The UK maritime sector post Covid-19

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The UK maritime sector post Covid-19

David Richards and Dr Tagbo Ilozue

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The Law

- International Legislation – and UK laws which implement
  - SOLAS
  - Athens
  - MLC
  - IHR
- Domestic Legislation
- Case Law

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Regulation (EC) No 336/2006 on the implementation of the ISM Code within the Community

- Article 5 **Safety management requirements**

  The ships referred to in Article 3(1) and the companies operating them shall comply with the requirements of Part A of the ISM Code.

- Article 9 **Penalties**

  Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all the measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

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The Merchant Shipping (International Safety Management (ISM) Code) Regulations 2014

- **Reg. 4.** An ISM company must not operate a ship to which the EU Regulation applies unless (a) Article 5 of the EU Regulation; and (b) the requirements in regulation 6; are complied with in relation to that ship.

- **Reg. 5(1)** An ISM company must not operate a ship within paragraph (2) unless the requirements in regulation 6 are complied with in relation to that ship.

- **Reg 7** The master of a ship to which the EU Regulation applies or which is within regulation 5(2) must operate that ship in accordance with the safety management system on the basis of which the Safety Management Certificate (or Interim Safety Management Certificate, as the case may be) was issued.

- **Reg 15** (1) Any contravention of regulation 4; regulation 5; or regulation 8(1), is an offence by the ISM company… (2) Any contravention of regulation 7; or regulation 8(2), is an offence…

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Athens Convention

Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974 as amended by the Protocol of 2002

- **Article 3.2:** For the loss suffered as a result of the death of or personal injury to a passenger…the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The burden of proving fault or neglect shall lie with the claimant.

Domestic Implementation

- EU Regulation (EC) No 392/2009 on the liability of carriers of passengers by sea in the event of accidents

- s.183 Merchant Shipping Act 1995

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MLC

Maritime Labour Convention **Article IV**

- **1.** Every seafarer has the right to a safe and secure workplace that complies with safety standard.
- **2.** Every seafarer has a right to fair terms of employment.
- **3.** Every seafarer has a right to decent working and living conditions on board ship.
- **4.** Every seafarer has a right to health protection, medical care, welfare measures and other forms of social protection.
- **5.** Each Member shall ensure, within the limits of its jurisdiction, that the seafarers' employment and social rights set out in the preceding paragraphs of this Article are fully implemented…

Domestic Implementation of MLC

- Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013/1785
- Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014/1613
- Merchant Shipping (Maritime Labour Convention) (Medical Certification) Regulations 2010/737
- Merchant Shipping (Maritime Labour Convention) (Hours of Work) Regulations 2018/58

Work in Fishing Convention

- The Merchant Shipping (Work in Fishing Convention) Regulations 2018/1106
- The Merchant Shipping (Work in Fishing Convention) (Survey and Certification) Regulations 2018/1107
- The Merchant Shipping (Work in Fishing Convention) (Medical Certification) Regulations 2018/1108
- The Merchant Shipping (Work in Fishing Convention) (Consequential Provisions) Regulations 2018/1109

IHR

International Health Regulations

- **Article 2:** …to prevent, protect against, control and provide a public health response to the international spread of disease in ways commensurate with and restricted to public health risks, and which avoid unnecessary interference with international traffic and trade
- **Arts. 5, 6, 27, 28, 37, 43, and 56**

Domestic implementation

- Public Health (Ships) Regulations 1979 as amended

Domestic Legislation

The Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997

- **Reg 5. General duties (1)** The employer shall ensure the health and safety of workers and other persons so far as is reasonably practicable…
- **Reg 7. Risk assessment (1)** A suitable and sufficient assessment shall be made of the risks of the health and safety of workers arising in the normal course of their activities or duties…
- **Reg 11. Health surveillance** Workers shall be provided with such health surveillance as is appropriate

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Coronavirus Legislation

- Health Protection (Coronavirus, International Travel) (England) Regulations 2020
- The Health Protection (Coronavirus, Public Health Information for Passengers Travelling to England) Regulations 2020
- Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020

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Case Law

- *Nolan v TUI UI Ltd* [2016] 1 Lloyd's Rep (CC)

- *Swift v Fred Olsen Cruise Lines* [2016] EWCA Civ 785

The Greg Mortimer

COVID-19: in the footsteps of Ernest Shackleton
Ing AJ, Cocks C, Green JP. Thorax Epub ahead of print: 27 May 2020. doi:10.1136/ thoraxjnl-2020-215091

- Set off 15 March 2020
- Screening and temperature checks
- On board surveillance
- Isolation of those who fell ill
- 128 out of 217 positive for Covid-19
- 104 (81%) asymptomatic

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International Guidelines

- WHO *Operational considerations for managing COVID-19 cases or outbreaks on board ships* (Interim guidance – 25 March 2020)
- IMO *COVID-19 related guidelines for ensuring a safe shipboard interface between ship and shore-based personnel* (Circular Letter No. 4204/Add.16 – 6 May 2020)
- ICS *Coronavirus (COVID-19) Guidance for Ship Operators for the Protection of the Health of Seafarers* (Version 2.1 – 29 May 2020)

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International Guidelines

- EU-OHSA (Information Agency for Occupational Safety and Health) *COVID-19: Back to the workplace - Adapting workplaces and protecting workers* (24 Apr 2020, also online in periodically updated OSHwiki article)
- EU Healthy Gateways *General guidance for restarting transportation activities to serve tourism after lifting restrictive measures in response to the COVID-19 pandemic* (Version 1 – 15 May 2020)

Back to the Workplace Guidance

- Update your risk assessment in light of Covid-19
- Identify staff who are particularly vulnerable; do you put in place support for those who may be suffering stress and anxiety
- Get the workplace ready: have a plan;
    - Preventive measures – personal hygiene, PPE, monitoring of health for staff and passengers; (procedures for response to a suspect case); standard operating procedures (SOPs) for cleaning and disinfection, for laundry, for disinfection of bodily fluid spills; food and water safety management, ventilation of indoor areas, communication plan, data management of health screening documents
- The plan must address sick leave arrangements and the mental health consequences of a case of Covid-19

Back to the Workplace Guidance

- Brief the plan – as with the need to advise passengers ahead of the voyage, so make sure the crew know the implications of your plan
- Make sure workers and their representatives know what they need to do or undo eg: Don't come here if you have symptoms
- Staff should be trained for recognition of signs / symptoms of Covid-19; staff also to be aware that they should stay away if they develop symptoms – posters are needed - stay home when sick; cough and sneeze etiquette, hand hygienec etc: at the entrance to the workplace and other areas

Restarting Transportation Guidance

- For passenger vessels, including cruise ships there are some particular suggestions:
- Policy to exclude those infected / exposed
- Provide information Before travelling
- Protection on board
  - Physical distancing (1.5m)
  - Floor markings
  - Protective glass/plastic screens
  - Ventilation
- Isolate ill travellers

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Domestic Guidelines

- Guidance for Shipping and sea ports on coronavirus (Covid-19) (updated 18 May 2020)

- Coronavirus (COVID-19): safer transport guidance for operators (Updated 29 June 2020)

- Public Health England Covid-19 Frequently Asked Questions (FAQs) for Maritime Sector (latest update v.6 8 June 2020)

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Domestic Guidelines: Key differences from pre-Covid guidelines

- Testing
- Social distancing at all times for all persons – 2 metres
- Protect those at higher risk
- Mitigating actions where social distancing not possible
  - Screens or barriers
  - Minimising indoor interactions
  - Eliminating face to face seating
  - Increase surface cleaning
- Face coverings
- Disembark symptomatic passengers

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Take-home messages

- Have a system, appropriately adapted to risks & informed by guidance
- Know the guidance – regularly updated
- Implement the system
  - Training
  - Operating appropriately
  - Supervising appropriately
  - Understand perfection not required by law
- Evidence your implementation
- Avoid over-pessimism

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Useful resources 1

Guidelines

- OSHWiki article containing EU guidance for safe return to the workplace has a table with multiple links to Sector-specific guidance related to COVID-19 (including links to the UK guidelines) https://oshwiki.eu/wiki/COVID-19:_Back_to_the_workplace_-_Adapting_workplaces_and_protecting_workers

- The IMO dedicated Covid-19 webpage http://www.imo.org/en/MediaCentre/HotTopics/Pages/Coronavirus.aspx

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Useful resources 2

Education

- WHO offer an online course entitled "Operational Considerations for Managing COVID-19 Cases and Outbreaks on Board Ships" https://extranet.who.int/hslp/training/course/view.php?id=326#section-0

Welfare

- SeafarerHelp provides a free lifeline for seafarers https://www.seafarerhelp.org

- ISWAN provide resources including self-help guides, infographics and a relaxation exercise https://www.seafarerswelfare.org/seafarer-health-information-programme/good-mental-health

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Useful resources 3

Assessment

- EU-OHSA OIRA have a tool to assist in performing risk assessments https://oiraproject.eu/oira-tools/eu/covid-19/covid-19
- The Norwegian Centre for Maritime and Diving Medicine. Have a tool to help assess, treat and follow up persons on board ships who might have Covid-19: https://helsebergen.youwell.no/public/1c04449c-efd4-4e54-e322-08d7ca7f5a17/module/1/task/0

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Useful resources 4

Port/Country information

- ITF have produced an Interactive Map showing country information on Covid-19 for seafarers: https://www.itfseafarers.org/en/embed/covid-19-country-information-seafarers
- Wilhelmsen Ships Service has an interactive map on current port re-strictions: https://wilhelmsen.com/ships-agency/campaigns/coronavirus/coronavirus-map
- GAC produces 'Hot Port News', a free daily information service pro-vided by email to registered subscribers and available via its website https://www.gac.com/news--media/read-hot-port-news/

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It's time for *Questions & Answers*

Questions welcome

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