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Newsletter

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Port Marine Safety Code Compliance Exercise

The MCA have written to all Statutory and Competent Harbour Authorities requiring that the Duty Holder certifies compliance with the Code by 31st March 2009. This declaration is a solemn one as it requires the Duty Holder to have considered all the requirements of the Code including reviewing the risk assessments and the Safety Management System. No doubt the Duty Holder will rely extensively on the audit reports generated by the Designated Person before making the declaration.

Marine Enforcement have unrivalled experience in conducting PMSC audits and have assisted the largest and busiest ports as well as small leisure harbours. Our sensible approach has been well received by our customers.

We look at the basics and use the verification checklist that we developed for the MCA.

1. Has the port formally identified the risks associated with getting a vessel safely in and out of the harbour?
2. Have precautions been put in place so that the risk of an accident occurring have been reduced to As Low As Reasonably Practical (ALARP)?
3. Is the management of risk reflected in a coherent and worthwhile Safety Management System that dovetails with other systems required by Health and Safety, ISM, ISPS, ISO?
4. Are all stakeholders consulted?
5. Are records kept?
6. Does the DP audit the whole system and keep the Duty Holder informed?



Our experience shows that the simpler the Safety Management System the more effective it becomes because everybody in the team understands it.

If your Harbour Authority would appreciate an independent external audit before signing off the compliance statement please call us.

What our Customers Say

“It was very refreshing to witness an audit which was not just another paper exercise. The audit followed a common sense route focusing on the practical issues which I believe is of greater value to the customer.

I know that both the Harbour Master & Designated Person were happy with the service provided and would not hesitate in calling on you again in the future”.



The Role of the Designated Person

The single biggest issue that we are asked about is the role, function and identity of a Designated Person. The PMSC and the Guide to Good Practice should provide a clear understanding of what is required but if that is the case we wouldn't constantly be asked to comment on whether the arrangements at a port are satisfactory. The test, in our view, is whether the DP can demonstrate independence and that the advice given to the Duty Holder is impartial. The DP has to audit compliance with the Code and the audit reports should go directly to the Duty Holder. The DP should personally go before the Duty Holder (at least annually) to report his findings and PMSC compliance should be a separate Board meeting agenda item.

In the final analysis the DP must be the impartial eyes and ears of the Duty Holder.

Our experience has shown that where an effective DP has been appointed, compliance with the Code naturally follows. This is because the DP will have regularly audited compliance and will have reported deficiencies to the Duty Holder. As a consequence the deficiencies will be rectified because otherwise the Duty Holder risks falling on their own swords.

We act as independent DP for ports. Sometimes our audit reports are critical but that is how we see our role. What is comforting is that our reports always stimulate a raised awareness on the benefits of practical and proportional compliance. The Duty Holders are grateful for the independent oversight and the Harbour Master is grateful because deficiencies are rectified.

If you need an independent, expert and cost effective DP then please call us.

Recent Prosecutions

Marine Enforcement assists Harbour Authorities with enforcement issues and actions. Prosecutions are the ultimate sanction and should only be used as a last resort.

The professional skipper of a survey launch with trainees on board sped down a River. The excessive wash created endangered a yachtsman up the mast of a yacht. But for hanging on like a “koala bear” he would have fallen to certain serious injury or death. Marine Enforcement assisted the Harbour Authority and prosecuted the skipper for speeding and failing to navigate with care and caution.

Magistrates recognised that the skipper should have shown an example to his students and that he endangered the yachtsman up the mast. He was fined and ordered to pay costs totalling £2475.

The driver of a PWC was warned by the marine police to slow down and be sensible. That warning went unheeded and the PWC made off at speed but was monitored by another police RIB and was clocked doing 9 times the speed limit. The police file was passed to Marine Enforcement who prosecuted the driver of the PWC for speeding. The Magistrates told the driver of the PWC that “You were given a warning but went on to commit a further offence”. He was fined and ordered to pay costs totalling £2429.76

Penalties of this magnitude reflect how seriously the Magistrates can view offences of this nature. The secret is for the prosecution to explain the nature of the offences in simple terms and the impact such conduct has on the safe operation of the port.

Recent Investigations

Dangerous or unsafe marine conduct is not necessarily an offence. If the prosecution can not prove that an offence has been committed then the prosecution will fail and should not be commenced, otherwise the Harbour Authority will lose credibility and incur wasted costs.

Marine Enforcement was asked to consider prosecuting a fishing vessel that was fishing amongst moorings. Although one of the byelaws is headed “Fishing vessels not to trawl or dredge in or near licensed mooring area” that is not what the actual text of the byelaw says. For an offence to be proved the byelaws require that fishing gear is likely to become an obstruction or danger to any property and that the act of fishing creates a danger to vessels using the moorings or tackle. If fishing was prohibited it would be easy but that is not what the byelaws say, despite the title to one of them.



In another case a speed boat was witnessed doing excessive speed (9 times the limit). The witness statements were conclusive and the driver of the speed boat admitted speeding when interviewed under caution by the police. The legal problem that materialised was that the byelaw that imposed the speed limit was subject to the permission of the Harbour Master. The Harbour Master had a policy of permitting speeding provided he thought it safe. The potential defendant claimed to have been granted permission and we would have had difficulty in proving otherwise especially as permission to speed was not formally granted or recorded. The Harbour Master recalled that he may have granted permission to the defendant's Father to exceed the speed limit and the rules governing prosecutions means we would have to disclose this to the defendant.

Unfortunately the application of law is a formal process and any uncertainty on their application will be construed in the favour of the defendant. Although it was galling, (especially as the witness statements indicated reckless conduct and the driver of the speed boat had been abusive) we did not commence a prosecution because we could not show that the Harbour Master had not given his permission to exceed the speed limit.

The moral of this is two-fold.

1. Make sure the byelaws regulate the conduct you want to regulate. If you want to prohibit something the byelaws must be clear. If permission can be granted so that a byelaw does not apply then that permission should be granted formally in writing to named individuals or named vessels and it must be recorded. Otherwise when you wish to stop unwanted marine conduct you won't be able to.

2. Before considering enforcement action carefully consider the wording of the relevant law. Can you prove each element of the offence and are your formalities perfect? If not, you will lose and you should not prosecute.

If you want assistance in reviewing Byelaws and Directions or their practical application call us.

Planning Applications and the PMSC

As independent experts, Marine Enforcement has recently assisted a planning authority when it considered two applications to construct marinas. The applications were for marinas within the jurisdiction of a navigation authority that applies the Port Marine Safety Code.

Recognising that the planning committee had limited knowledge of marine matters and the Port Marine Safety Code, we compiled a sensible and practical report so that the committee could make an informed and reasoned decision. We suggested that a distinction needed to be drawn between "ease of navigation" and "safety of navigation" because although they may be linked they are not the same and we identified the issues relevant to each. This is what was said about our report; "The report is a masterpiece of common sense allied with informed technical and legislative know-how".

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