, i.e. negative or affirmative procedure. Under **negative procedure** the SI will become law on the date stated on it, but will be nullified if either House of Parliament passes a Motion calling for it annulment within a certain time (usually 40 days) from the date on which it was laid. This is the most common procedure. **Affirmative procedure** gives more stringent Parliamentary control, since the SI must receive the affirmative approval of both Houses before it can come into force. The applicable procedure for any SI is stated in its parent Act; e.g. section 306 of the Merchant Shipping Act 1995 provides that any SI containing regulations, orders or rules under the Act will be subject to annulment in pursuance of a resolution of either House of Parliament.
- * **SIs are printed** by the Queen’s Printer and are numbered consecutively for each calendar year in which he or she receives them; e.g. the first SI to be received in 2002 would be SI 2002 No. 1, regardless of its subject.
- * There is **no statutory requirement** for any Act or SI to be carried on board any UK ship. The technical requirements of many modern Merchant Shipping SIs are contained in a **related Merchant Shipping Notice**; compliance with the MSN is made a statutory requirement by the SI.
- * **HMSO website:** www.legislation.hmso.gov.uk/stat.htm

B04a.3b Byelaws

- are **local laws** which are made by a statutory public body such as a local authority or harbour authority, under an enabling power established by an Act of Parliament, for the good administration of their local area or undertaking. If there is general legislation (e.g. an Act or SI) to cover a subject, byelaws are not generally considered suitable.
- are a form of **delegated legislation**. They are not subject to the control of Parliament, but are made under powers conferred by an Act of Parliament or SI and take effect only after confirmation by a Government minister.
- are subject to **judicial control** (i.e. a court may order a change in or repeal of a byelaw).
- **create criminal offences** and may set **penalties** in the same way as any other legislation.
- * **Byelaws concerning shipmasters** are mainly those made by **harbour authorities**. For notes **harbour byelaws**, see I02g.2.

B04a.3c Approved codes of practice

- are codes of practice **approved by relevant official bodies** such as the Health and Safety Commission (HSC) and the Maritime and Coastguard Agency (MCA).
- are bodies of **rules for practical guidance** only and **do not have the force of law** in themselves.
- provide **guidance** to employers, employees and their representatives **on the fulfilment of their statutory obligations** in relevant fields, such as health and safety, handling of certain types of cargo and operation of certain types of ship.
- **do not include IMO codes** such as the IMDG Code and STCW Code.
- * Although **failure to observe any provision** of an approved code of practice is **not in itself an offence**, that failure may be taken by a court in criminal proceedings as proof that a person or company has contravened a regulation or section of an Act to which the provision relates, i.e. it may be **evidence** that the person or company has not fulfilled some statutory requirement. Non-compliance with the provisions in the Code of Safe Working Practices for Merchant Seamen on the rigging of accommodation ladders, for example, may be relied on by a court as evidence showing a breach of the MS (Means of Access) Regulations 1988. In such a case, however, it would be open to the person charged to satisfy the court that he has complied with the relevant regulation in some other way.
- * **Statutory codes of practice** applying to UK vessels are shown in the following table. For detailed notes on each code see D031.

Code title	Popular name	Related SI	Related M Notice	SBC ref.
The Safety of Small Commercial Motor Vessels – A Code of Practice	Yellow Code	1998/2771	-	D031.2
The Safety of Small Commercial Sailing Vessels – A Code of Practice	Blue Code	1998/2771	-	D031.3
The Safety of Small Workboats and Pilot Boats – A Code of Practice	Brown Code	1998/1609	MGN 50	D031.4
The Code of Practice for the Safety of Small Vessels in Commercial Use for Sport or Pleasure operating from a Nominated Departure Point (NDP)	Red Code		MIN 77	D031.6
The Code of Practice for Safety of Large Commercial Sailing and Motor Vessels	Megayacht Code or White Code	1998/2771	-	D031.7
Code of Practice for Vessels Engaged in Oil Recovery Operations	Black Code	-	M.1663	D04g.11

B04a.4 M Notices

- disseminate safety, pollution prevention and other information of relevance to the shipping and fishing industries.
- are mostly issued by the MCA, although the MAIB may issue (and has issued) M Notices.
- have **no force of law** in themselves. An SI may, however, contain provisions requiring compliance with the provisions of a specified Merchant Shipping Notice; for example, the MS (Load Line) Regulations 1998 require compliance with the provisions in MSN 1752. Non-compliance with the provisions of the MSN would therefore constitute a breach of the SI's provisions, for which there is a criminal penalty.
- may contain directions that may in certain circumstances supersede directions in an SI. For example, the directions in M.1101 supersede the directions in SI 1960/1477 relating to passenger returns.
- since 11 March 1997 have been issued in three complementary series, as described below.
- * **Merchant Shipping Notices (MSNs)** -
 - are used only to convey **mandatory information** that must be complied with under UK legislation.
 - **relate to SIs** and contain the **technical detail of regulations**.
 - are numbered in sequence, continuing the sequence in use prior to 11 March 1997, but with the prefix "MSN".
 - are printed on **white** paper.
 - can be viewed on the MCA website at www.mcga.gov.uk/publications/msn/default.htm
- * **Marine Guidance Notes (MGNs)** -
 - provide **advice and guidance** to relevant parties in order to improve the safety of shipping and of life at sea, and to prevent or minimise pollution from shipping (in the manner of former "M" Notices).
 - are numbered in sequence from MGN 1.
 - are printed on **blue** paper.
 - can be viewed on the MCA website at www.mcga.gov.uk/publications/mgn/default.htm
- * **Marine Information Notes (MINs)** -
 - provide **information for a more limited readership**, such as training establishments or equipment manufacturers, or which will only be of use for a **short period of time**, e.g. timetables for MCA examinations.
 - are numbered in sequence from MIN 1.
 - mostly have a fixed **cancellation date** which will typically be 12 months after publication.
 - are printed on **green** paper.
 - can be viewed on the **MCA website** at www.mcga.gov.uk/publications/min/default.htm
- * A **suffix (M), (F), or (M+F)** is used to indicate whether a MSN, MGN or MIN is intended for merchant ships (M), or fishing vessels (F), or both (M+F).
- * **SOLAS regulation V/19.2.1.4** provides that all ships, irrespective of size, must have **nautical charts and nautical publications** to plan and display the ship's route for the intended voyage and to plot and monitor positions throughout the voyage. This regulation is given effect in the UK by **regulation 5 of the MS (Safety of Navigation) Regulations 2002** (SI 2002/1473) (see H01f.2) and the MCA's **2002 SOLAS V publication** (see H01f.2a). **Guidance note 5 in Annex 3 to the 2002 SOLAS V publication** lists publications considered by the MCA to satisfy the requirements of SOLAS regulation V/19.2.1.4, and includes **Merchant Shipping Notices, Marine Guidance Notes and Marine Information Notes** published by the MCA. The Guidance Notes state that **only those parts** of the publication which are **relevant to the ship's voyage and operation** need be carried.
- * As promulgated in **MIN 129**, copies of **individual MSNs, MGNs and MINs** and an **annual list** may be obtained from MCA Marine Offices or from the MCA's distribution agent: Mail Marketing (Scotland), Blooms Grove Industrial Estate, Norton Street, Nottingham, NG7 3JG, England. Tel: 0115 901 3336. Fax: 0115 901 3334. E-mail: mca@promo-solution.com
- * **Bound volumes** of M Notices can be bought at Stationery Office Bookshops (formerly known as Government Bookshops), addresses of which can be found at www.the-stationery-office.co.uk or in Yellow Pages.
- * **Multiple copies** of MSNs, MGNs and MINs are available in a joint annual subscription. For details see **MIN 122**.
- * A Marine Information Note is published annually by the MCA listing current MSNs, MGNs and MINs.

B04b LEGISLATION IN FORCE

- * The following tables include all known Merchant Shipping legislation affecting shipmasters in force at the time of writing. In the titles, "MS" means "Merchant Shipping" and "FV" means "Fishing Vessels".
- * Readers using the annually-issued Marine Information Note (MIN) entitled "Principal Acts and Regulations on Merchant Shipping" should note that the section headings of the MIN differ from those used below.

B04b.1 Acts of Parliament

Year	Chapter	Title	SBC references
1971	c.19	Carriage of Goods by Sea Act 1971	B04c.2, F07c.3
1971	c.60	Prevention of Oil Pollution Act 1971	B04c.9
1985	c.22	Dangerous Vessels Act 1985	B04c.8, I02g.3
1987	c.21	Pilotage Act 1987	B04c.4, I01b
1990	c.31	Aviation and Maritime Security Act 1990	B04c.6
1992	c.50	Carriage of Goods by Sea Act 1992	B04c.3, F07d
1995	c.21	Merchant Shipping Act 1995	B04c.1
1995	c.22	Shipping and Trading Interests (Protection) Act 1995	B04c.7
1997	c.28	Merchant Shipping and Maritime Security Act 1997	B04c.5, H04b.9

B04b.1a Commencement Orders

Year	SI No.	Title	SBC references
1996	1210 (C.20)	Merchant Shipping Act 1995 (Appointed Day No. 1) Order 1996	B04c.1
1997	1082 (C.39)	Merchant Shipping and Maritime Security Act 1997 (Commencement No.1) Order 1997	B04c.2
1997	1539 (C.62)	Merchant Shipping and Maritime Security Act 1997 (Commencement No.2) Order 1997	B04c.2
1997	3107 (C.114)	Merchant Shipping Act 1995 (Appointed Day No. 2) Order 1997	B04c.1

B04b.2 Statutory Instruments - General

Year	SI No.	Title	SBC references
1979	1519	MS (Increased Penalties) Regulations 1979	
1980	531	MS (Safety Convention) (Transitional Provisions) Regulations 1980	
1981	237	MS (Safety Convention 1974) (Countries) Order 1981	
1981	568	MS (Modification of Enactments) Regulations 1981	
1981	584	MS (Safety Convention) (Transitional Provisions) Regulations 1981	
1985	212	MS (Modification of Enactments) Regulations 1985	
1985	405	MS (Liner Conferences) (Conditions for Recognition) Regulations 1985	
1985	406	MS (Liner Conferences) (Mandatory Provisions) Regulations 1985	
1986	2285	General Lighthouse Authorities (Beacons: Hyperbolic Systems) Order 1986	
1987	37	Dangerous Substances in Harbour Areas Regulations 1987	I02g.4
1989	662	MS (Merchant Navy Reserve) Regulations 1989	
1989	1991	MS (Ministry of Defence Ships) Order 1989	D01c.5
1991	347	MS The General Lighthouse Authority (Beacons: Hyperbolic Systems) Order 1991	
1992	1293	MS (Ministry of Defence Commercially Managed Ships) Order 1992	D01c.5
1992	1294	MS (Ministry of Defence Yachts) Order 1992	D01c.5
1994	2788	MS (Sterling Equivalents) (Revocation) Order 1994	
1997	3016	The General Lighthouse Authorities (Beacons: Maritime Differential Correction Systems) Order 1997	
1998	209	MS (Compulsory Insurance: Ships Receiving Trans-shipped Fish) Regulations 1998	
1998	2771	MS (Vessels in Commercial Use for Sport or Pleasure) Regulations 1998	D03l.8
2000	482	MS (Vessels in Commercial Use for Sport or Pleasure) (Amendment) Regulations 2000	D03l.8
2001	1638	MS (Miscellaneous Amendments) Regulations 2001	
2002	1650	MS (Miscellaneous Amendments) Regulations 2002	

B04b.3 Cargo (including packaged dangerous goods and marine pollutants)

Year	SI No.	Title	SBC references
1997	2367	MS (Dangerous Goods and Marine Pollutants) Regulations 1997	A03c.1a, F07f.2
1999	336	MS (Carriage of Cargoes) Regulations 1999	A03c.1a, F07g
2000	3216	MS (Carriage of Packaged Irradiated Nuclear Fuel etc.) (INF Code) Regulations 2000	F07h

B04b.4 Construction, equipment and operation - cargo ships

Year	SI No.	Title	SBC references
1997	1509	MS (Cargo Ship Construction) Regulations 1997	A03c.1a, D02a.1, D04d.1
1999	643	MS (Cargo Ship Construction) (Amendment) Regulations 1999	D02a.1
1999	1644	MS (Additional Safety Measures for Bulk Carriers) Regulations 1999	A03c.1a, D03f.3a, F07g.1g, I05d.4

B04b.5 Construction, equipment and operation – passenger ships and ro-ro ships

Year	SI No.	Title	SBC references
1988	1275	MS (Weighing of Goods Vehicles and Other Cargo) Regulations 1988	D03b.2
1988	2272	MS (Emergency Equipment Lockers for Ro/Ro Passenger Ships) Regulations 1988	
1989	270	MS (Weighing of Goods Vehicles and Other Cargo) Regulations 1989	D03b.2
1989	568	MS (Weighing of Goods Vehicles and Other Cargo) (Application to Non-UK Ships) Regulations 1989	
1992	2356	MS (Categorisation of Waters) Regulations 1992	D04c.2a
1997	647	MS (Ro-Ro Passenger Ship Survivability) Regulations 1997	D03b.5c
1998	3022	MS (ISM Code - Ro-Ro Passenger Ferries) Regulations 1998	C04a, D03b.1a
1998	2514	MS (Passenger Ship Construction: Ships of Classes I, II and II(A)) Regulations 1998	A03c.1a, D02a.1
1998	2515	MS (Passenger Ship Construction: Ships of Classes III to VI(A)) Regulations 1998	D04d.1
2000	2687	MS (Passenger Ships on Domestic Voyages) Regulations 2000	D03b.6b
2001	152	MS (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001	D04f.4
2001	3209	MS (Domestic Passenger Ships) (Safety Management Code) Regulations 2001	C04a, C04c, D03b.1b, D04c.2
2003	771	MS (Passenger Ships on Domestic Voyages) (Amendment) Regulations 2003	D03b.6b

B04b.6 Construction, equipment and operation - gas carriers and chemical tankers

Year	SI No.	Title	SBC references
1994	2464	MS (Gas Carriers) Regulations 1994	D03d.2a
1996	3010	MS (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996	B03b.3f, D03e.2a, D04g.3, D05b.3, H03b.2
1998	1153	MS (Dangerous or Noxious Liquid Substances in Bulk) (Amendment) Regulations 1998	D03e.2a, D04g.3, H03b.2

B04b.7 Construction, equipment and operation - high speed craft

Year	SI No.	Title	SBC references
1996	3188	MS (High Speed Craft) Regulations 1996	A03c.1a, D02a.1, D03i.2, D04v
2001	152	MS (Mandatory Surveys for Ro-Ro Ferry and High Speed Passenger Craft) Regulations 2001	D03i.3, D04f.4

B04b.8 Construction, equipment and operation – miscellaneous

Year	SI No.	Title	SBC references
1985	661	MS (Application of Construction and Survey Regulations to Other Ships) Regulations 1985	
1995	1210	MS (Survey and Certification) Regulations 1995	A03c.1a, B03b.3c, D04f.2
1995	1802	MS and FV (Medical Stores) Regulations 1995	D04p
1996	147	MS (Delegation of Type Approval) Regulations 1996	D04b.2
1996	2418	MS (Survey and Certification) (Amendment) Regulations 1996	D04f.2
1996	2821	MS and FV (Medical Stores) (Amendment) Regulations 1996	D04p
1996	2908	MS (Ship Inspection and Survey Organisations) Regulations 1996	D04d.2
1997	529	MS (Minimum Standards of Communications) Regulations 1997	D03a.4
1998	1561	MS (International Safety Management (ISM) Code) Regulations 1998	C04a, D03a.1
1999	1704	MS (Minimum Standards of Safety Communications) (Amendment) Regulations 1999	D03a.4
1999	1957	MS (Marine Equipment) Regulations 1999	D04b.1
2000	1334	MS (Survey and Certification) (Amendment) Regulations 2000	D04f.2
2002	1473	MS (Safety of Navigation) Regulations	D03a.5, D03l.8, D04n.1, D04n.2, D04o, D04t.7, D04w, H01a.6, H01a.11, H01f.2, H01f.3, H01f.4, H01f.5, H04b.1, H06d.2, I01b.9, I07i.2, I07i.4, I07i.7

B04b.9 Crew accommodation

Year	SI No.	Title	SBC references
1997	1508	MS (Crew Accommodation) Regulations 1997	E08g.1, E08h.3

B04b.10 Crew agreements

Year	SI No.	Title	SBC references
1977	45	MS (Crew Agreements, Lists of Crew and Discharge of Seamen) (Merchant Ships and Other Vessels) Regulations 1977	
1991	2144	MS (Crew Agreements, Lists of Crew and Discharge of Seamen) Regulations 1991	E07b

B04b.11 Crew - training, certification, manning, hours of work and watchkeeping

Year	SI No.	Title	SBC references
1970	294	MS (Certificate of Competency as AB) Regulations 1970	E02d.2
1981	1076	MS (Certification of Ships' Cooks) Regulations 1970	E02d.3
1987	408	MS (Seamen's Documents) Regulations 1987	E06a.2
1993	1213	MS (Local Passenger Vessels) (Masters' Licences and Hours, Manning and Training) Regulations 1993	E02d.1, E03c.5
1995	1427	MS (Officer Nationality) Regulations 1995	E03d.1a
1995	1803	MS (Ships' Doctors) Regulations 1995	E03d.4
1995	1900	MS (Seamen's Documents) (Amendment) Regulations 1995	E06a.2
1997	346	MS (Disqualification of Holder of Seaman's Certificates) Regulations 1997	E02d.8
1997	348	MS (Training and Certification) Regulations 1997	E02b
1997	1320	MS (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997	E03b.1
1997	1911	MS (Training, Certification and Safe Manning) (Amendment) Regulations 1997	E02b.2
1998	2411	MS and FV (Health and Safety at Work) (Employment of Young Persons) Regulations 1995	E03c.4, E05c.1
1999	3281	MS (Seamen's Documents) (Amendment) Regulations 1999	E06a.2
2000	484	MS (Safe Manning, Hours of Work and Watchkeeping) (Amendment) Regulations 2000	E03b.1
2000	836	MS (Training and Certification) (Amendment) Regulations 2000	E02b.2
2002	2125	MS (Hours of Work) Regulations 2002	E03c.1

B04b.12 Crew - financial matters

Year	SI No.	Title	SBC references
1972	1304	Seamen's Savings Bank Regulations 1972	
1972	1635	MS (Maintenance of Seamen's Dependants) Regulations 1972	
1972	1698	MS (Seamen's Allotments) Regulations 1972	E09c.2
1972	1699	MS (Seamen's Wages) (Contributions) Regulations 1972	E09b.2c
1972	1700	MS (Seamen's Wages and Accounts) Regulations 1972	E09b.2
1972	1875	MS (Maintenance of Seamen's Dependants) (No. 2) Regulations 1972	
1978	1757	MS (Seamen's Wages and Accounts) (Amendment) Regulations 1978	E09b.2
1985	340	MS (Seamen's Wages and Accounts) (Amendment) Regulations 1985	E09b.2
1988	479	MS (Maintenance of Seamen's Dependants) (Amendment) Regulations 1988	
1994	791	MS (Seamen's Wages and Accounts) (Amendment) Regulations 1994	E09b.2
1997	1674	MS (Compensation to Seamen - War Damage to Effects) (Revocation) Scheme 1997	
1999	3360	MS (Seamen's Wages and Accounts) (Amendment) Regulations 1999	E09b.2

B04b.13 Crew – miscellaneous

Year	SI No.	Title	SBC references
1979	97	MS (Repatriation) Regulations 1979	E13c.1
1979	1577	MS (Returns of Births and Deaths) Regulations 1979	E14b
1982	1525	MS (Foreign Deserters) (Disapplication) Order 1982	
1983	1801	MS (Property of Deceased Seamen and Official Log Books) (Amendment) Regulations 1983	E14c
1985	174	MS (Foreign Deserters) (Disapplication) Order 1985	

B04b.14 Distress signals and prevention of collisions

Year	SI No.	Title	SBC references
1996	75	MS (Distress Signals and Prevention of Collisions) Regulations 1996	B03b.3c, H02a.2, H06b.1
2002	1473	MS (Safety of Navigation) Regulations 2002	H04b.1

B04b.15 Diving safety

Year	SI No.	Title	SBC references
2002	1587	MS (Diving Safety) Regulations 2002	D03h.7

B04b.16 Fees

Year	SI No.	Title	SBC references
1996	3243	MS (Fees) Regulations 1996	B05b.1
1998	531	MS (Fees) (Amendment) Regulations 1998	
1999	1063	MS (Fees) (Amendment) Regulations 1999	
1999	1923	MS (Fees) (Amendment No. 2) Regulations 1999	
2000	1683	MS (Fees) (Amendment) Regulations 2000	
2001	3340	MS (Fees) (Amendment) Regulations 2001	
2001	3628	MS (Fees) (Amendment No. 2) Regulations 2001	
2003	788	MS (Fees) (Amendment) Regulations 2003	

B04b.17 Fire

Year	SI No.	Title	SBC references
1998	1011	MS (Fire Protection: Small Ships) Regulations 1998	D04l.2
1998	1012	MS (Fire Protection: Large Ships) Regulations 1998	A03c.1a, D04l.1
1999	992	MS (Fire Protection) (Amendment) Regulations 1999	D04l.1

B04b.18 Inquiries and investigations

Year	SI No.	Title	SBC references
1982	1752	MS (Section 52 Inquiries) Rules 1982	B07c
1985	1001	MS (Formal Investigations) Rules 1985	B07b
1989	84	MS (Section 52 Inquiries) Rules (Amendment) Rules 1989	B07c
1990	123	MS (Formal Investigations) (Amendment) Rules 1990	B07b
1997	347	MS (Section 63 Inquiries) Rules 1997	B07d
2000	1623	MS (Formal Investigations) (Amendment) Rules 2000	B07b

B04b.19 Liability and indemnification of shipowners

Year	SI No.	Title	SBC references
1986	1040	MS (Liability of Shipowners and Others) (Calculation of Tonnage) Order 1986	C03d
1986	2224	MS (Limitations of Liability for Maritime Claims) (Parties to Convention) Regulations 1986	
1987	220	MS (Indemnification of Shipowners) Order 1987	
1994	3049	MS (Liability of Shipowners and Others) (Rate of Interest) Order 1994	
1998	1258	Convention on Limitation of Liability for Maritime Claims (Amendment) Order 1998	
1999	1922	MS (Liability of Shipowners and Others) (Rate of Interest) Regulations 1999	

B04b.20 Life-saving appliances

Year	SI No.	Title	SBC references
1999	2721	MS (Life-Saving Appliances for Ships Other Than Ships of Classes III to VI(A)) Regulations 1999	A03c.1a, D04k.1a
1999	2723	MS (Life-Saving Appliances for Passenger Ships of Classes III to VI(A)) Regulations 1999	D04k.1b
2000	2558	MS (Life-Saving Appliances for Passenger Ships of Classes III to VI(A)) (Amendment) Regulations 2000	D04k.1b
2001	2642	MS (Life-Saving Appliances) (Amendment) Regulations 2001	D04k.1a

B04b.21 Light dues

Year	SI No.	Title	SBC references
1997	562	MS (Light Dues) Regulations 1997	I07g.2
1998	495	MS (Light Dues) (Amendment) Regulations 1998	I07g.2
2002	504	MS (Light Dues) (Amendment) Regulations 2002	I07g.2

B04b.22 Load lines

Year	SI No.	Title	SBC references
1973	1979	MS (Metrication) Regulations 1973	
1998	2241	MS (Load Line) Regulations 1998	D04i.1, I07b.1
2000	1335	MS (Load Line) (Amendment) Regulations 2000	D04i.1

B04b.23 Musters and safety training

Year	SI No.	Title	SBC references
1999	2722	MS (Musters, Training and Decision Support Systems) Regulations 1999	E08l.1, I07f.2

B04b.24 Navigational safety

Year	SI No.	Title	SBC references
2002	1473	MS (Safety of Navigation) Regulations	A03c.1a, H01f.2, H06d.2

B04b.25 Occupational health and safety

Year	SI No.	Title	SBC references
1960	1932	The Shipbuilding and Ship-repairing Regulations 1960	I06e
1979	1435	Public Health (Ships) Regulations 1979	D04q.2, E06c.1, I01e.1
1988	1636	MS (Guarding of Machinery and Safety of Electrical Equipment) Regulations 1988	E08e.1
1988	1637	MS (Means of Access) Regulations 1988	E08e.2
1988	1638	MS (Entry into Dangerous Spaces) Regulations 1988	E08e.3
1988	1639	MS (Hatches and Lifting Plant) Regulations 1988	D04r.1, E08e.4
1988	1641	MS (Safe Movement on Board Ship) Regulations 1988	E08e.5
1988	2274	MS (Safety at Work Regulations) (Non-UK Ships) Regulations 1988	
1993	1213	MS (Local Passenger Vessels) (Masters' Licences and Hours, Manning and Training) Regulations 1993	E02d.1
1997	2962	MS and FV (Health and Safety at Work) Regulations 1997	E08b.2
1998	587	Suspension from Work on Maternity Grounds (Merchant Ships and Fishing Vessels) Order 1998	E08b.2h
1998	1838	MS (Code of Safe Working Practices for Merchant Seamen) Regulations 1998	E08c.3
1998	2411	MS (Health and Safety at Work) (Employment of Young Persons) Regulations 1998	E03c.4, E05c.1
1998	2857	MS and FV (Manual Handling Operations) Regulations 1998	E08e.8
1999	2205	MS and FV (Personal Protective Equipment) Regulations 1999	E08e.6
2000	2567	MS (Accident Reporting and Investigation) Regulations 1999	E08k.1
2001	54	MS and FV (Health and Safety at Work) (Amendment) Regulations 2001	E08b.2
2001	3444	MS and FV (Safety Signs and Signals) Regulations 2001	E08e.7
2002	2055	MS (Medical Examination) Regulations 2002	E06c.2

B04b.26 Official log books

Year	SI No.	Title	SBC references
1981	569	MS (Official Log Books) Regulations 1981	D05a.2, D05b.1, D05b.5, E08k.2, E14a.2, E14c, E14d, H04b.3, H04b.4, H04b.7, H04b.8, H04b.9, H04b.13, H04c.6, H04d
1985	1828	MS (Official Log Books) (Amendment) Regulations 1985	D05a.2
1991	2145	MS (Official Log Books) (Amendment) Regulations 1991	D05a.2
1997	1511	MS (Official Log Books for Merchant Ships and Fishing Vessels) (Amendment) Regulations 1997	D05a.2

B04b.27 Passengers

Year	SI No.	Title	SBC references
1960	1477	MS (Passenger Returns) Regulations 1960	I01i
1987	670	MS Carriage of Passengers and Their Luggage by Sea (Domestic Carriage) Order 1987	
1987	703	MS Carriage of Passengers and Their Luggage by Sea (Notice) Order 1987	
1987	855	MS Carriage of Passengers and Their Luggage by Sea (United Kingdom Carriers) Order 1987	
1989	1880	MS The Carriage of Passengers and Their Luggage by Sea (UK Carriers) (Amendment) Order 1989	
1990	660	MS (Emergency Information for Passengers) Regulations 1990	I07f.3
1999	1869	MS (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999	I07f.1

B04b.28 Pilotage

Year	SI No.	Title	SBC references
1998	1609	MS (Small Workboats and Pilot Boats) Regulations 1998	D03I.5a
2002	1473	MS (Safety of Navigation) Regulations	H01f.2, I01b.9
2003	1230	The Pilotage (Recognition of Qualifications and Experience) Regulations 2003	

B04b.29 Pollution – garbage

Year	SI No.	Title	SBC references
1988	2252	MS (Prevention of Pollution by Garbage) Order 1988	
1993	1581	MS (Prevention of Pollution by Garbage) (Amendment) Order 1993	
1998	1377	MS (Prevention of Pollution by Garbage) Regulations 1998	B03b.3f, H03e.2

B04b.30 Pollution - dangerous and noxious liquid substances in bulk

Year	SI No.	Title	SBC references
1996	3010	MS (Dangerous or Noxious Liquid Substances in Bulk) Regulations 1996	B03b.3f, D03e.2a, D04g.3, D05b.3, H03b.1, H03b.2
1998	1153	MS (Dangerous or Noxious Liquid Substances in Bulk) (Amendment) Regulations 1998	D03e.2a, D04g.3, H03b.2

B04b.31 Pollution – oil

Year	SI No.	Title	SBC references
1957	358	Oil in Navigable Waters (Transfer Records) Regulations 1957	I06a.8
1967	710	Oil in Navigable Waters (Heavy Diesel Oil) Regulations 1967	
1981	612	Prevention of Oil Pollution (Convention Countries) Order 1981	
1983	1106	MS (Prevention of Oil Pollution) Order 1983	
1985	2002	MS (Prevention of Oil Pollution) (Amendment) Order 1985	
1986	2223	MS International Oil Pollution Compensation Fund (Parties to Convention) Order 1986	
1986	2225	MS (Oil Pollution) (Parties to Convention) Order 1986	
1990	2595	MP The Merchant Shipping (Prevention and Control of Pollution) Order 1990	
1991	2885	MS (Prevention of Oil Pollution) (Amendment) Order 1991	
1993	1580	MS (Prevention of Oil Pollution) (Amendment) Order 1993	
1996	282	MS (Prevention of Pollution) (Law of the Sea Convention) Order 1996	
1996	2154	MS (Prevention of Oil Pollution) Regulations 1996	B03b.2j, B03b.3d, B05b.4e, D03a.2, D04g.1, H03a.2, H03a.3, H03a.4, H03a.5, H03a.6, H03a.7, H03a.8, H03a.9
1997	1820	Oil Pollution (Compulsory Insurance) Regulations 1997	G04d.1b
1997	1910	MS (Prevention of Oil Pollution) (Amendment) Regulations 1997	D03a.2, H03a.2
1997	2566	MS (Liability and Compensation for Oil Pollution Damage) (Transitional Provisions) (Revocation) Order 1997	
1997	2567	MS (Oil Pollution Preparedness, Response and Cooperation Convention) Order 1997	
1998	1056	MS (Oil Pollution Preparedness, Response and Co-operation Convention) Regulations 1998	H06e.2
2000	483	MS (Prevention of Oil Pollution) (Amendment) Regulations 2000	D03a.2, H03a.2
2001	1639	MS (Oil Pollution Preparedness, Response and Co-operation Convention) (Amendment) Regulations 2001	

B04b.32 Pollution - jurisdiction and miscellaneous

Year	SI No.	Title	SBC references
1980	1093	MS (Prevention of Pollution) (Intervention) Order 1980	
1996	282	MS (Prevention of Pollution) (Law of the Sea Convention) Order 1996	A02b
1996	972	The Special Waste Regulations 1996	I06c.6
1996	2128	MS (Prevention of Pollution) (Limits) Regulations 1996	A02b, I01a.1b
1997	506	MS (Prevention of Pollution) (Limits) Regulations 1997	A02b, I01a.1b
1997	1869	MS (Prevention of Pollution) (Substances Other Than Oil) (Intervention) Order 1997	
1997	2568	MS (Prevention of Pollution) (Intervention) (Foreign Ships) Order 1997	
1997	2569	MS (Prevention of Pollution) (Amendment) Order 1997	
1998	254	Prevention of Pollution (Amendment) Order 1998	
1998	1500	MS (Control of Pollution) (SOLAS) Order 1998	
1998	3018	MS (Port Waste Reception Facilities) Regulations 1998	I06c.1

B04b.33 Port State control

Year	SI No.	Title	SBC references
1995	3128	MS (Port State Control) Regulations 1995	I01a.1c, I02c.3
1998	1433	MS (Port State Control) (Amendment) Regulations 1998	I02c.3
1998	2198	MS (Port State Control) (Amendment No. 2) Regulations 1998	I02c.3
2001	2349	MS (Port State Control) (Amendment) Regulations 2001	I02c.3

B04b.34 Provisions and water

Year	SI No.	Title	SBC references
1989	102	MS (Provisions and Water) Regulations 1989	E08h.1

B04b.35 Radio and navigational equipment

Year	SI No.	Title	SBC references
1998	2070	MS (Radio Installations) Regulations 1998	A03c.1a, D04m.1
2000	1850	MS (EPIRB Registration) Regulations 2000	D04b.5
2002	1473	MS (Safety of Navigation) Regulations	D04n.1, H01f.2

B04b.36 Registration of ships

Year	SI No.	Title	SBC references
1983	1470	MS (Small Ships Register) Regulations 1983	D01c.2
1993	3138	MS (Registration of Ships) Regulations 1993	D01c.1
1994	541	MS (Registration of Ships) (Amendment) Regulations 1994	D01c.1
1994	774	MS (Modification of Enactments) (Bareboat Charter Ships) Order 1994	D01f
1998	2976	MS (Registration of Ships) (Amendment) Regulations 1998	D01c.1
1999	3206	MS (Registration of Ships, and Tonnage) (Amendment) Regulations 1999	D01c.1
2003	1248	MS (Categorisation of Registries of Relevant British Possessions) Order 2003	D01c.2

B04b.37 Reporting and routeing

Year	SI No.	Title	SBC references
1995	2498	MS (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995	F07f.5, H04b.4, H04d, H06e.1, I01a.7, I01b.7, I01b.10, I02g.4, I07d, I07d.1, I07d.2, I07d.3
1999	2121	MS (Reporting Requirements for Ships carrying Dangerous or Polluting Goods) (Amendment) Regulations 1999	H06f.1
2002	1473	MS (Safety of Navigation) Regulations	H01a.6, H06c.2

B04b.38 Statistical returns

Year	SI No.	Title	SBC references
1997	2330	Statistical Returns (Carriage of Goods and Passengers by Sea) Regulations 1997	

B04b.39 Tonnage

Year	SI No.	Title	SBC references
1982	1085	Tonnage (Various Countries) Order 1982	
1983	439	MS (Deck Cargo Tonnage) Regulations 1983	
1997	1510	MS (Tonnage) Regulations 1997	D04h.2
1999	3206	MS (Registration of Ships, and Tonnage) (Amendment) Regulations 1999	

B04c CHIEF SHIPPING-RELATED ACTS OF PARLIAMENT OF CONCERN TO SHIPMASTERS

B04c.1 Merchant Shipping Act 1995 (c.21)

- **consolidates** all Merchant Shipping Acts from 1894 to 1994 and various other enactments relating to merchant shipping.
- **replaced Merchant Shipping Act 1894** as the “**Principal Act**” in relation to UK merchant shipping legislation.
- **entered into force** in accordance with section 316(2) on 1 January 1996, with the exception of a small number of sections. Certain sections were brought into force by the Merchant Shipping Act 1995 (Appointed Day No. 1) Order 1996 (SI 1996/1210) and others by the Merchant Shipping Act 1995 (Appointed Day No. 2) Order 1997 (SI 1997/3107).
- **contains 316 sections** arranged in **13 parts**, and **14 schedules**. **Parts** are as follows: Part **I**. British ships; **II**. Registration; **III**. Masters and seamen; **IV**. Safety; **V**. Fishing vessels; **VI**. Prevention of pollution; **VII**. Liability of shipowners and others; **VIII**. Lighthouses; **IX**. Salvage and wreck; **X**. Enforcement officers and powers; **XI**. Accident investigations and inquiries; **XII**. Legal proceedings; **XIII**. Supplemental.
- **contains** numerous provisions which are referred to throughout the text of this book, and numerous powers to make regulations on matters covered by this book²⁹.
- * **Schedule 12** lists **repeals**, or partial repeals, of numerous sections and some schedules of Merchant Shipping Act 1894.
- * **Schedule 13** lists **consequential amendments** of other pieces of legislation.
- * **Acts totally repealed by the Merchant Shipping Act 1995** include the Merchant Shipping Act 1897, Merchant Shipping Act 1965, MS (Oil Pollution) Act 1971, Merchant Shipping Act 1981, Prevention of Oil Pollution Act 1986, MS (Registration etc) Act 1993, and Salvage and Pollution Act 1994. Some other acts are **partially repealed**.

B04c.2 Carriage of Goods by Sea Act 1971 (c.19)

- **is an act to amend the law** with respect to the carriage of goods by sea, principally by making the **Hague-Visby Rules** apply to the carriage of goods in certain circumstances. The Rules form the Schedule to the Act and by virtue of section 1(2) have the force of law in the UK.
- * For more detailed notes on the Act, see F07c.3.

B04c.3 Carriage of Goods by Sea Act 1992 (c.50)

- **is described** in its introduction as “an Act to replace the Bills of Lading Act 1855 with new provision with respect to bills of lading and certain other shipping documents”.
- * For more detailed notes on the Act, see F07d.

²⁹ While many existing Merchant Shipping regulations were made under powers conferred by older acts, such as Merchant Shipping Act 1970, any replacing legislation will be made under powers conferred by the Merchant Shipping Act 1995.

B04c.4 Pilotage Act 1987 (c.21)

- **repealed the Pilotage Act 1983**, resulting a large-scale **reorganisation of pilotage service provision** in the UK.
- **provides** for certain masters and mates of ships using UK ports to obtain **Pilotage Exemption Certificates** (section 8).
- **contains** four parts (as detailed below) and three schedules. Parts I and II are of most concern to shipmasters.
- * **Part I** concerns Pilotage functions of competent harbour authorities, including Preliminary (section 1), Provision of pilotage services (sections 2 to 6), Compulsory pilotage (sections 7 to 9), Charging by authorities (section 10), Agents and joint arrangements (sections 11 to 13) and Accounts (section 14). **Part II** contains General Provisions Concerning Pilotage, including Compulsory pilotage (sections 15 and 16), Rights of pilots (sections 17 to 20), Misconduct by pilots (section 21), Limitation of liability (section 22) and Deep sea pilotage (section 23). **Part III** concerns the winding-up of the existing pilotage organisation. **Part IV** concerns Supplementary matters.
- * For notes on **port and canal pilotage**, see I01b.

B04c.5 Merchant Shipping and Maritime Security Act 1997 (c.28)

- **is described** in its introduction as “an Act to amend the Merchant Shipping Act 1995; to extend the powers of fire authorities to use fire brigades and equipment at sea; to make further provision about the protection of wrecks; to amend Part III of the Aviation and Maritime Security Act 1990; to make provision about piracy; to provide for the continuing application to the International Oil Pollution Compensation Fund of section 1 of the International Organisations Act 1968; to make provision about the International Tribunal for the Law of the Sea; and for connected purposes”.
- **was brought into force** by the Merchant Shipping and Maritime Security Act 1997 (Commencement No.1) Order 1997 (SI 1997/1082 (C.39) and The Merchant Shipping and Maritime Security Act 1997 (Commencement No.2) Order 1997 (SI 1997/1539 (C.62).
- **amends** several sections and schedules of the Merchant Shipping Act 1995.
- **brings several sections of the Merchant Shipping Act 1995 into force** through the Merchant Shipping and Maritime Security Act 1997 (Commencement No.1) Order 1997 and the Merchant Shipping and Maritime Security Act 1997 (Commencement No.2) Order 1997.
- **contains** four parts, as follows: **Part I**. Aviation security; **Part II**. Offences against the safety of ships and fixed platforms. **Part III**. Protection of ships and harbour areas against acts of violence; **Part IV**. Miscellaneous and general.
- **contains** the following sections in **Part II**: **9**. Hijacking of ships; **10**. Seizing or exercising control of fixed platforms; **11**. Destroying ships or fixed platforms or endangering their safety; **12**. Other acts endangering or likely to endanger safe navigation; **13**. Offences involving threats; **14**. Ancillary offences; **15**. Master's power of delivery; **16**. Prosecution of offences and proceedings. **17**. Interpretation of Part II.
- **contains** the following sections in **Part III** of interest to shipmasters: **20**. Designation of restricted zones of harbour areas; **21**. Power to impose restrictions in relation to ships; **22**. Power to require harbour authorities to promote searches in harbour areas; **23**. Power to require other persons to promote searches; **24**. General power to direct measures to be taken for purposes to which Part III applies; **25**. Matters which may be included in directions under sections 21 to 24; **26**. Limitations on scope of directions under sections 21 to 24; **27**. General or urgent directions under sections 21 to 24; **28**. Objections to certain directions under section 24; **29**. Enforcement notices; **30**. Contents of enforcement notice; **31**. Offences relating to enforcement notices; **32**. Objections to enforcement notices; **33**. Enforcement notices: supplementary; **34**. Operation of directions under Part III in relation to rights and duties under other laws; **35**. Detention of ships; **36**. Inspection of ships and harbour areas; **37**. False statements relating to baggage, cargo etc.; **38**. False statements in connection with identity documents; **39**. Unauthorised presence in restricted zone; **40**. Offences relating to authorised persons; **41**. Sea cargo agents; **42**. Duty to report certain occurrences; **43**. Compensation in respect of certain measures taken under Part III; **45**. Service of documents.
- **contains** the following sections in **Part IV** of interest to shipmasters: **49**. Extradition by virtue of Orders in Council under section 2 of Extradition Act 1870; **50**. Offences by bodies corporate; **51**. Extension of Act outside the United Kingdom.

B04c.6 Aviation and Maritime Security Act 1990 (c.31)

- **is described** in its introduction as “an Act to give effect to the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation which supplements the Convention for the Suppression of Acts against the Safety of Civil Aviation; to make further provision with respect to aviation security and civil

- aviation; to give effect to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and to the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf which supplements that Convention; to make other provision for the protection of ships and harbour areas against acts of violence; and for connected purposes”.
- **contains** four parts, as follows: Part **I**. Aviation Security; Part **II**. Offences against the security of ships and fixed platforms; Part **III**. Protection of ships and harbour areas against acts of violence; Part **IV**. Miscellaneous and general.
 - **contains** the following sections in **Part II** of interest to shipmasters: **9**. Hijacking of ships; **10**. Seizing or exercising control of fixed platforms; **11**. Destroying ships or fixed platforms or endangering their safety; **12**. Other acts endangering or likely to endanger safe navigation; **13**. Offences involving threats; **14**. Ancillary offences; **15**. Master’s power of delivery; **16**. Prosecution of offences and proceedings; **17**. Interpretation of Part II.

B04c.7 Shipping and Trading Interests (Protection) Act 1995 (c.22)

- **is described** in its introduction as “an Act to consolidate certain enactments for the protection of shipping and trading interests”.
- * **Section 1** gives the UK Government powers to **regulate shipping services** in the event of “foreign action”, i.e. where a foreign government or authority, or agency of either, is doing anything which damages or threatens to damage, the shipping or trading interests of the UK or a State to which the UK has some relevant obligations. A **protective order** may be issued to regulate matters such as the provision of shipping services, the type of shipping services provided, the admission to and departure from UK ports by ships and the making of charter-parties.
- * **Section 5** allows the UK Government to **prohibit by order certain shipping services**, including the carriage of goods or passengers between UK ports or between the UK and an offshore installation on the UK Continental Shelf, or between such installations, except where the services are provided from one or more permanent places of business maintained in the British Islands. The owner and **master** of a ship which breaches such an order is liable under section 6 to a fine on summary conviction not exceeding **£50,000**.

B04c.8 Dangerous Vessels Act 1985 (c.22)

- **is described** in its introduction as “an Act to empower harbour masters to give directions to prohibit vessels from entering the areas of jurisdiction of their respective harbour authorities or to require the removal of vessels from those areas where those vessels present a grave and imminent danger to the safety of any person or property, or risk of obstruction to navigation; to enable the Secretary of State to give further directions countermanding those first-mentioned directions; and for connected purposes”.
- **contains** eight sections, of which sections 1 and 3 are of chief concern to shipmasters.
- * For notes on **sections 1 and 3** of the Act, see I02g.3.

B04d EC DIRECTIVES

- * For notes on **European Community legislation**, see B03a.6.
- * The EC Directives listed in the following table are referred to in the specified sections of this book.

Directive No./Name	Subject of Directive	SBC references
91/689/EEC “Hazardous Waste Directive”	Hazardous waste	I07c.6
1999/35/EC	System of mandatory surveys for the safe operation of regular ro-ro ferry and high-speed passenger craft services	D04f.4, I02c.3b
1999/63/EC	Concerning the Agreement on the organisation of working time of seafarers	E03b.4a, E03b.4d
1999/95/EC	Enforcement of working time restrictions on ships	E03b.4d
1999/32/EC	Sulphur content of certain liquid fuels	I06d.3
2000/34/EC	Amends Directive 93/104/EC	E03b.4d
79/115/EEC	Deep-sea pilotage in the North Sea and English Channel	H01a.8
89/391/EC	Introduction of measures to encourage improvements in the safety and health of workers at work	E08b.2
90/269/EEC	Minimum health and safety requirements for manual handling	E08e.8
91/383/EEC	Supplementing measures to encourage improvements in the safety and health of workers at work with a fixed-term or temporary employment relationship	E08b.2
92/29/EC	Minimum safety and health requirements for improved medical treatment on board vessels	D04p, E03c.4, H04c.3

92/58/EEC	Minimum requirements for the improvement of safety and/or health signs at work	E08e.7
92/85/EEC	Implementation of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding	E08b.2, E08b.2h
93/104/EC “Working Time Directive”	Certain aspects of the organisation of working time	E03b.4d
93/75/EEC “Hazmat Directive”	Minimum requirements for vessels bound for or leaving Community ports and carrying dangerous or polluting goods	B05b.2d, F07f.2, H06e.1, I01a.7, I02c.3d
94/33/EC	Protection of young people at work	E05c.1
94/57/EC	Common rules and standards of ship inspection and survey organisations and for the relevant activities of maritime Administrations	B03a.6 , D03i.2, D04d.1, D04d.2, I02c.3d
94/58/EC	Minimum level of training for seafarers (amended and repealed by Directive 2001/25/EC of the same name)	D03a.4
95/21/EC	Enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control),	B03a.6, D04f.4, I02c.3
95/64/EC	Statistical returns in respect of carriage of goods and passengers by sea	C04c.5
96/98/EC “the MED”	Marine equipment	D04b.1
98/18/EC	Safety rules and standards for passenger ships	B03a.6, D03b.6a, D03b.6b, D04c.2a, D04f.2, D04f.2w, D04f.3, D04f.3a, D04f.3b, D04f.4
98/35/EC	Amendment of Directive 94/58/EC	D03a.4
98/41/EC	Registration of persons sailing on board passenger ships operating to or from ports of the Member States of the Community	I08f.1
98/55/EC	Amendment of Directive 93/75/EEC	H06e.1, I01a.7
98/85/EC	Amendment of Directive 96/98/EC	D04b.1

B05 Department for Transport (DfT) and its agencies

B05a DEPARTMENT FOR TRANSPORT (DfT)

- was **created** in May 2002 by the Labour Government of the UK, following a Cabinet reshuffle³⁰.
- is the UK government department **responsible for**:
 - road transport;
 - rail transport;
 - civil aviation;
 - merchant shipping;
 - health and safety.
- is **headed** by the **Secretary of State for Transport**, to whom the **Minister for Transport** has overall responsibility for Transport matters. An **Under-Secretary of State for Transport** is responsible for (*inter alia*) **shipping and ports** and the **Maritime and Coastguard Agency**, and is sometimes referred to as “the **Shipping Minister**”.
- is **responsible**, in relation to merchant shipping, for:
 - Government policy towards the UK merchant fleet;
 - marine safety in general;
 - seaworthiness of ships;
 - safe construction and stability of ships;
 - safety and pollution aspects of ships’ equipment;
 - safety of carriage of dangerous goods;
 - navigational safety;
 - safe manning;
 - certification of seafarers;
 - health, safety and welfare of seafarers;
 - civil marine search and rescue;

³⁰ In the year prior to the creation of the DfT, shipping was a responsibility of the Department for Transport, Local Government and the Regions (DTLR), which was created in June, 2001. The DTLR’s predecessor was the Department for Environment, Transport and the Regions (DETR).

- prevention and combating of marine pollution;
- investigation of marine accidents; and
- representing the UK at international maritime conferences (e.g. IMO and ILO).

* **Website:** www.dft.gov.uk

B05b MARITIME AND COASTGUARD AGENCY (MCA)

B05b.1 The Maritime and Coastguard Agency

- is an **executive agency of the Department for Transport (DfT)**.
- was created on 1 April 1998 by the merger of the **Marine Safety Agency (MSA)** with the **Coastguard Agency (CGA)**, and carries out the functions of both former organisations.
- **is responsible for:**
 - developing, promoting and enforcing high standards of marine safety;
 - minimising loss of life amongst seafarers and coastal users;
 - responding to maritime emergencies 24 hours a day; and
 - minimising the risk of pollution of the marine environment from ships and where pollution occurs, minimising the impact on UK interests.
- **sets, monitors and enforces standards of safety and pollution prevention** on all UK merchant vessels and **enforces international standards** on foreign ships visiting UK ports.
- implements the **National Contingency Plan for Marine Pollution from Shipping and Offshore Installations**.
- has a wide range of **other duties** with a direct and indirect bearing on safety of life at sea and the prevention of pollution from ships.
- has various functions in connection with **crew matters** and documentation, death inquiries, etc.
- issues **directives and advice** on safety and other matters to masters and crews of ships, shipowners, fishermen and shipbuilders by means of **M Notices** (including Merchant Shipping Notices, Marine Guidance Notes and Marine Information Notes).
- has central **headquarters** at Southampton, England (see address below).
- maintains **Marine Offices (MOs)** in four administrative **regions** as follows:
 - Scotland and Northern Ireland Region: Aberdeen, Belfast, Glasgow, Leith, Shetland (Lerwick);
 - East of England Region: Beverley, Tyne (South Shields), Stockton, Thames (Walton-on-Naze), Yarmouth;
 - South of England Region: Southampton, Dover, Falmouth, Orpington, Plymouth;
 - Wales and West of England Region: Swansea, Cardiff, Liverpool, Milford Haven.
- employs **nautical, ship and engineer surveyors** who mainly work from Marine Offices and deal with:
 - statutory surveys for the issue and maintenance of validity of ship and fishing vessel certificates;
 - other surveys and inspections of UK and non-UK ships, e.g. of bulk cargoes, stowage of dangerous goods, etc.
 - Port State Control inspections of non-UK ships; and
 - sight tests and oral examinations of candidates for Certificates of Competency.
- charges **fees** for its services in accordance with the **MS (Fees) Regulations 1996** (SI 1996/3243), as amended (see B04b.16).
- operates the **Registry and Shipping and Seamen (RSS)** (see B05c).
- time-charters vessels for service as **Emergency Towing Vessels (ETVs)** around the UK coast (see B05b.2e).
- is a party, with the HSE and MAIB, to a **Memorandum of Understanding for health and safety enforcement activities** etc. at the water margin and offshore (see B05f).
- * **MCA headquarters address:** Maritime and Coastguard Agency, Spring Place, 105 Commercial Road, Southampton SO15 1EG. Tel. 01703 329100. Fax 01703 329404.
- * For notes on the **MCA website**, see B05b.6.

B05b.2 MCA structure and organisation

- * The MCA's main component bodies of interest to seafarers are the **Directorate of Operations** (see B05b.2a) and the **Directorate of Quality and Standards** (see B05b.2d).

B05b.2a Directorate of Operations

- * **The Directorate of Operations** consists of six separate parts:
 - Inspection Branch (including Port State Control);
 - Survey Branch;
 - Enforcement Unit;
 - SAR Prevention and Response (formerly Search and Rescue);
 - Counter Pollution and Response; and
 - Public Relations.
- * The **Inspection Branch** supports Marine Offices in inspection of UK and foreign ships (ports State control). It is the contact point for procedures and case guidance, collates information on inspection activity, follows up ship detention with interested parties, manages the Survey and Inspection system (SIAS) and input to the Paris MOU system (SIRENAC), develops policy and represents the UK at national and international fora.
- * The **Survey Branch** develops, promotes and monitors a consistent policy for survey operations; act as a focal point for Marine Office surveyors, Marine Accident Investigation Branch and classification societies when dealing with surveys overseas on behalf of the UK.
- * The **Enforcement Unit** consists of a small team of **Enforcement Officers** who investigate breaches of Merchant Shipping legislation and prosecute offenders where appropriate. Offences investigated are mostly related to pollution, safety and manning, breaches of the Collision Regulations and forged certificates. **Prosecutions** (successful or otherwise) are publicised in the “Prosecutions” section of the **MCA website**.

B05b.2b HM Coastguard

- operates within the **Search and Rescue Branch** of the Directorate of Operations.
- maintains a **continuous distress watch** on international distress frequencies, digital selective calling (DSC) and satcoms.
- collates and broadcasts Maritime Safety Information on VHF and MF radio and NAVTEX.
- provides a **radio medical advice and assistance service** through six Maritime Rescue Co-ordination Centres (**MRCCs**) and fifteen Maritime Rescue Sub-Centres (**MRSCs**). Each Centre is continuously manned and is fitted with a comprehensive range and network of radio and telecommunications, satcoms, fax and telex together with emergency planning facilities, and is responsible for a District with a network of Auxiliary Coastguard Response Teams who are responsible for cliff rescues, mud rescues, coastal searches and patrol work.
- **initiates and co-ordinates all civil maritime search and rescue (SAR) operations** for vessels or persons requiring assistance in the **UK Search and Rescue Region**, i.e. around the 2,500 mile coastline of the UK and for 1,000 miles into the North Atlantic to 30°W.
- is responsible for **requesting the assistance** in distress situations of other appropriate **authorities and resources** including Coastguard helicopters, RNLi lifeboats, RN and RAF fixed wing aircraft, helicopters and ships, as well as merchant shipping, commercial aircraft and fishing vessels.
- **liaises** closely with adjacent foreign SAR organisations.
- maintains its own **coastal rescue teams, vehicles and boats**.
- operates three civil **helicopters** with full night- and all-weather rescue capability contracted to provide a SAR facility at Sumburgh Airport (Shetland), Stornoway (Isle of Lewis) and Lee-on-Solent for civil aviation and maritime rescue or medical evacuation from ships or offshore installations. Current aircraft are Sikorsky S61Ns with a typical endurance of 4 hours at 110 knots. 10 persons can be lifted by winch at about 150 miles radius or 20 persons at 80 miles radius depending on weather conditions.
- * In particular, **HM Coastguard is responsible for:**
 - obtaining and evaluating all relevant information regarding an incident from appropriate sources;
 - initiating distress and urgency broadcasts as necessary;
 - alerting and tasking of appropriate resources to SAR incidents;
 - determining search areas, formulating search plans and tasking resources effectively;
 - where appropriate appointing an On-Scene Commander (OSC) or Aircraft Co-ordinator (ACO) to exercise local co-ordination at the scene of SAR operations;
 - co-ordinating the actions of all involved units;
 - deciding, after consideration of all the available information, that there is no longer any probability of survival of any missing persons, and that SAR action can be terminated.
- * **HM Coastguard** is organised into six **Coastguard Search and Rescue Regions** (which are subdivisions of the UK Search and Rescue Region, or SRR). For SAR purposes, these Regions are each under the authority of Regional Inspectors, each based at a **Maritime Rescue Co-ordination Centre (MRCC)**. The six MRCCs are at Aberdeen, Yarmouth, Dover, Falmouth, Swansea and Clyde. Each Region is further subdivided into **Coastguard Districts**,

each under the authority of a District Controller. Each District is centred on either an MRCC or **Maritime Rescue Sub-Centre (MRSC)**.

- * All **MRCCs and MRSCs** maintain a 24-hour communications watch system which together give coverage of the UK SRR. Within each District there are a number of Auxiliary Coastguard Rescue Teams grouped within Sectors under the management of regular Coastguard Officers.
- * **MRCC Dover** is also the headquarters of the **Channel Navigation Information Service (CNIS)**, and operates a radar surveillance system in conjunction with its French counterpart at Cap Gris Nez to monitor the traffic flow through the Dover Strait. CNIS operates an aircraft to identify vessels which appear to be contravening the International Regulations for Preventing Collisions at Sea, 1972.
- * **MRCC Dover and MRSC Portland** are also “reporting-in” stations for ships operating the **Ship Movement Reporting System (MAREP)**, and MRCC Dover is the collating station for information received as a result of the “Hazmat Directive” (see B04d). Vessels may also make voluntary Position and Intended Movement reports to MRCC Falmouth and MRSCs Shetland, Pentland and Stornoway when on passage through their areas of responsibility.
- * In addition to regional responsibilities, **MRCC Falmouth** plays an important role in the GMDSS as the **UK SAR Point of Contact** for the International SAR Satellite System (SARSAT) and maintains links with foreign MRCCs to resolve incidents occurring worldwide. Liaison with countries not covered by formal SAR liaison arrangements is also conducted through MRCC Falmouth.

B05b.2c Counter Pollution and Response Branch

- is a branch of the Directorate of Operations.
- fulfils the Government’s commitment under international agreements to provide a **marine pollution response capability** by the maintenance of a **National Contingency Plan for Marine Pollution from Shipping and Offshore Installations** (which is on the MCA website).
- has the objective of **protecting the marine environment and minimising damage to UK interests from pollution** by maintaining an effective and efficient **response organisation** for the clean-up of oil and chemical spills from shipping casualties and offshore installations, using both **directly-owned and contracted resources** which include emergency cargo transfer equipment, dispersant-spraying and remote-sensing aircraft³¹, dispersant-spraying tugs and some mechanical oil-recovery equipment. For onshore operations it holds stockpiles of specialised beach-cleaning equipment.
- **assesses reports of marine pollution** and potential pollution from oil and other hazardous substances (e.g. from vessels in difficulties) and takes **appropriate action**.
- provides **scientific and technical advice** on shoreline clean-up, and training for local authority oil pollution officers.
- manages the **Emergency Towing Vessel (ETV)** contract³².
- seeks to detect **illegal discharges and offenders** through aerial surveillance.
- seeks to encourage **reporting of pollution** at sea.
- * The Counter Pollution team based in MCA headquarters at Southampton manages the MCA stockpiles of **counter pollution equipment** and provides central and scientific support and back-up to the **Principal Counter Pollution and Salvage Officers (PCPSOs)** placed in each of the four MCA Regions. PCPSOs take responsibility for monitoring and dealing with pollution incidents in their regions, with support from Southampton HQ as needed.
- * The Counter Pollution response was changed in March 1999 from a totally centralised organisation (which was known as the **Marine Pollution Control Unit**) to a **regional counter pollution organisation** supported by a central core of counter pollution officers, scientists and administrators. This was intended to improve the speed and performance of counter-pollution response in the Regions and to improve liaison with ports and harbours, harbourmasters and the oil industry located within the Regions.

³¹ Aerial surveillance and dispersant spraying work is contracted out by the MCA to a commercial operator. Surveillance aircraft provided include a Cessna 406 and a Cessna 404, based at Coventry and Inverness. A Cessna 406, based at Inverness, is equipped for spraying 1.3 tonnes of dispersant. Two Lockheed Electras, each able to carry 13 tonnes of dispersant, are normally based at Coventry. Under a separate contract an Islander is based at Lydd (Kent) for Channel Navigation Information Service patrols operated by Dover MRCC; this aircraft, which has no pollution detection equipment, may also be tasked for counter-pollution visual observation and evidence recording in the Dover Strait.

³² The MCA time-charters four ETVs to provide emergency towing cover in winter months in the four areas deemed to pose the highest risk of a marine accident, i.e. the Dover Strait, the Minches, the Western Approaches and the Fair Isle Channel. MCA delegates operational tasking of ETVs to local HMCG District Controllers. As part of the charter agreement, and at the discretion of MCA, any ETV may undertake such commercial towage as a shipowner and the ETV operator may agree. Any such “hire” agreement benefits both the ETV operator and MCA.

B05b.2d Directorate of Quality and Standards

- is responsible for: reviewing and developing standards for seafarers, ships and the environment; growing the business, including flagging-in work and the use of training skills within the MCA; internal and external quality assurance; developing the availability and the use of corporate information to support the operation of the MCA and its customers.
- * Within the Directorate are branches responsible for: Fishing Vessel Safety; Code Vessel Safety; Shipping Safety; Environmental Quality; Communication and Innovation; Standards Setting; Seafarer Training and Certification; Formal Safety Assessment; International Standards; Seafarer Health and Safety; and the Registry of Shipping and Seamen (see B05c).

B05b.3 MCA personnel

- * Duties and powers of the various **MCA personnel** with whom a shipmaster might have contact are outlined below.

B05b.3a Secretary of State's Representative (SOSREP)

- has the full title of **Secretary of State's Representative for Maritime Salvage and Intervention**.
- is a post created as part of the UK Government's response to *Command and Control: Report of Lord Donaldson's Review of Salvage and Intervention and their Command and Control*³³, commissioned in the wake of the *Sea Empress* grounding and published in March 1999. SOSREP commenced work at the MCA in October 1999 and is based at the MCA's Southampton headquarters.
- acts during a salvage operation on behalf of the Secretary of State for Transport, and in the public interest.
- has statutory powers to oversee, control and, if necessary, **intervene in salvage operations** within UK waters involving vessels or fixed platforms where there is a **significant risk of pollution**.
- * During periods of emergency activity SOSREP will be based at an HM Coastguard MRCC or MRSC. At other times SOSREP is based at the MCA's HQ in Southampton, and is responsible to the MCA Chief Executive.
- * The Government's **intervention powers** in shipping casualties are contained in section 137 of the Merchant Shipping Act 1995 (see H03i and H05c.2).

B05b.3b Receiver of Wreck

- * The **Department for Transport** (DfT) has general superintendence of all matters relating to **wreck** found in the UK and in UK waters.
- * **Wreck** is the subject of Part IX, Chapter II of the Merchant Shipping Act 1995. Under section 231 of the Act, sections 232, 233, 234 and 235 apply in circumstances where a UK or foreign vessel is wrecked, stranded, or in distress at any place on or near the coasts of the UK or any tidal water within UK waters.³⁴
- * **The official in charge of wreck** in the UK is the **Receiver of Wreck**, an MCA official appointed under section 248 of the Merchant Shipping Act 1995 and based at MCA's Southampton HQ.
- * **The Receiver's main task** is to **process incoming reports of wreck** in the interest of both the salvor and owner. This involves researching ownership, liaising with the finder and owner, and liaising with other interested parties such as archaeologists and museums. Certain functions of the Receiver, e.g. taking charge at wreck scenes, are delegated to HM Customs and HM Coastguard officers around the UK coast.
- * **Under section 231** of the Merchant Shipping Act 1995, **where a UK or foreign vessel is wrecked, stranded, or in distress** at any place on or near the coasts of the UK or in any tidal water within UK waters, the Receiver (or delegated official) must go to the scene, take command of all persons present and assign such duties and give such directions as he/she thinks are needed for the preservation of the vessel and the lives of the shipwrecked persons.
- * **Under section 232(3)** the Receiver may not interfere between the master and crew of a vessel in reference to the management of the vessel unless he/she is requested to do so by the master.
- * **Under section 233** the Receiver may, for the purpose of the preservation of shipwrecked persons or of the vessel, cargo and equipment:
 - require such persons as he/she thinks necessary to assist him/her;

³³ Available at the **DfT Shipping website**: www.shipping.dft.gov.uk/index.htm

³⁴ Sections 232, 233, 234 and 235 deal with: duty of the receiver where a vessel is in distress; powers of the receiver in case of a vessel in distress; power to pass over adjoining land; and liability for damage in case of plundered vessel, respectively.

- require the master, or any other person having the charge, of any vessel near at hand to give such assistance with his men, or vessel, as may be in his power;
- require the use of any vehicle that may be near at hand.
- * **Section 234** confers on the Receiver considerable **powers to pass over land** adjoining a wreck scene. A land owner or occupier who hinders the Receiver will be liable to a level 3 fine on summary conviction.
- * **Section 247** confers on the Receiver powers of entry, search and seizure (subject to a search warrant being granted) where he/she has reason to believe that wreck is being concealed or is in the possession of a non-owner, or is being improperly dealt with.
- * **Section 226** requires the Receiver to detain wreck where salvage is due any person under Part IX, Chapter I of the Merchant Shipping Act 1995 and the wreck is not sold as unclaimed. The Receiver must detain the vessel and the cargo and equipment, or the wreck, until payment is made for salvage, or process is issued for the arrest or detention of the property by the court. The Receiver may release any property when satisfactory security is given.
- * For notes on the **duties of a finder of wreck** and a definition of “**wreck**”, see I02h.
- * **Receiver of Wreck postal address:** Receiver of Wreck, Bay 1/05, Spring Place, 105 Commercial Road, Southampton SO15 1EG, England.
- * **Receiver of Wreck web address:** www.mcga.gov.uk/row

B05b.3c Superintendents

- are properly called “**mercantile marine superintendents**”.
- are **MCA officials**, based at **Marine Offices** in the UK.
- are **empowered** by section 296 of the Merchant Shipping Act 1995 to exercise the numerous functions conferred on superintendents by the Act, which include (but are not limited to) dealing with:
 - issue, endorsement and withdrawal, etc. of seamen’s documents;
 - engagement of seamen and exemption provisions;
 - discharge of seamen;
 - seamen’s wages and allotments;
 - resolution of wages disputes;
 - relief and repatriation of seamen left behind;
 - returns and reports of births and deaths at sea;
 - inquiries into deaths on board ships, etc.;
 - property of deceased seamen;
 - official log books;
 - manning of merchant ships;
 - seamen’s health and safety;
 - receipt and onward delivery of ships’ documents;
 - complaints by seamen about provisions or water;
 - complaints about seaworthiness of ships; and
 - inquiries into misconduct of seamen.

B05b.3d Proper officers

- are **defined** in section 313(1) of the Merchant Shipping Act 1995 as **consular officers** appointed by Her Majesty’s Government in the UK and, in relation to a port in a country outside the UK which is not a foreign country, also any officer exercising in that port functions similar to those of a superintendent.
- have **powers in relation to merchant ships, masters and seamen** conferred by many provisions of Merchant Shipping legislation, many of which are referred to throughout this book, for example in connection with Official Log Books, returns of births and deaths, and repatriation of seamen.
- * **In a foreign port**, the proper officer is a **consular officer** (i.e. the British consul or vice-consul). Consuls and vice-consuls are officials of the Foreign and Commonwealth Office (FCO), and not the DfT, but carry out various official functions on behalf of the DfT.
- * “Countries outside the UK which are not foreign countries” include Crown Dependencies and British Overseas Territories (see D01c.2).
- * **In a port outside the UK which is not a foreign country** (e.g. in a Crown Dependency port such as Douglas, Isle of Man, or in a British Overseas Territory port such as Gibraltar), the proper officer is the port State government official who exercises similar functions to those of a mercantile marine superintendent in the UK. (These officials may be known locally as **Shipping Masters**.)
- * For notes on **British consuls**, see B02d.2. For notes on **reasons for contacting a consul**, see I01j.i.

B05b.3e Inspectors

- are Department for Transport (DfT) **enforcement officers** appointed by the Secretary of State for Transport under **section 256(6)** of the Merchant Shipping Act 1995 to report to him –
 - upon the nature and causes of any accident or damage which any ship has or is alleged to have sustained or caused; whether any requirements, restrictions or prohibitions imposed by or under the Act have been complied with or contravened, as the case may be;
 - whether the hull and machinery of a ship are sufficient and in good condition; and
 - what measures have been taken to prevent the escape of oil or mixtures containing oil.
- have wide powers under several sections of the Merchant Shipping Act 1995, including the powers-
 - to require production of ships' documents (section 257);
 - to inspect ships and their equipment, etc. (section 258);
 - to enter premises and board ships, and make examinations, investigations, etc. (section 259);
 - to serve Improvement Notices (section 261);
 - to serve Prohibition Notices (section 262).
- * **MAIB inspectors of marine accidents** are appointed separately under **section 267** of the Merchant Shipping Act 1995.
 - **HSE inspectors** are appointed separately under **section 267** of the Merchant Shipping Act 1995.

B05b.3f Surveyors of ships

- are **MCA** officials.
- include **nautical surveyors** (who are qualified as deck officers), **ship surveyors** (who are qualified as naval architects) and **engineer surveyors** (who are qualified as marine engineers).
- are **enforcement officers** appointed under section 256 of the Merchant Shipping Act 1995 for the purposes of the Act.
- have certain **powers as inspectors** (see B05b.3e).
- **enforce merchant shipping legislation** and **administer international maritime safety conventions** and related Codes of Practice.
- are **responsible for**:
 - the survey and certification of safety equipment on ships;
 - in some cases, the survey of ships' structures;
 - investigating shipping casualties and accidents to crew;
 - inspecting crew accommodation and related matters;
 - inspecting arrangements on ships for dealing with the prevention of marine pollution;
 - random general safety inspections of ships, both UK and foreign;
 - random inspections of the condition, loading and storage on ships of packaged dangerous goods, including tank containers and motor tank vehicles;
 - inspecting shipboard operational arrangements for the loading and unloading of oil, chemical and gas tankers and offshore support vessels;
 - inspecting arrangements relating to the occupational health and safety of seafarers;
 - safe manning and the certification of crews;
 - diving operation activities from UK flag vessels outside the jurisdiction of the Health and Safety Executive;
 - eyesight testing of deck officer candidates; and
 - oral examination of candidates for certificates of competency.
- * For notes on functions of marine Administration surveyors generally, see I03b.3.

B05b.3g Customer Service Managers

- * When a ship is to be “flagged in” to the UK Register, once the owner/manager decides to proceed with UK registration, a **Customer Service Manager** (CSM) will be appointed by RSS. The CSM is a fully qualified MCA surveyor who will be the owner's or manager's single point of contact with the RSS and will oversee the smooth transfer to the UK Register. For notes on **registration procedure in the UK**, see D01d.

B05b.3h MARPOL surveyors

- are surveyors appointed or authorised, and paid fees, by the MCA for the purposes of **exercising control procedures under MARPOL Annex II** (which covers noxious liquid substances carried in bulk).
- are mostly surveyors employed by marine survey firms, but also include individual marine consultants.
- do not have the same range of powers as MCA surveyors.
- are listed in **MIN 116**.
- will only attend if required by a shipowner or his agent.
- have duties which can be summarised as follows:
 - to attend the **completion of the unloading of all Category A substances** and verify that the pre-wash has been conducted;
 - to attend where the **unloading of Category B and C substances** cannot be carried out in accordance with the ship's Procedures and Arrangements Manual;
 - to attend vessels, such as **offshore supply vessels**, to verify that cargo tanks that have contained NLSs of Categories A, B or C have been **cleaned** and that the residues and washings have been **discharged** to port reception facilities in accordance with the ship's Procedures and Arrangements Manual;
 - to **exempt ships** from the requirements of paragraphs 1 to 10 of Schedule 2 of M.1703/NLS1 in accordance with paragraph 16 of Schedule 2;
 - to **endorse the ship's Cargo Record Book**;
 - to provide six-monthly **returns** (including nil returns) to the MCA.

B05b.4 Powers of MCA personnel

- * **Various sections of the Merchant Shipping Act 1995** confer powers on MCA personnel and on proper officers, as outlined below.

B05b.4a Powers to require production of ships' documents

- * **Section 257 of the Merchant Shipping Act 1995** confers certain powers on:
 - any Departmental officer (i.e. any Department for Transport (DfT) officer discharging functions under the Merchant Shipping Act 1995);
 - any commissioned naval officer;
 - any British consular officer;
 - the Registrar General of Shipping and Seamen or any person discharging his functions;
 - any chief officer of customs and excise; and
 - any superintendent -
 - whenever the officer has reason to suspect that the Merchant Shipping Act 1995 or any law for the time being in force relating to merchant seamen or navigation is not complied with.
- * The **powers** conferred are:
 - to require the owner, master, or any of the crew to produce any official log book or other documents relating to the crew or any member of the crew on their possession or control;
 - to require the master to produce a list of all persons on board his ship, and take copies or extracts from the official log books or other such documents;
 - to muster the crew; and
 - to require the master to appear and give any explanation concerning the ship or her crew or the official log books or documents produced or required to be produced.

B05b.4b Powers to inspect ships and their equipment, etc.

- * **Section 258(1) of the Merchant Shipping Act 1995** allows, for the purposes of seeing that the Act and regulations are complied with, etc., a **surveyor of ships**, a **superintendent** or **any person appointed by the Secretary of State**, at all reasonable times go on board a ship and **inspect the ship and its equipment or any part thereof, any articles on board and any document carried in the ship** under the Act or any regulations or rules under it.
- * These powers are also exercisable on a UK ship outside the UK by the above officers or by a **proper officer** (section 258(2)).

- * A person exercising these powers shall not unnecessarily detain or delay a ship but may, if he considers it necessary following an accident or for any other reason, require a ship to be **taken into dock for a survey** of its hull or machinery (section 258(3)).
- * Powers are also given under section 258 to **enter premises ashore** where there are reasonable grounds for believing that there are, on the premises, **provisions or water intended for supply to a UK ship** which, if provided on the ship would not be in accordance with relevant safety regulations.

B05b.4c Powers of inspectors in relation to premises and ships

- * **Under section 259 of the Merchant Shipping Act 1995**, an inspector -
 - may at any reasonable time (or, in a situation which in his opinion is or may be dangerous, at any time) -
 - enter any premises in the UK; or
 - board any UK ship wherever it may be and any other ship which is in the UK or UK waters, if he has reason to believe that it is necessary for him to do so;
 - may, on entering the premises or boarding the ship, make such examination and investigation as he considers necessary;
 - may give a direction that the premises, ship, or anything in same shall be left undisturbed for as long as reasonably necessary during the examination or investigation;
 - may take measurements, photographs, recordings and samples as necessary;
 - may, in the interests of health or safety, have articles dismantled and tested;
 - may take temporary possession of articles or substances for certain purposes;
 - may require the giving of relevant information;
 - may require the production of, and inspect and take copies of books and documents which are required by the Act to be kept (including requiring a master to certify a copy of an oil record book as a true copy);
 - may require facilities and assistance.
- * The powers to enter property and board ships, make examinations and investigations and require the production of and inspection and copying of books or documents are also exercisable in the UK under section 259 by **harbour masters**, for the purpose of ascertaining the circumstances relating to an **alleged discharge of oil or a mixture containing oil** from the ship into the harbour.
- * Nothing in section 259 will be taken to compel the production by any person of a **document** of which he would on grounds of **legal professional privilege** be entitled to withhold production on an order for discovery in a High Court action or a Court of Session action, as the case may be. (Note: Masters should take advice from their company officials, P&I club or legal representatives before handing over such documents.) See also D06d.2 for notes on **legal professional privilege**.

B05b.4d Powers to detain ships

- * **Section 284 of the Merchant Shipping Act 1995** gives powers of detention to:
 - any commissioned **naval or military officer**;
 - any **Departmental (i.e. Department for Transport (DfT)) officer**;
 - any **officer of Customs and Excise**; and
 - any **British consular officer**.
- * Where a ship **breaches a detention order**, the master will be liable, on summary conviction, to a maximum fine of £50,000, or on conviction on indictment, an unlimited fine.
- * For notes on **detention**, see I02e.

B05b.4e Power to deny entry to ports or offshore terminals

- * **Regulation 35(1) of the MS (Prevention of Oil Pollution) Regulations 1996** (SI 1996/2154) gives the MCA the power to deny the entry to UK ports or offshore terminals of a ship which a harbour master has reason to believe proposes to enter the harbour but does not comply with the requirements of the Regulations, if the MCA is satisfied that the ship presents an unreasonable threat of harm to the marine environment.

B05b.4f Power to serve Improvement Notices

- * **Section 261(1) of the Merchant Shipping Act 1995** provides that if an inspector appointed under section 256(6) is of the opinion that a person is **contravening one or more of the relevant statutory provisions**, or has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue to be repeated, he may serve on that person an **Improvement Notice**.

- * Holders of the above power include **MCA surveyors** and **HSE inspectors**.
- * For notes on the **form and use of Improvement Notices**, see E08b.4.

B05b.4g Power to serve Prohibition Notices

- * **Section 262(1)** of the Merchant Shipping Act 1995 provides that if, as regards any **relevant activities** which are being or are likely to be carried on **on board any ship** by or under the control of any person, an inspector appointed under section 256(6) is of the opinion that, as so carried on or as likely to be so carried on, the **activities involve** or (as the case may be) will involve the **risk of serious personal injury** to any person (whether on board the ship or not), or of **serious pollution of any navigable waters**, the inspector may serve on the first-mentioned person a **Prohibition Notice**.
- * Section 262(2) provides that in section 262(1), “**relevant activities**” means activities to or in relation to which any of the relevant statutory provisions apply or will, if the activities are carried on as mentioned that sub-section, apply.
- * Holders of the above power include **MCA surveyors** and **HSE inspectors**.
- * **Section 263** of the Merchant Shipping Act 1995 provides that an Improvement Notice or a Prohibition Notice may (but need not) include **directions** as to the measures to be taken to remedy any contravention or matter to which the notice relates, and may give a choice between different ways of remedying the contravention or matter.
- * **Section 264** of the Merchant Shipping Act 1995 provides for questions relating to notices served as above to be referred to **arbitration**.
- * For notes on the **form and use of Prohibition Notices**, see E08b.4.

B05b.5 MCA publications

- The MCA publishes the publications listed in the following table (some of which were first published by a predecessor of the MCA).

Title	Publisher	Printed	ISBN
Carriage of Cargoes, Volume 2 - Solid Bulk Cargoes - Instructions for the Guidance of Surveyors	Maritime and Coastguard Agency	Stationery Office,	0 11 552127 5
Carriage of packaged dangerous goods by sea: Instructions for the Guidance of Surveyors	Department of Transport	HMSO, 1993	0 11 551167 9
Code of practice for safety of large commercial sailing and motor vessels (the “Megayacht Code”)	Marine Safety Agency	HMSO, 1997	0 11 551911 4
Code of practice for the construction, machinery, equipment, stability, operation and examination of sailing vessels, of up to 24 metres load line length, in commercial use and which do not carry cargo or more than 12 passengers (the “Blue Code”)	Surveyor General's Organisation	HMSO, 1993	0 11 551184 9
Code of practice for the construction, machinery, equipment, stability, operation and examination of motor vessels, of up to 24 metres load line length, in commercial use and which do not carry cargo or more than 12 passengers (the “Yellow Code”)	Surveyor General's Organisation	HMSO, 1993	0 11 551185 7
Code of practice for the safety of small workboats & pilot boats (the “Brown Code”)	Maritime and Coastguard Agency	Stationery Office, 1998	0 11 552006 6
Code of practice for vessel engaged in oil recovery operations	Marine Safety Agency	HMSO, 1996	0 11 551811 8
Code of safe working practices for Merchant Seamen	Maritime and Coastguard Agency	Stationery Office, 1998	0 11 551836 3
Fire Protection Arrangements - Instructions for the Guidance of Surveyors	Maritime and Coastguard Agency	Stationery Office, 1999	0 11 552000 7
International Code of Safety for High Speed Craft (HSC Code) - Instructions for the Guidance of Surveyors	Maritime and Coastguard Agency	Stationery Office, 1999	0 11 552084 8
International Management Code for the Safe Operation of Ships and for Pollution Prevention, The ISM Code - Instructions for the Guidance of Surveyors	Maritime and Coastguard Agency	Stationery Office, 1999	0 11 551810 X
Load Line - Instructions for the Guidance of Surveyors	Maritime and Coastguard Agency	Stationery Office, 1999	0 11 551999 8
Merchant Shipping Navigational Equipment - Instructions for the Guidance of Surveyors	Maritime and Coastguard Agency	Stationery Office, 1999	0 11 552198 4
Passenger Ship Construction, Classes I, II & II(A): Instructions for the Guidance of Surveyors	Maritime and Coastguard Agency	Stationery Office, 1999	0 11 551998 X
Passenger Ship Construction, Classes III to VI(A): Instructions for the Guidance of Surveyors	Maritime and Coastguard Agency	Stationery Office, 1999	0 11 552114 3
Radio Installations on Fishing Vessels - Instructions for the Guidance of Surveyors	Maritime and Coastguard Agency		0 11 552199 2
Radio Installations on GMDSS Ships - Instructions to surveyors	Maritime and Coastguard Agency	Stationery Office, 1998	0 11 552010 4

Roll-on/roll-off ships - stowage and securing of vehicles - code of practice	Department of Transport	HMSO, 1991	0 11 550995 X
Survey of Chemical Tankers: Instructions for the Guidance of Surveyors	Maritime and Coastguard Agency	Stationery Office, 1999	0 11 552110 0
Survey of Crew Accommodation in Merchant Ships - Instructions for the Guidance of Surveyors	Maritime and Coastguard Agency	Stationery Office, 1998	0 11 552116 X
Survey of gas carriers: Instructions for the Guidance of Surveyors	Marine Safety Agency	HMSO, 1996	0 11 551696 4
Survey of Gas Carriers: Instructions for the Guidance of Surveyors	Maritime and Coastguard Agency	Stationery Office, 1999	0 11 552112 7
Survey of life-saving appliances Volume 1: Instructions for the Guidance of Surveyors	Maritime and Coastguard Agency	Stationery Office, 1999	0 11 552001 5
Survey of life-saving appliances Volume 2: Instructions of the Guidance of Surveyors - testing of life-saving appliances	Maritime and Coastguard Agency	Stationery Office, 1999	0 11 552002 3
Survey of Lights and Signalling Equipment - Instructions for the Guidance of Surveyors	Maritime and Coastguard Agency	Stationery Office, 1999	0 11 552173 9
The Carriage of Cargoes, Volume 1 - The carriage of packaged cargoes and cargo units (including containers and vehicles), Instructions for the Guidance of Surveyors	Maritime and Coastguard Agency	Stationery Office, 1998	0 11 552113 5
The Code of Practice for the Safety of Small Vessels in Commercial Use for Sport or Pleasure Operating from a Nominated Departure point (NDP) (the "Red Code")	Maritime and Coastguard Agency	Stationery Office, 1999	0 11 551812 6
The Prevention of Oil Pollution from Ships: Instructions for the Guidance of Surveyors	Maritime and Coastguard Agency	Stationery Office, 1999	0 11 552111 9
The Prevention of Pollution by Garbage from Ships and the provision and use of Port Waste Reception facilities: Instructions for the Guidance of Surveyors	Maritime and Coastguard Agency	HMSO, 1999	0 11 552107 0
The safety of sail training ships - stability information booklet	Department of Transport	HMSO, 1990	0 11 550956 9

B05b.6 MCA website

- * The **MCA website** is at: www.mcga.gov.uk and contains³⁵ the following sections:
- **homepage** – including “Solway” Safety Scheme; MCA training and advisory services; “Ensign” Large Yacht Safety; UK Flag & Registration; “CG66” ID Safety Scheme; Seafarer training and certification; MCA Business Plan; Consultations; “Sea Smart” Safety Scheme; History of HM Coastguard; Fishing vessel incidents; Code vessel safety; and “Coastwalk”.
 - **About us** – including MCA Contacts; Receiver of Wreck; MCA business directory; IMO Committees; “How to find us”; Recruitment; and Dangerous goods;
 - **News** – including Press releases; Prosecutions; Detentions; and New statutory powers;
 - **Survey and Inspection** – including Seafarer Standards; Certification requirements for UK ships; Application for Survey and Inspection of Ships and Fishing Vessels; Code Vessel safety; Authorisation for issue of statutory certificates; Byelaws; Alternative Compliance Scheme; Standards setting; UK ship classification and EC equivalents; and Authorisation for Approval of Stability.
 - **Search and Rescue** – including Co-ordination; COMSAR Correspondence Group on Large Passenger Ship Safety; International SAR Co-operation Plans Index; Maritime Safety Information; UK Search and Rescue Framework; UK 406 MHz EPIRB registration form; and Firefighting at Sea Project.
 - **Counter Pollution and Response** – including Prevention; Information on Local Authority training course run by the MCA; Advisory Committee on Protection of the Sea (ACOPS) Annual Report; a Review of Emergency Towing Vessel (ETV) Provision Around the Coast of the UK; National Contingency Plan for Marine Pollution from Shipping and Offshore Installations; The Secretary of State’s Representative (SOSREP); Oil Spill Contingency Guidelines; and STOp and INF Notices.
 - **Campaigns and Publications** – including: Regulations; Fishing Vessel Safety Survey; Fishing Vessel Engine Types Index; Corporate Information; Statutory Information; and Promotional Information.
 - a **Search** facility.
- * The MCA’s 2002 SOLAS V publication (see H01f.2a) is under the heading “Regulations” in the Campaigns and Publications pages.
- * The complete text of the **Ship Captain’s Medical Guide** can be downloaded from: www.mcga.gov.uk/publications/medical/index.htm
- * A 24-hour **MCA Infoline** is maintained on telephone number 0870 6006505 or e-mail: infoline@mcga.gov.uk or by post to MCA Infoline, Tutt Head, Mumbles, Swansea SA3 4HW, Wales.

³⁵ In June 2003.

B05c REGISTRY OF SHIPPING AND SEAMEN (RSS)

- is a **branch of the MCA** co-located (as notified in **MIN 137**) with Cardiff Marine Office (see address below).
- **registers**, and maintains the **central register** of, UK merchant ships, pleasure vessels, fishing vessels and ships which are bareboat chartered ("bareboat charter ships") (see D01c.2).
- allocates **official numbers** and **approves names** of ships. (Radio call signs are allocated by the Radiocommunications Agency – see B06.)
- issues and revalidates **seafarers' certificates**.
- issues other **seamen's documents** such as discharge books and seamen's cards.
- issues **medals** to seamen and has custody of **records of medals and awards** to seamen.
- **registers all births and deaths** at sea.
- administers, on behalf of the Department for Transport, the **Crew Relief Scheme** (a scheme to assist shipowners with costs of flying UK seafarers to and from ships joined or left abroad).
- has **custody of Crew Agreements and Lists of Crew, Official Log Books**, and (for one year only) **Radio Logs** (although historic records are now kept in Newfoundland, Canada).
- has **custody of seamen's records** for verification of sea service.
- maintains the **central record of British Seamen's Cards and Discharge Books**.
- maintains the **Register of Certificates of Competency and Service** and issues copy certificates.
- * **Address:** Registry of Shipping and Seamen, MCA Cardiff, Ground Floor, Anchor Court, Keen Road, Cardiff CF24 5JW, Wales; Tel 029 20448800; Fax: 029 20448820; E-mail rss@mcga.gov.uk

B05d MARINE ACCIDENT INVESTIGATION BRANCH (MAIB)

- is an **expert unit** within the **Department for Transport (DfT)**, based in Southampton, England.
- is responsible for **investigating marine accidents** for the UK government, **producing reports and recommendations** based on its findings, and **providing professional advice at public inquiries**.
- **investigates** accidents at sea and on board ships with the aim of determining what caused an accident in order to prevent it from happening again³⁶.
- **operates** under the requirements and powers of Part XI of the Merchant Shipping Act 1995 (Accident investigations and inquiries), which contains sections as follows: **267**. Investigation of marine accidents; **268**. Formal investigation into marine accidents; **269**. Re-hearing and appeal from investigation; **270**. Rules as to investigations and appeals; **271**. Inquiries into deaths of crew members and others; **272**. Reports of and inquiries into injuries; **273**. Transmissions of particulars of certain deaths on ships.
- **has duties** defined in the **MS (Accident Reporting and Investigation) Regulations 1999** (SI 1999/2567) (see E08k).
- operates **independently of the MCA**, and does not enforce Merchant Shipping legislation.
- **was established** in July 1989 (following the *Herald of Free Enterprise* disaster of 1987) under section 33 of the Merchant Shipping Act 1988.
- **is headed** by the **Chief Inspector of Marine Accidents**, who is appointed under section 267(1) of the Merchant Shipping Act 1995 and reports directly (and only) to the Secretary of State for Transport.
- **is staffed** by MAIB inspectors³⁷ whose powers and working framework are set out in Part XI of the Merchant Shipping Act 1995. (The MS (Accident Reporting and Investigation) Regulations 1999 put the framework into effect.)
- maintains a **computerised database** of marine accidents from 1991, which can be used to determine trends.
- is a party, with the MCA and HSE, to a **Memorandum of Understanding for health and safety enforcement activities** etc. at the water margin and offshore (see B05f).
- * **MAIB inspectors** are appointed under and have powers conferred by section 267(1) of the Merchant Shipping Act 1995. Section 267(8) provides that for the purpose of discharging their investigative functions they have the powers of an **inspector** conferred by section 259.
- * For notes on the **MS (Accident Reporting and Investigation) Regulations 1999** and procedures for reporting accidents, see E08k.

³⁶ MAIB received 1,453 accident and incident reports in 2000. Accidents to ships accounted for 621, with a further 631 involving accidents to people. 201 hazardous incidents (near-misses) were reported, a 25% increase on 1999.

³⁷ MAIB inspectors come from the three marine disciplines: nautical, engineering and naval architecture. Some are experienced former MCA surveyors; others have been recruited because of their recent seagoing or specialist knowledge. Inspectors are available to travel at short notice to wherever a ship has been involved in an accident. In the course of a year MAIB inspectors will provide assistance to various coroners, procurators fiscal, and the police in connection with marine accidents. Inspectors attended coroner's inquests in England, Wales and Northern Ireland, and fatal accident inquiries in Scotland, to give evidence.

- * **MAIB address:** Marine Accident Investigation Branch, First Floor, Carlton House, Carlton Place, Southampton, Hampshire SO15 2DZ, UK. Tel (office hours): 023 8039 5500. Tel (24 hours): 023 8023 2527. Fax: 023 8023 2459. E-mail: maib@dft.gsi.gov.uk
- * **Accident reporting line:** 023 8023 2527 (from outside UK: +44 23 8023 2527).
- * **Website:** www.maib.dft.gov.uk

B05e HEALTH AND SAFETY COMMISSION (HSC) AND HEALTH AND SAFETY EXECUTIVE (HSE)

B05e.1 Functions, powers and jurisdiction of HSC and HSE

- * The **Health and Safety Commission (HSC)** -
 - is responsible to the Secretary of State for Transport and to other Secretaries of State for the administration of the HSW Act throughout Great Britain and on installations on the UK Continental Shelf.
 - has the following **functions**:
 - to secure the health, safety and welfare of persons at work;
 - to protect the public generally against risks to health or safety arising out of work activities and to control the keeping and use of explosives, highly flammable and other dangerous substances;
 - to conduct and sponsor research; promote training and provide an information and advisory service;
 - to review the adequacy of health and safety legislation and submits to Government proposals for new or revised regulations and approved codes of practice.
 - has general oversight of the work of the Health and Safety Executive (HSE) and has power to delegate to the HSE any of its functions.
- * The **Health and Safety Executive (HSE)** -
 - is the operating arm of the **Health and Safety Commission (HSC)**.
 - is a **statutory body**, set up in 1975 with the main function of making arrangements to secure the health, safety and welfare of people at work and to protect the public from dangers arising from work activities.
 - **enforces**, in all premises in **Great Britain** and on **installations on the UK Continental Shelf**:
 - the Health and Safety at Work, etc. Act 1974 (HSWA), as amended (see E08b.1);
 - regulations made under HSWA;
 - other laws covering particular hazards, e.g. parts of the Food and Environment Protection Act, the COSHH Regulations and the Control of Pesticides Regulations; and
 - laws that cover a particular industry, such as the **ports industry** and the **offshore oil and gas industry**.
- * **HSE inspectors** -
 - have **powers** derived principally from sections 20-23 of HSWA and associated legislation, including the **power of entry to all work places**, including docks and offshore installations, to **inspect health and safety conditions** and to **investigate accidents** to dock workers, etc. **working in a port** or while (on board) **loading or unloading a ship** in Great Britain.
 - have powers to **investigate accidents to a ship's crew** (see B05f).
 - have powers to **require transport to, and accommodation on, offshore installations**.
 - have powers to issue **Improvement Notices and Prohibition Notices** in any workplaces under their jurisdiction (including ships) (see E08b.4).
 - have the same powers to **inspect premises, ships and offshore installations** as Department for Transport (DfT) inspectors (see B05b.3e).
 - may bring **prosecutions** for breaches of relevant legislation.
- * **HSE website:** www.hse.gov.uk
- * **In Northern Ireland**, the Health and Safety Executive for Northern Ireland (**HSENI**) exercise similar powers to those of HSE. Website:

B05e.2 Legislation enforced by HSE applying to ships and offshore installations

- * The following tables list the **chief health and safety legislation** applicable to ships in situations in which the HSE is the enforcing body.

Acts of Parliament

Year	Chapter	Title	SBC ref.
1974	c.37	Health and Safety at Work etc. Act 1974	E08b.1
1992	c.15	Offshore Safety Act 1992	
1992	c.24	Offshore Safety (Protection Against Victimisation) Act 1992	

Statutory Instruments

Year	SI No.	Title	SBC ref.
1987	37	The Dangerous Substances in Harbour Areas Regulations 1987	I02g.4
1987	1331	The Offshore Installations (Safety Zones) Regulations 1987	H01a.5
1988	1655	The Docks Regulations 1988	E08f
1989	971	The Offshore Installations (Safety Representatives and Safety Committees) Regulations 1989	
1992	2051	The Management of Health and Safety at Work Regulations 1992	
1992	2966	The Personal Protective Equipment at Work Regulations 1992	
1992	2932	The Provision and Use of Work Equipment Regulations 1992	
1992	2793	The Manual Handling Operations Regulations 1992	
1992	2885	The Offshore Installations (Safety Case) Regulations 1992	
1995	743	Offshore Installations (Prevention of Fire and Explosion, and Emergency Response) Regulations 1995	D03h.3
1997	2776	Diving at Work Regulations 1997	
2001	2127	The Health and Safety and Work etc. Act 1974 (Application Outside Great Britain Order) 2001	E08b.1a
2002	1355	The Offshore Chemicals Regulations 2002	
2002	1861	The Offshore Installations (Emergency Pollution Control) Regulations 2002	H03i

B05f SHARING OF RESPONSIBILITIES BETWEEN HSE, MCA AND MAIB

- * **Areas of mutual interest** between HSE, MCA and MAIB include docks and harbours (including dry docks), coastal and inland waters, shipbuilding and ship repair, offshore, construction work, chain ferries, diving and hovercraft. In areas where there is an **overlap of responsibilities** between these bodies, e.g. at the water margin, in canals and offshore, effective co-ordination between the three organisations is ensured through a **Memorandum of Understanding for Health and Safety Enforcement Activities etc. at the Water Margin and Offshore**. (“the MOU”). The MOU identifies the organisation that will be the **lead authority** for inspection of vessels, investigation of accidents, etc. in different circumstances. The lead authority co-ordinates any joint inspection activities, accident investigation, etc. and notifies the other bodies if appropriate.
- * The following notes outline some of the arrangements set out in the MOU. The full text of the **MOU** can be seen on the **MCA website** in the “Statutory information” section of the “Campaigns and publications” pages.

B05f.1 Enforcement

- * **MCA** is responsible for enforcing all merchant shipping legislation in respect of occupational health and safety, the safety of vessels, safe navigation and operation (including manning levels and crew competency). Merchant shipping health and safety regulations extend to all those working on the ship at sea, and all shipboard activities carried out by the crew under the control of the ship’s master (but not to shipboard activities in port, etc. carried out under the control of a land-based employer, such as stevedoring operations).
- * For health and safety enforcement, MCA has powers over **non-UK vessels** only while they are moored, and not over such vessels exercising their right of transit through UK waters, which may include maintaining position by DP. (Vessels being moved using anchor winches are considered to be moored.)
- * A **stacked offshore installation** is regarded in merchant shipping law as a ship. Under the MS (Port State Control) Regulations 1995, MCA’s powers of inspection and detention extend to any non-UK stacked installation anchored off a port, but not if the installation is anchored off the coast unless the anchorage is a recognised port anchorage.
- * **HSE** is responsible for enforcing the **Health and Safety at Work etc. Act 1974** (HSWA), and regulations made under it, in respect of **land-based and offshore work activities**, including loading and unloading of a ship, and for all work activities carried out in a **dry dock**.
- * **MAIB** has no enforcement responsibilities or powers. MAIB inspectors observing serious contraventions of legislative requirements on vessels would, in practice, report them to MCA for possible prosecution.

- * **HSE** is responsible for enforcement of HSWA in respect of **diving operations**, including certification of divers, equipment safety, etc. **MCA** is responsible for enforcement of relevant safety legislation applicable to diving support vessels.
- * **MCA** is responsible for enforcement of legislation applicable to **hovercraft**, even when the craft has left the water. **HSE** is responsible for enforcement of HSWA in respect of the loading or unloading of passengers, vehicles and the handling of cargo.
- * **HSE** has responsibility in respect of **standby vessels** only for enforcing the requirement on installation operators and owners for ensuring adequate provision of standby vessels where appropriate. **MCA** is responsible for enforcement of legislation concerning the safety of standby vessels and their crews.
- * **HSE** has no responsibility in respect of survey vessels (except for diving operations), towing vessels, anchor handling vessels, dredging vessels or cable-laying vessels (unless cable-laying between installations).
- * **In docks and harbours**, **HSE** is primarily responsible for enforcing legislation covering the safety of shore-based personnel and work equipment supplied by the shore, even when employed on a ship. **HSE** is also responsible for enforcing legislation covering the safety of passengers when on shore. (The dividing line between **MCA** and **HSE** responsibilities for passengers is at the gangway.) **MCA** is responsible for occupational health and safety of crews of ships in docks and harbours, for work equipment supplied by the ship, and for the safety of passengers on board ships in port.
- * Merchant shipping legislation, enforced by **MCA**, applies to launches used for servicing lights and lightships in docks and harbours., including loading and unloading stores etc. at the light. HSWA, enforced by **HSE**, applies to maintenance work carried out on lights and lightships in docks and harbours.
- * On **ships which are permanently moored** and have no master or crew, e.g. restaurant ships and museum ships, **HSE** has primary responsibility for enforcement in relation to shore-based workers and members of the public visiting the ship.
- * For vessels on **inland waterways**, enforcement could be either under HSWA (by **HSE**) or merchant shipping legislation (by **MCA**). (The HSWA applies where there is no industry-specific legislation.)
- * On **workboats** attending construction work such as bridge repairs, the **MCA** enforces the applicable statutory code regulating the boat's safety, while **HSE** enforces occupational health and safety legislation, since the work activity is land-based.
- * Since the Merchant Shipping Act 1995 does not apply to **Crown-owned vessels** such as MOD vessels, Customs cutters and Coastguard craft, **HSE** is responsible for inspections and accident investigation, although they will seek assistance as required from **MCA** and **MAIB**.

B05f.2 Accident investigation

- * **MAIB** investigates accidents relating to ships and their crews. **MAIB** may investigate any accident on any UK vessel anywhere, and on any vessel in UK territorial waters. For notes on the **MS (Accident Reporting and Investigation) Regulations**, within which the **MAIB** operates, see E08k.1.
- * **HSE** investigates land-based and offshore accidents. Accidents must be reported under the **Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995** ("RIDDOR") (SI 1995/3163), which came into force on 1 April 1996.
- * In situations where an employer or a shipmaster has a **duty to report the same accident to both HSE** (under RIDDOR) **and MAIB** (under the ARI Regulations), the person filing the report with one organisation will be advised and the report passed on to the other.
- * **HSE** would investigate **accidents involving shore-based workers**, such as linesmen falling from a quay during a mooring operation, in co-operation with **MAIB**.
- * Where **access is provided by the ship**, **MAIB** leads in investigation of any accident involving access; where access is provided by the shore, **HSE** leads, and consults **MCA** if ship's personnel or passengers are involved.
- * **MAIB** is responsible for investigating any accidents to or on diving support vessels. **MAIB** is also responsible for investigating accidents to or on hovercraft.

B06 Radiocommunications Agency and associated organisations

B06a RADIOCOMMUNICATIONS AGENCY

- * The **Radiocommunications Agency (RA)** -
 - was established in London in 1990 as an executive agency of the Department of Trade and Industry (DTI).
 - **is responsible** for the issue (under the provisions of the **Wireless Telegraphy Act 1949**) of **Ship Radio Licences** of various categories (although this is contracted out to Wray Castle – see B06b.2);
 - **allocates radio call signs** to UK ships as part of the licensing function. The call sign is a unique identification for the vessel (unlike its name) and is registered by the RA with the ITU along with details given by the license applicant about the vessel.
 - **monitors** (from a station at Baldock, Hertfordshire) the **radio frequency spectrum** as an aid to management, enforcement and freedom from harmful interference.
 - **was formerly responsible** to the Secretary of State for Trade for the **certification of radio operators** and for the issue of Certificates of Competence and Authorities to Operate (ATO) in conformity with the Wireless Telegraphy Act 1949. (Since 1 April 1997 this function has been the responsibility of the MCA.)
 - is responsible for most **civil radio matters** in the UK other than those of telecommunications policy, broadcasting policy and the radio equipment market.
 - **allocates and assigns frequencies** to meet the needs of current and future users, service providers and manufacturers.
 - pursues a policy of **deregulation** where possible and appropriate.
 - **represents UK interests** in international negotiations on radio matters.
 - seeks to ensure that all UK users of radio equipment (as well as manufacturers and installers) comply with relevant **EC regulations and international agreements** to which the UK is a party.
- * **Website:** www.radio.gov.uk
- * Application forms and guidance notes for Ship Fixed Radio Licences and EPIRB registration are published on the RA website.

B06b ORGANISATIONS ASSOCIATED WITH THE RADIOCOMMUNICATIONS AGENCY

B06b.1 AMERC

- * The **Association of Marine Electronics and Radio Colleges (AMERC)** -
 - **acts as the examining body** for a range of operator and maintenance certificates on behalf of the Radiocommunications Agency and MCA.
 - **provides**, as part of this examining agency status, a national network of **regional examination centres** for UK radio operator qualifications, with qualified examiners.
 - **sets examinations and maintains standards** for certificated personnel, as part of the above function.
 - **provides examination services to the MCA** for marine radio, radar and electronic navigation equipment maintenance certificates.
 - **operates**, in co-operation with the British Council, a limited number of **overseas examination centres**.
- * **Website:** www.amerc.ac.uk

B06b.2 Wray Castle

- is an international **provider of telecoms training**, specialising in the design, development and delivery of high level technical training for RF, network and software engineers.
- **maintains databases** of ships' callsigns, Selcall numbers and Maritime Mobile Service Identities (MMSI).
- **issues radio operator certificates** (other than VHF-only certificates) on behalf of the Radiocommunications Agency.

- formerly distributed Ship Radio Licences on behalf of the Radiocommunications Agency; this is now done by Subscriptions Services Ltd.
- * **Address:** Wray Castle Limited, Ambleside, Cumbria LA22 0JB, England. Tel: 015394 40200. Fax: 015394 40201.
- * **Website:** www.wraycastle.com

B07 Statutory investigations and inquiries

B07a INSPECTOR'S INVESTIGATIONS

- * **Under section 267(1) of the Merchant Shipping Act 1995** the Secretary of State must, for the purpose of the investigation of marine accidents, appoint inspectors of marine accidents, one of whom will be appointed as Chief Inspector of Marine Accidents.
- * Section 267(2) identifies the “**accidents**” in subsection (1) as:
 - **any accident involving a ship or ship's boat**³⁸ where, at the time of the accident, the ship is a **UK ship**, or the ship or boat is **in UK waters**; and
 - **such other accidents** involving ships or ships' boats as the Secretary of State may determine.
- * Under **regulation 6(1) of the MS (Accident Reporting and Investigation) Regulations 1999** (SI 1999/2567) **any accident** (as defined in regulation 2(1) may be investigated and the Chief Inspector of Marine Accidents must decide whether or not an investigation (known as an “Inspector's Investigation”) should be carried out. Where a report of an accident or serious injury has been received under regulation 5, the MAIB must, within 28 days of receipt of the report or information, notify the master of any decision to have an Inspector's Investigation.
- * Before making the decision whether or not to investigate an accident, the MAIB may, under regulation 6(2), require further information to be obtained, and the master or owner and any other relevant person or corporate body must provide this information to the best of their ability and knowledge.
- * Under regulation 6(7) any initial decision not to investigate may later be reversed by the MAIB.
- * Regulation 4 explains that the **fundamental purpose of investigating an accident** is to determine its circumstances and causes with the aim of improving the safety of life at sea and the avoidance of future accidents. It is not the purpose to apportion **liability** or, except so far as is necessary to achieve its fundamental purpose, to apportion **blame** (which are matters for the MCA and the courts).
- * Regulation 8 makes the rules for the **conduct of Inspectors' Investigations**.
- * Regulation 10 requires the Chief Inspector to produce **reports** of certain **Inspectors' Investigations** carried out under regulation 6(1).
- * An investigation may be **reopened** under regulation 12.

B07b FORMAL INVESTIGATIONS

- * **Under section 268 of the Merchant Shipping Act 1995** where any “**accident**” has occurred (as defined in the MS (Accident Reporting and Investigation) Regulations 1999), the Secretary of State for Transport may (whether or not an Inspector's Investigation into the accident has been carried out under section 267) cause a **Formal Investigation** to be held. In England, Wales or Northern Ireland a Formal Investigation will be held by a **wreck commissioner**, while in Scotland it will be held by a **sheriff**.
- * Under section 268(3) the **Magistrates' Courts Act 1980** (which compels the attendance of witnesses and production of evidence) applies to a Formal Investigation held by a wreck commissioner **as if it were a magistrate's court** and the Formal Investigation was a “complaint”. The wreck commissioner has the power to administer oaths for the Formal Investigation. In Scotland, a sheriff will dispose of a Formal Investigation as a “summary application”, and his decision will be final (section 268(4)).
- * Assistance will be given in the Formal Investigation by one or more suitably experienced and qualified **assessors** (usually mariners); if cancellation or suspension of an officer's certificate is likely to arise, not less than two assessors must be appointed.
- * Under section 268(5) a wreck commissioner or sheriff may, if satisfied that an officer caused or contributed to an accident, **cancel or suspend any certificate** held by the officer, or censure him. On cancellation or suspension, the officer must deliver his certificate to the Department for Transport (DfT). Legal costs may also be awarded against an officer.

³⁸ References to an accident involving a ship or ship's boat include references to an accident occurring on board a ship or ship's boat. “Ship's boat” includes a life-raft.

- * Section 269 provides for the **re-hearing** of all or part of a case where a formal investigation was held under section 268 and new and important evidence has been discovered or there appear to the Secretary of State to be other grounds for suspecting that a miscarriage of justice may have occurred. A re-hearing may be by a wreck commissioner or the High Court in England or Wales, or by a sheriff or the Court of Session in Scotland.
- * The **rules for the conduct of Formal Investigations** are contained in the **MS (Formal Investigations) Rules 1985** (SI 1985/1001), as amended by SI 1990/123 and SI 2000/1623.

B07c INQUIRIES INTO THE FITNESS OR CONDUCT OF OFFICERS (“SECTION 61 INQUIRIES”)

- may be held under powers given by **section 61 of the Merchant Shipping Act 1995**.
- were formerly known as “**section 52 Inquiries**”, since they were formerly provided for under section 52 of the Merchant Shipping Act 1970.
- * If it appears to the Department for Transport (DfT) that an officer -
 - is unfit to discharge duties, by reason of incompetence, misconduct or any other reason; or
 - has been seriously negligent in the discharge of his duties; or
 - has failed to render assistance and exchange information after a collision -
 then the DfT may hold an **inquiry** by one or more persons appointed by them and may, if they think fit, **suspend**, pending the outcome, **his certificate**.
- * Where a certificate has been suspended the suspension may, on application of the officer, be terminated by the High Court, or if the inquiry is held in Scotland, by the Court of Session; the decision of the court will be final.
- * The **Rules of the Inquiry** are laid down in the **MS (Section 52 Inquiries) Rules** (SI 1982/1752), as amended by SI 1989/84.

B07d INQUIRIES INTO THE FITNESS OR CONDUCT OF SEAMEN OTHER THAN OFFICERS (“SECTION 63 INQUIRIES”)

- may be held under powers given by **section 63 of the Merchant Shipping Act 1995**.
- * The Department for Transport (DfT) may, where it appears that a person who is the holder of a certificate other than an officer's, whether by reason of incompetence or misconduct or for any other reason, give him notice in writing that it is considering the suspension or cancellation of the certificate.
- * The seaman may make written representations or claim to make oral representations to the DfT, and the DfT must decide whether to cancel the certificate.
- * The holder of the certificate may, under section 63, require the case to be dealt with by an inquiry to be held by one or more persons appointed by the Secretary of State. They -
 - may confirm the DfT's decision and cancel or suspend the certificate;
 - where the decision was to cancel the certificate, may suspend it instead;
 - may, where the decision was to suspend the certificate, suspend it for a different period;
 - may, instead of confirming the decision of the Secretary of State, censure the seaman or take no further action;
 - may make an order with regard to the cost of the inquiry.
- * The procedure to be followed at a Section 63 inquiry is prescribed by the **MS (Section 63 Inquiries) Rules 1997** (SI 1997/347).
- * **Section 62** allows for the disqualification of the holder of a certificate other than an officer's (see E02d.8).

B07e POWER TO SUMMON WITNESSES

- * **Section 68 of the Merchant Shipping Act 1995** gives the persons holding an inquiry under section 61 or section 62³⁹ powers to -
 - summon any person to attend to give evidence or to produce any documents in his custody or under his control which relate to the matter in question; and
 - take evidence on oath (and for that purpose administer oaths), or, instead of administering an oath, require the person examined to make a solemn affirmation.

³⁹ Section 62 actually deals with “Disqualification of holder of certificate other than officer's”, whereas it is section 63 that provides for an “Inquiry into fitness or conduct of seaman other than an officer”. Section 62(4) refers to “an inquiry under section 63”.

- * The persons holding an inquiry have powers to issue a warrant for the arrest of a person summoned but failing to attend, and to bring him before the inquiry, if it appears to them that there is no just excuse for the failure or if they are satisfied by evidence on oath that the absent person is likely to be able to give material evidence or produce a relevant document.
 - A person attending an inquiry but refusing to be sworn or to give evidence may be jailed for up to one month or fined up to £1000 by the persons holding the inquiry.

B07f DEATH INQUIRIES

- * **Section 271 of the Merchant Shipping Act 1995** provides that, except where a coroner's inquest⁴⁰ is to be held, or, in Scotland, where a fatal accident inquiry is to be held, an **inquiry** into the cause of death shall be held by a superintendent or proper officer where -
 - any person dies in a UK ship or in a boat or liferaft from such a ship; or
 - the master of or a seaman employed in such a ship dies in a country outside the UK.
- * The inquiry must be held **at the next port** where the ship calls after the death and where there is a superintendent or proper officer, or at such other place as the Secretary of State for Transport may direct.
- * For the purposes of the inquiry the superintendent or proper officer will have the **powers of an inspector** under section 259 (see B05b.3e).
- * For notes on **deaths of seafarers and other persons on board ships**, see E14.

⁴⁰ In England or Wales a **coroner's inquest** must be held if a death was violent or unnatural, was caused by an industrial disease, occurred in prison, or if the cause of death remains uncertain after post-mortem examination. Coroners hold inquests in these circumstances even if the death occurred abroad (and the body is returned to Britain). If a body has been destroyed or is unrecoverable, a coroner can hold an inquest by order of the Secretary of State provided the death is likely to have occurred in or near the coroner's jurisdiction. The inquest is an inquiry into the medical cause and circumstances of a death. It is held in public, sometimes with a jury. In Scotland, a **fatal accident inquiry** is held in similar circumstances.