

RESPONDING TO COVID-19

THE MARITIME PERSPECTIVE IN THE UK

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3PB Barristers

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EXECUTIVE SUMMARY

We have reviewed the response to the Covid 19 crisis from international organisations and authorities and the UK Government and we have analysed responses from the cruise industry and UK ports. It is clear that protecting the health of those on ships and minimising the risk of transporting the coronavirus between different shores necessitates a focus on similar measures to those taken in society in general. These measures, however, need to be adapted to the very different environment on board ships.

Stakeholders in maritime industries must ensure they comply with the obligations imposed by Regulations that prescribe the health and safety and welfare standards that must be met on vessels. Obviously, none of these Regulations were drafted with the current pandemic in mind, but they are nevertheless applicable and must be considered to determine the proper approach to the risks posed by the disease.

Lessons learned from perceived failings in response to the influenza pandemic in 2009 did not sufficiently prepare the world for Covid-19. The robust lockdown measures currently in place in many parts of the world reflect the devastating effect the disease has had. Unless and until an effective vaccine and/or cure is discovered, it is highly likely that a continuing threat of resurgence will persist once the current emergency phase of the crisis has passed.

Therefore, looking ahead to the practical steps required to design the ongoing response to this disease, shipowners and employers of seafarers are best advised to take account of the special features of coronavirus and the implications this has for the scope of their legal responsibilities as they incorporate the lessons from the past and the guidance from all available sources to develop the necessary processes to continue to tackle the effects of pandemic within the particular circumstances of life on board ship.

BACKGROUND

1. The 2009 H1N1 Influenza Pandemic highlighted the vulnerability of the maritime sector to outbreaks of respiratory infections. As Kate Bunyan, Medical Director of Carnival UK reported¹, despite the fact that pandemic planning had been identified as an important area for development over the prior decade, very few groups in the shipping industry had mapped the practical processes needed to handle the pandemic. She identified four key deficiencies in the industry:
 - a. Lack of practical process across both shipping operators and government agencies
 - b. Lack of preparation for the extreme measures encountered
 - c. Lack of evidence-based measures
 - d. Lack of trust between the parties
2. She considered that building trust between parties was perhaps the most important area to address in the planning for future pandemics, in order to best ensure the protection

¹ Lessons learnt from the 2009 Influenza Pandemic: Intl Maritime Health 2011; 62, 3: 196–199

of all people in contact with shipping activities . She believed it was crucial to strengthen relationships in order to ensure that responses were mutually agreed and appropriate to the situation.

3. On 31 Dec 2019 the World Health Organisation (WHO) country office in China was informed of a cluster of cases of pneumonia of an unknown cause in Wuhan. By 7 January 2020 the cause of this disease, a new type of coronavirus, had been identified. By the end of January 2020 the first two cases of the new coronavirus were diagnosed in the UK. The WHO declared the outbreak a Public Health Emergency of International Concern on 30 Jan 2020 and then on 11 March 2020, as the now familiar history of the rapid spread of the virus round the globe gathered pace, the outbreak of the newly named COVID-19 disease was confirmed to be a pandemic.
4. A key feature that makes the coronavirus so dangerous is the high rate of transmissibility, arising because transmission can occur while a person is asymptomatic and therefore unaware they are affected by the disease². The severity of illness varies widely but a significant proportion of those affected experience severe respiratory compromise requiring ventilatory support.
5. On 1 Feb 2020 a passenger who had disembarked from the Diamond Princess cruise ship in Hong Kong tested positive for the coronavirus and 2 days later the ship was quarantined in Japanese waters. 700 people on board were infected over the next month.
6. On 13 March 2020 the Ruby Princess arrived in Sydney and disembarked its passengers. It allegedly became the single largest source of Covid 19 cases in Australia and NSW police have begun a criminal investigation.
7. As ports began closing their gates to cruise ships, and nations began placing restrictions on movement, cruise companies voluntarily made the decision temporarily to cease activities.
8. However maritime trade has had to continue through the crisis. The ongoing supply of goods, medicines, and food is widely recognized by all stakeholders as a fundamental component of the fight against the disease.

² He, X., Lau, E.H.Y., Wu, P. et al. Temporal dynamics in viral shedding and transmissibility of COVID-19. Nat Med (2020)

9. Accordingly, on 19 March 2020 the UK Government published guidance naming among the list of key workers: *“those who will keep the ... water ... and freight transport modes operating during the COVID-19 response, including those working on transport systems through which supply chains pass.”*. Analogously, all but essential international travel is advised against, but exemption is made in the guidance for *“International freight transport...by...ship...[as] an essential activity in the context of travel advice”*.
10. So seafarers continue to work and ports continue to operate, but appropriate steps have had to be taken to keep those involved in such activities safe. As the scale of the global challenge posed by the new disease became clear and the various agencies responsible for global safety at sea and the protection of maritime trade began to shape their response, the tensions between the protection of health and preservation of trade emerged clearly as a recurring theme.

THE INTERNATIONAL RESPONSE

International Chamber of Shipping

11. On 3 March 2020 the International Chamber of Shipping issued *‘Guidance for Ship Operators for the Protection of the Health of Seafarers’*. This was prepared with the assistance of the International Maritime Organisation (IMO), International Labour Organisation (ILO), World Health Organisation (WHO), International Maritime Health Association, European Centre for Disease Prevention and Control, Mediterranean Shipping Company (MSC) and Wilhelmsen Ships Service.
12. The purpose of the guidance was to help shipping companies follow advice provided by the United Nations agencies. It was also a response to many governments having imposed restrictions on crew changes, shore leave, the discharge of cargoes and other routine activities. The problem of abandonment of sailors is a running sore in maritime labour relations and the Covid -19 emergency threatened and continues to threaten to aggravate this issue³.

³ BBC website report 23 Apr 2020: an estimated 150,000 merchant sailors are currently stranded at sea even though their contracts have expired.

13. The ICS guidance encourages companies and masters to cooperate with port states to ensure that seafarers can be changed over, passengers can be embarked / disembarked and that shore leave can continue if safe to do so.
14. Protective measures for seafarers are prescribed:
 - a. Basic hand and respiratory hygiene with handwashing for 20 seconds and social distancing of 1 metre;
 - b. Giving seafarers time to wash their hands;
 - c. Using posters as a gentle reminder of best practices for seafarers to adopt.
15. There should be pre-boarding screening. Until the end of the outbreak all ships are to provide passengers and seafarers with general information about Covid 19 and preventative measures.
16. Ship operators should provide the crew with guidance on how to recognize the signs and symptoms of Covid 19.
17. The guidance contains advice on how to identify those at most risk of having the disease (referred to as “suspected contacts”); there is advice on steps to take to trace and isolate such ‘suspected contacts’. These are likely to include gym trainers and stewards who have cleaned the cabins of those infected or delivered food. Where close contacts are difficult to identify then all on board may be considered to have had close contact.
18. Ship operators are advised to provide guidance and training on hand washing, how to cough and sneeze, appropriate disposal for waste and how to keep a safe distance.
19. The management of suspect cases is addressed by advice that PPE may be provided together with key outbreak control activities including oxygen and antibiotics.
20. Suspect cases are to be isolated immediately and the next port of call must be informed of suspect cases with acute respiratory infection and persons who, within 14 days of the onset of symptoms, have met criteria laid down for suspect cases.
21. There is further guidance on the management of the ship’s medical facility and cleaning, disinfection and waste management once there are case(s) on board. Disinfection protocols used to address norovirus infections are to be followed

World Health Organisation

22. On 25 March 2020 the WHO published: *Interim Guidance: Managing COVID-19 cases or outbreaks on board ships*. Much of the document is similar to the earlier guidance from the International Chamber of Shipping.
23. This included advice that passenger ships sailing on an international voyage should develop a written plan for disease outbreak management which should include:
 - a. How to identify suspect cases
 - b. An isolation plan
 - c. A location for suspected cases to be isolated until disembarkation to a health care facility
 - d. The management of communications about those in isolation
 - e. Clinical management of suspected cases while on board
 - f. Cleaning and disinfection procedures for potentially contaminated areas
 - g. The provision of food service and utensils, waste management services and laundry to isolated travellers.
24. There are definitions of who is to be considered to have come into contact with the disease prior to embarkation or during the voyage.
25. The crew should be given guidance on how to recognize symptoms of the disease.
26. In the event of an outbreak on board an outbreak management plan should be brought into action. This will involve:
 - a. Suspect cases instructed to wear face masks, observe the cough etiquette and practice hand hygiene.
 - b. Isolation in a predetermined location on board
 - c. Subjecting the isolation location to strict protocols for those entering
 - d. Infection control measures
 - e. Staff involved in transporting patients are to apply infection control practices including use of PPE (and change of PPE after loading each patient)
 - f. Complying with notification requirements in the International Health Regulations (IHR) by informing the National Focal Point (NFP)

International Maritime Organisation

27. On 27 March 2020 The Secretary General of the IMO sent Circular Letter 4204/Add.6.
28. He quoted the resolution of the G20 on 26 March 2020 to maintain the flow of vital medical, food etc. supplies across borders; to resolve disruptions to global supply chains; to support the health and well-being of all people.
29. The Secretary General had received a preliminary list of recommendations for Governments and relevant national authorities on the facilitation of maritime trade during the pandemic. This list had been prepared by a range of industry bodies and is annexed to the Circular Letter. The focus of the list is clearly to ensure that measures necessary to protect public health do not involve obstacles to ship and port operations including the movement of seafarers and marine personnel for the purpose of crew changes as well as the wider functioning of systems necessary for the operation of ports. The list reflects the common theme among these various responses of the need to maintain the flow of trade and the normal changeover of crews whilst taking steps to ensure health protection of the crews and within the ports themselves.
30. The IMO Circular Letter likewise also focused on seafarers: *We must also remember the hundreds of thousands of seafarers on ships. They are unwittingly on the front line of this global calamity...their own health and welfare is as important as that of anyone else.*"
31. On 31 March 2020 the Officers of the Special Tripartite Commission of the Maritime Labour Convention (a body established by Article XIII of the MLC to keep the working of the convention under continuous review) made a statement about the current emergency.
32. This followed the imposition by some governments of restrictions on travel and quarantines of international seafarers. The statement claimed that in some parts of the world the supply of PPE to ships had been interrupted.
33. They invited governments to recognize seafarers as key workers (something the UK has done) and to grant exemptions from travel restrictions and special considerations to enable them to join and leave their ships and return home without impediment while complying with good practice in infection control. They referred to how Covid 19

exacerbates “*the inherent stress, isolation and social pressures that seafarers experience*”⁴.

International Labour Organization

34. On 7 April 2020 the ILO published an information note headed: *Maritime Labour Issues and Covid 19*.
35. This was in response to requests from governments and seafarers and shipowners organisations for guidance on how best to respond to the complexities of the current crisis in light of the Maritime Labour Convention (MLC).
36. The starting point in the note is that parties to the convention should make every attempt to comply with their MLC obligations. Noncompliance is excused by *force majeure* only where it is materially and objectively impossible by reason of an irresistible event. Covid 19 is not to be used as an excuse to breach the MLC.
37. Considering the requirement at regulation 4.1 para 1 of the MLC for flag states to ensure that seafarers on their ships have adequate measures for protection of health, the ILO state this includes the provision of PPE, alcohol based hand rub and prompt and adequate medical care. The lack of PPE had been a concern of the crew on board the British registered *Diamond Princess*.
38. The need for port states to provide access to on shore medical and welfare facilities for seafarers on board ships in their territory was emphasized.
39. As with the response from other bodies the need to ensure the right of seafarers to return home was stressed.
40. The focus of these international agencies has thus been twofold: first to ensure the continued flow of trade; then (and a matter of at least equal concern) protection of the health and safety of those on board, be they seafarers or passengers. These twin concerns are given the same equal prominence in national guidance around the world.

⁴ The 25 seafarers on 2 bulk carriers currently abandoned in Djibouti during the Covid 19 crisis would no doubt agree.

THE UK NATIONAL RESPONSE

41. The Gov.UK website contains “*Guidance for Shipping and Sea Ports on Coronavirus (updated 26 March 2020)*” published by the Department for Transport and MCA.
42. The guidance contains advice on questioning crew and passengers before they embark about a new, continuous cough or high temperature (the most common symptoms of Covid-19). The standard advice about washing hands for 20 seconds and more frequently than normal is repeated; similarly, the use of PPE and cleaning of surfaces is emphasized.
43. The guidance advises on the information crew and customers should be given about Covid 19 prior to embarkation. Anyone who presents with the telltale symptoms should be denied embarkation or isolated in a cabin.
44. Measures are set out to help limit the spread of coronavirus in marine settings: hand washing, surface cleaning, PPE etc.
45. The guidance given largely reflects general advice available to the land based population together with additional requirements to accommodate the marine setting and ensure proper reporting of cases to the public health authorities.
46. The Maritime and Coastguard Agency (MCA) have published several information notes / guides to the industry as a result of the crisis.
47. On 23 March 2020 MCA suspended routine vessel survey and inspection activities. However, vessels and seafarers continue to require certification to ensure they can continue to operate. Accordingly, to enable the industry to keep functioning, contingency plans have been put in place to provide for interim certification of vessels and seafarers (see e.g. MIN 612 and 611). An overview of the steps taken on this issue is provided in the document entitled *Coronavirus Contingency Plan and Guidelines for the services provided to Seafarers and Shipowners*.
48. In *Maritime Labour Convention 2006 and Covid 19 (valid 1 Mar to 31 Aug 2020)* the MCA advises companies to provide seafarers with information on infection, best practices in hygiene and social distancing and measures being taken for their protection. The guidance emphasises the need for operators to comply with their obligations as to repatriation under the MLC and consult with seafarers before changes to practices are implemented as a result of Covid 19.

49. These examples are by no means comprehensive but give an overview of the domestic response. UK government guidance specifically targeting the maritime industry has been relatively limited, but the message promoted is consistent with that given to the wider community.
50. A panoply of new laws have been passed in response to the crisis, including regulations granting the police new powers to enforce the lockdown restrictions on travel. However, the regulatory framework that applies to the maritime industry, has largely been unchanged by this virus. It is discussed further below, after a brief review of examples of the important changes that some within the maritime industry have made in accordance with the national and international guidelines.

THE INDUSTRY RESPONSE

International Ports

51. On 24 April 2020 the North P and I club published an update on the impact of Covid – 19 on Shipping. This sets out information from countries around the world as to measures being taken at ports to counter the spread of infection.
52. The pattern that is clear from a review of these measures is that states have taken different levels of response. There is generally a mix of quarantine of vessels for a period of 14 days since they left their last port, distancing and increased hygiene to protect port employees required to visit the vessels.
53. By way of example of some of the measures taken in Australia require (inter alia):
 - a. All Masters to answer health screening questions as part of their entry reporting.
 - b. For a period up to 14 days from when they left the last port before Australia, all crew members to remain on board save to disembark for vessel functions when using PPE
 - c. There are specific provisions for changeover of crews
54. The Bahamas requires:
 - a. Enhanced sanitization prior to a pilot boarding the vessel's bridge;

- b. Only one person is to escort the pilot and all ships personnel are to distance by 2 metres.
- 55. Brazil also imposes a similar 14-day quarantine and special authorization is required for removal of sanitation waste from the vessel.
- 56. In Malta disembarkation of crews from vessels in the Malta Freeport is prohibited. There are (as of 26 March) tight restrictions placed on shore based personnel interacting with vessels. In general (once the ship is in port) a 14 day quarantine is imposed.
- 57. Singapore issued advice to masters to educate the crew as to Covid 19 symptoms, to carry out daily temperature checks of the crew and to isolate any with over 37.5 degrees Celsius; and to carry out increased disinfection of common areas before arrival in Singapore. Vessels arriving in Singapore will be quarantined if there are suspected cases of Covid 19. Operators of all vessels in port (including the harbor, and pleasure craft) must ensure that every individual wear a mask, though this is not required if carrying out functions where the wearing of a mask is not possible (e.g. diving or welding).

Domestic Ports

- 58. UK ports have introduced a near universal requirement for vessels from foreign ports to make Maritime Declarations of Health (MDH)⁵, which were previously only required if there had been an occurrence on board that may affect public health.
- 59. Many ports have also introduced similar rules with regard to pilotage. Common principles include:
 - a. Enhanced cleaning of the bridge beforehand
 - b. Minimising the number of crew present during embarkation of the pilot and in the bridge during pilotage
 - c. Observing social distancing where possible.
- 60. Also having regard to the safety of the ship, by ensuring the pilot is healthy/free of symptoms of illness.

⁵ On the Humber this must be done between 12 and 4 hours prior to arrival at port: Notice No. H. 39/2020: Enhanced surveillance measures (12 Mar 2020)

61. That said the approach of individual ports varies in certain details.
62. The Humber asks vessels to provide notice of their shipping movements as soon as possible, because staff absences as well as steps taken to abide by government advice on social distancing, such as including fewer pilots in each launch, may cause delays.⁶
63. Prior to pilot allocation the vessel will be required to give positive verbal confirmation that they have submitted an MDH and that there are zero cases of infection on board.⁷
64. The Port of Southampton requires Masters and agents to give as much notice as possible of planned voyages. Vessels requiring pilotage (incoming or outgoing) must give a minimum of 24 hours' notice with confirmation of ETA at pilot boarding point or departure a minimum of 6 hours prior to arrival / departure.⁸
65. All Masters are to submit their MDH by email to Southampton Port Health Authority, with specific requirements as to what should be included.⁹
66. Vessels berthed or arriving at Tilbury must send a daily declaration of health before 1000 each day to the Marine Department¹⁰.
67. Mariners on board such vessels are expected to remain onboard save in an emergency¹¹. From 23 March 2020 no persons aged over 70 are allowed to work in the port either afloat or ashore¹².
68. The Ports of Tees and Hartlepool have a distinctive extended list of measures for Pilots to take ¹³, including:
 - a. Suspension of the passage of trainee pilots
 - b. Limiting the number of pilots on cutters at any one time to two
 - c. Prohibiting handshakes and using cups provided by the vessel
 - d. Washing hands upon entering the bridge.

6 Notice No. H. 43/2020: request for Max Advance Notice of Vessel Movements (24 Mar 2020)

7 Notice No. H. 40/2020: COVID 19 Prevention Measures (17 Mar 2020)

8 Notice No. 13(T) of 2020: Amendment to Pilotage Directions (27 March 2020)

9 Notice No. 10 (T) of 2020 amended: Enhanced Surveillance (17 March 2020)

10 Notice to Mariners – No.6 of 2020: declaration of Health (6 April 2020)

11 Notice to Mariners – No.65 of 2020: Movement Restrictions (27 March 2020)

12 Notice to Mariners – No.4 of 2020: Restricted Port Access (20 March 2020)

13 Notice to Mariners No. 20 of 2020: Pilotage Precautions Due to Covid-19

The Cruise Industry

69. UK ports have welcomed British cruise ships at berth as they await the time when the current suspension of worldwide activities can be lifted. But the continuation of measures such as the cancellation of crew shore leave and prohibition of visitors on board even after passengers have disembarked¹⁴ acknowledges the meaningful risks associated with the particular environment on cruise ships and the significant challenges cruise lines face in implementing effective measures against Covid 19. Many ports worldwide have closed to cruise ships. This poses a particular challenge to that industry. There has been a concerted response to reassure the regulators and prospective customers.
70. Prior to suspending activities Royal Caribbean Cruises implemented Coronavirus (COVID-19) Health Protocols, the most recent updates of these (from 24 Apr 2020) includes (together with other measures): mandatory temperature screenings prior to embarkation with secondary screenings if a fever above 38 degrees is recorded; anyone aged over 70 to be required to provide evidence of no underlying health issues and a medical certificate of fitness to travel before embarking; boarding to be denied to any person with a severe chronic medical condition and to persons who have travelled from to or through certain specified locations associated with significant clusters of the disease; increased use of hand sanitizer and increased sanitation of cruise terminals; a comprehensive response plan.
71. On 14 April 2020 Princess Cruises (operators of 16 cruise ships, 3 of which are registered in the UK) announced their '*Covid 19 update: Cruise with Confidence*'.
72. This contains new provisions for their itinerary, for embarkation of passengers and for conduct of life on board that reflect a response to Covid 19. They include (by way of example):
- a. Thermal scanning temperature checking of those embarking;
 - b. Mandatory health screening before embarkation (and some passengers to be subject to enhanced screening);
 - c. Increased use of hand sanitisers;

¹⁴ Coronavirus Kent: P&O Cruise liners Oceana and Aurora dock at Port of Dover after cruises suspended during Covid-19 lockdown 26 March 2020 (<https://www.kentonline.co.uk/dover/news/coronavirus-kent-cruise-liners-dock-for-covid-19-isolation-224489/>, accessed 26 Apr 2020)

- d. Altered practices at food stations / buffets
 - e. Enhanced cleaning of staterooms;
 - f. Greater availability of PPE;
 - g. Changes to crew training;
 - h. Comprehensive Covid response plan.
73. The above is just a sample of measures Princess Cruises are to introduce to secure the health and safety of their passengers (and no doubt to reassure their customers).
74. On 21 April 2020 the Cruise Lines International Association published a press release referring to industry wide measures of: rigorous screening protocols, enhanced sanitation and the availability of onboard medical care and treatment.
75. These examples demonstrate measures expressed to some degree uniformly across the industry as a whole. Notably none of these cruise line responses make a great deal of distancing, for perhaps obvious reasons given the nature of the industry.
76. The common themes that emerge from the international response, the guidance issued by the UK Govt, particularly through the MCA, and changes to industry practice all reflect the steps hammered home to all of us as we endure lockdown: regular and prolonged hand washing, increased disinfecting of surfaces and, where possible, social distancing. Clearly when considering what constitutes a safe place of work and a safe environment for customers, these anti- Covid 19 measures must take centre stage.
77. Therefore, we turn to consider the regulatory framework in the UK and how this may be used to enforce the implementation of such measures both during the current emergency and looking ahead to times when the threat of Covid 19 remains but daily restrictions on movement have been eased.

THE UK REGULATORY FRAMEWORK

78. The sources of this framework are to be found in health and safety law as applied to the maritime industries and the terms of the Maritime Labour Convention (MLC).
79. While it is not directly relevant to the present situation the Marine Guidance Note 399: *Prevention of Infectious Disease at Sea by immunisation and anti malarial medication (prophylaxis)* states at paragraph 1.3:

“The major means of infection control on board ship are through work practices designed to minimise infection risk and effective personal hygiene measures...”

80. The analysis of the international and national response to the crisis indicates that the maintenance of systems designed to minimise such ‘infection risk’ will be central to good health and safety practice on ship.

The MLC

81. The MLC revised 37 previous International Labour Conventions. It came into force in the UK on 7 August 2014. According to the ILO: It encapsulates and modernises the international experience in regulating decent living and working conditions for seafarers.
82. Responsibility under the Convention to promote decent conditions of work for seafarers falls principally to flag states.
83. By Article IV every seafarer has the right to a safe and secure workplace that complies with safety standards...to decent working and living conditions on board ship, to health protection and to medical care. This perhaps obvious statement enshrines in international law basic rights to health and safety protections.
84. The provisions of the MLC are enforced in UK law by a series of statutory instruments under the Merchant Shipping Act 1995. Notably these include:
- a. Merchant Shipping (Maritime Labour Convention) (Medical Certification) Regulations 2010¹⁵;
 - b. Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers) Regulations 2014¹⁶;
 - c. Merchant Shipping (Maritime Labour Convention) (Health and Safety)(Amendment) Regulations 2014¹⁷; this amends where necessary the 1997 Merchant Shipping and Fishing Vessels (health and Safety) Regulations.
85. These regulations apply to UK registered vessels and their owners and those who employ the crew. In some circumstances they apply to foreign vessels in UK waters.

15 SI 2010/737
16 SI2014/1613
17 SI2014/1616

Breach of the regulations is punishable by level 5 fines and they are all subject to a 'so far as is reasonably practicable' defence, with the burden of proof on the defendant.

86. In addition, vessels can be detained in port by inspectors who consider that they do not comply with the regulations and conditions on board are hazardous to the health and safety of those on board.

Merchant Shipping (MLC) (Medical Certification) Regulations 2010

87. Regulation 12 requires seafarers who hold medical certificates who are likely to be absent from work for 30 days or more or develop a significant medical condition to report that condition as soon as possible to a medical practitioner or the authority who issued the certificate.

Merchant Shipping (MLC) (Minimum Requirements for Seafarers) Regulations 2014

88. Regulation 19 sets out the duty of shipowners to repatriate seafarers whose contracts have expired or who are unable to carry on their work due to illness.
89. There are basic requirements for crew accommodation set out in regulation 29. It must comply with Marine Shipping Notice (MSN) 1844. This sets out minimum standards for ventilation, drainage, sleeping accommodation, laundry and the maintenance of cleanliness. In addition, for vessels carrying 15 or more and engaged in voyages of more than 3 days duration, separate hospital accommodation is required.
90. Regulation 43 requires shipowners to ensure seafarers are provided with medical care on board and that they meet any expenses which are reasonably incurred in connection with seafarers' sickness or injury. When in port the shipowner must allow seafarers to go ashore for medical treatments that cannot be provided on board ship.
91. There must be a medical officer on board any vessel that has 100 or more crew or passengers and is engaged in an international voyage of 3 days or more (Reg. 44).
92. From the terms of the MLC together with the Regulations enforcing its requirements in UK law, there are clear obligations on shipowners to protect the health and safety of those employed on their vessels. These obligations extend to protection from Covid-19. It seems likely from the guidance issued internationally and nationally that the steps

required will be familiar in their type if not their specifics to those of us living in the UK during lockdown.

93. There needs to be enhanced hygiene: hand washing, cleaning of surfaces etc and distancing. Within the confines of ships these measures will have to be adapted to provide the best protection. Regard may also need to be had to ensuring adequate ventilation. In addition, as the steps prescribed to the population as a whole evolve, so will the measures required of shipowners and masters, whose responsibilities will extend to keeping up to date with all relevant guidance.
94. The conditions imposed on vessels requiring pilotage provide some guide as to the nature of measures that will be considered reasonable for the protection of seafarers. This will clearly have to be modified to allow for the effective day to day workings on board boat, nonetheless enhancing cleanliness, provision of adequate equipment and limiting social contact as far as possible will be central.

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

95. These regulations are the centrepiece for health and safety regulation on board UK vessels. They apply to all the activities of workers on UK registered ships and in part to non-UK ships in UK waters.
96. Regulation 4 requires every employer and anyone with a duty under these regulations to comply. Penalties for breach of the various duties imposed are up to 2 years imprisonment on indictment though many are summary only matters.
97. The general duty to ensure the health and safety of workers and other persons on board is set out in regulation 5. The principles that define this include:
 - a. Combating risks at source;
 - b. Evaluating unavoidable risks and taking action to reduce them;
 - c. Adaptation of procedures to take account of new technology and other changes in working practices, equipment, the working environment and any other factor which may affect health and safety;
 - d. Provision of appropriate and relevant information and instruction for workers.
98. In particular these duties require :

- a. the provision and maintenance of an environment for persons on board ship that is so far as is reasonably practicable, safe and without risk to health;
 - b. provision of such information, instruction, training and supervision as is necessary to ensure the health and safety of workers and that of other persons aboard ship who may be affected by their acts or omissions;
 - c. maintenance of all places of work in the ship in a condition that is, so far as is reasonably practicable, safe and without risk to health;
99. There must be a risk assessment and, if necessary, the provision of protective equipment to meet the risks identified (Reg. 7).
100. By Reg. 11 workers are to be provided with the appropriate health surveillance in light of the risks identified by the risk assessment.
101. Again, these regulations impose clear duties on shipowners and those employing workers on board to identify risks associated with Covid 19 and take steps to safeguard those on board (workers and passengers) against those risks.
102. In approaching these duties there is assistance in the *Code of Safe Working Practices for Merchant Seafarers 2015 edn amendment 4, Oct 2019* (the Code).
103. Paragraph 3.2.3 of the Code states: “*On board ship infections can easily be spread from one person to others, so preventive measures as well as simple effective treatment are essential.*”
104. Chapter 7 deals with health surveillance and chapter 8 with PPE.
105. While the Regulations and the Code were not drafted with such a contagious, prevalent infection as Covid 19 in mind, those responsible for the health and safety of the crew and passengers will have to adapt their methods to best ensure they protect the people on board.
106. Again, the actions of UK port authorities and the cruise industry reflect an approach that mirrors the concerns of broader society. Likewise, as the measures in place in wider society change so will the protection of those on board have to keep step.

Other Relevant UK Merchant Shipping Legislation

107. The Merchant Shipping and Fishing Vessels (Personal Protective Equipment) Regulations 1999 require the employers of those on board to provide suitable PPE for the avoidance of risks that cannot otherwise be avoided or reduced to an acceptable level by means of a system of work that is safe. The PPE is generally required by Regulation 8 to be personal to the user but can be common to members of the crew if maintained in a hygienic condition and decontaminated as required. The crew must be trained in its use (Regn. 9).
108. Again we note that these regulations were not drafted with a pandemic in mind. Nonetheless they apply to this situation, and health and safety officers will have to adapt their risk assessments and the methods used to address risks to take account of the new infection.

LOOKING FORWARD

109. The current pandemic is unprecedented in living memory. There is no vaccine and the global response has been to limit the spread of the virus. Infection control rather than treatment has been key. In the maritime world the same has been true, and to a certain extent continued observation of that approach will be key to ensuring good health and safety on board ship moving forwards.
110. However, the approach has currently entailed the complete shutdown of all cruising activities, closure of marinas and cessation of most passenger ferry activities between ports. When the time comes for the movement restrictions to be lifted and these services begin to resume, it is highly unlikely that the threat from coronavirus will have been eradicated.
111. Operators will need to ensure protocols are put in place to manage the ongoing risk and satisfy the requirement to take all reasonably practicable steps to protect the health of seafarers and passengers. Similarly, those responsible for persons continuing to work on ships during the present lockdown will need to ensure that appropriate standards of protection are maintained notwithstanding relaxation of the more extreme restrictions across society as a whole.
112. There will need to be new standard processes, which are sustainable for the long term, ingrained into daily life on board to limit the risk of further outbreaks.

113. The shape of the response to date has emerged from the guidance issued by both international bodies and the UK government and MCA; it is clear from the response of maritime industry that cleanliness and distancing (where possible) have been the main tactics adopted to date and are likely to be central to the ongoing strategy.
114. Thought may need to be given to the extent that any additional measures may need to be incorporated into the tactics employed adequately to manage the particular risks raised by the maritime context. Particular issues include ventilation within enclosed regions of vessels and, in the cruising industry, regard to the increased vulnerability, due to age, of a significant proportion of passengers.
115. The environment onboard any ships lends itself relatively poorly to effective social distancing. However, the reasonably practicable measures test in the regulations mandates careful consideration to be given to what steps may be practicable to achieve this nonetheless.
116. The role of screening and testing will be enhanced where distancing is more of a challenge. The advantage that ships have over land based activity is control over the people admitted on board. That together with control over the locations that ships visit may allow greater flexibility than land based equivalents such as train or coach travel and indeed air travel where the ability to distance is even more limited.
117. Similarly, the use of protective equipment is identified by the guidance to be of central importance in suspected or confirmed cases of infection. It may also emerge as an important part of the prevention side of the response. Particularly where social distancing cannot be optimised. Attention may also need to be paid to improving or modifying ventilation systems in enclosed spaces.
118. In view of the insidious nature of the disease with convincing evidence that asymptomatic and pre-symptomatic transmission is possible, further instances and outbreaks of infection on board vessels must be anticipated, and an adequate response to such incidents to limit the spread of the disease have to be considered equally as important as precautionary steps to prevent infection.
119. Whilst the Regulators do not have bespoke mechanisms for overseeing the response to Covid 19 the regulations and codes available are adequate to enforce the health and safety standards required of those who own ships and employ those on board in relation to the threats posed by Covid-19.

120. The risk assessment mandated by reg. 7 the Health and Safety at Work Regulations should be considered fundamental to compliance with all the other obligations. Appropriately identifying risks and carefully considering responses goes a long way towards satisfying the reasonably practicable test. In such assessments It would be advisable to demonstrate an appreciation for the particularly distinctive features of Covid-19 that underlie its dangerousness.
121. The guidelines available from international and national sources are also important for ensuring an adequate response. In the face of such a new disease and exceptional circumstance, this guidance is frequently updated and keeping up to date is essential. The current and ongoing response will need to incorporate a strategy for regular review of all relevant information to ensure continuing compliance with all aspects of the duty imposed by the regulations.
122. Finally, to achieve the cooperation and trust between all those involved which Kate Bunyan identified as so important to pandemic preparedness, honest communication is key: between workers and employers, owners, ports, passengers, and state authorities, all those involved in the industry. There must be: frank reporting of symptoms and conditions by all those on board vessels; robust measures to protect safety founded on evidence and authoritative guidance; and the provision of comprehensive information and clear explanations of the basis and rationale for decisions, to all those affected. It will take all these stakeholders working together in this way to enable the merchant shipping industry (in all its various forms) to continue to operate as effectively as possible.

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