



Unite the Union Submission to the Marine Coastguard Agency (MCA) **Maritime Civil Sanctions Provisions**

1 Introduction

- 1.1. Unite is the UK's largest trade union with over 1.4 million members across the private and public sectors. The union's members work in a range of industries including manufacturing, financial services, print, media, construction, transport, local government, food, agriculture, education, health, not for profit and of particular relevance to this submission, the docks, rail, ferries and waterways sectors.
- 1.2. Unite is surprised to learn from the wording of the consultation that the sanctions that the MCA can bring are so limited, not allowing sanctions to suit the degree of noncompliance with the rules and that the MCA "*does not have powers to impose sanctions that have an immediate impact, such as financial fixed and variable monetary penalties*". In this response Unite seeks to strike a balance between a proposal which could unjustly punish a worker for following what they believed to be the lawful instructions of their employer and the justified punishment of individuals or organisations for a flagrant disregard to maritime safety legislation.

2 Section 5.1 Consultation Questions

- 1. Do you agree with the cost assessment set out within Annex A, concluding there are no additional costs being placed on industry as a result of the proposed extension of civil sanctions? Please supply any additional evidence that you may have relating to potential costs.**
 - 2.1. Unite agrees with the idea of seeking to amend the Merchant Shipping Act 1995 to be amended to provide the MCA with financial penalties for breaches of the Merchant Shipping Legislation. Unites only concern is with the burden of proof between that needed for a criminal and that for a civil conviction.
 - 2.2. As the MCA will be aware the burden of proof for a criminal case is beyond all reasonable doubt whilst for a civil prosecution the burden of proof level is on the balance of probabilities. Therefore a criminal prosecution is far harder to prove as there should be no reasonable doubt of guilt as opposed to a situation where weighing up the evidence; it is likely that the party is guilty. Such a change would mean there could be more convictions and miscarriages of justice.

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2. **Which of the options from Annex A would you support? i.e. (i) make civil sanctions available for all offences; or (ii) extend application of existing civil sanctions powers; or (iii) do nothing?**
- 2.3. Unite agrees with the assessment that in Annex A that Option 1 to extend the powers to enforce existing offences through civil sanctions should be preferred as it “provides an effective and more proportionate way for the MCA to enforce regulatory requirements, reducing the reliance on criminal sanctions”. Unite would state, however, that these should be occasions where criminal sanctions should apply if there is a sufficient burden of proof that the actions were taken deliberately or with the knowledge that the actions may result in a breach putting lives at risk.
3. **Monetary penalties are being considered in the range of £250 to £50 000. Do you think that the levels of monetary penalties proposed are appropriate as an alternative to a criminal prosecution and potential criminal conviction for an individual or organisation?**
- 2.4. Unite does not agree that the fines should be capped at £50,000, as for some larger organisations in the shipping industry a £50,000 fine might be considered to be the cost of doing business rather than any real sanction as it may lose more than that if they complied with the legislation.
4. **Do you consider that these measures would support and encourage compliance within the maritime industry, setting out reasons why you think they would or would not have this effect?**
- 2.5. Unite believes that the measures may support and encourage compliance within the industry for minor infractions but the cap on penalties may be not enough to effect change. For these infractions the prospect of a criminal conviction and potentially far steeper penalties would be appropriate especially where lives are put at risk.
- 3 **Section 5.2**
5. **Do you have any additional comments to add to the response?**
- 3.1. Unite is still firmly of the view that the lashing and unlashng or cargo should be the responsibility of trained stevedore as opposed to a member of the crew unless there are no stevedores available in a port. Crew members may be tired and exhausted after a long voyage and therefore not in a fit state to judge if it is safe to un-lash cargo before it enters the port or if it is safe to depart with cargo still not secured. Whilst the speed of the turnaround could make the difference between making the tide or not, and thereby losing a half a day from the voyage it can also be the difference between life and death or serious injury.

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4 Conclusion

- 4.1. Unite agrees that there should be the option in the Merchant Shipping Act 1995 to allow the MCA to apply civil appropriate civil sanctions to enforce the legislation and ensure the safety of all seafarers and dock workers. Unite is not convinced however that the application of a £50,000 fine will be enough to cause some less scrupulous organisations from changing their ways.

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