

CMI International Working Group on the Fair Treatment of Seafarers

QUESTIONNAIRE

Response of the British Maritime Law Association

PART 1 (ANSWERS TO THESE QUESTIONS ARE ESSENTIAL)

1. Who has responsibility for administering and enforcing maritime safety and marine pollution prevention and control in the waters under the jurisdiction of your State?

The responsibility for administering and enforcing maritime safety and marine pollution prevention and control in UK waters is, as explained below, shared between relevant authorities such as the Maritime and Coastguard Agency (MCA), Environment Agency (EA) and the Crown Prosecution Service (CPS).

1.1 The Maritime and Coastguard Agency (MCA)

1.1.1 Administering Maritime Safety and Marine Pollution Prevention and Control

The Maritime & Coastguard Agency (MCA) is responsible for implementing the UK Government's maritime safety policy. The MCA is an executive agency (created in 1998 by the merger of the Coastguard Agency and the Marine Safety Agency) of the Department for Transport. The current Chief Executive is Mr. Stephen Bligh. Key functions of the MCA are:

- Developing, promoting and enforcing high standards of marine safety
- Minimising loss of life amongst seafarers and coastal users
- Minimising pollution from ships of the sea and coastline.¹

The powers of the MCA derive mainly from the Coastguard Act 1925, the Merchant Shipping Act 1995 (MSA 95) and the Merchant Shipping and Maritime Security Act 1997 (MSMSA 97) and associated secondary legislation.

The directorate of Operations within the MCA consists of 6 parts (Enforcement, Survey, Inspection including Port State Control, Her Majesty's Coastguard; Search and Rescue, Incident Prevention and Counter Pollution). The Counter Pollution section responds to pollution incidents assessing incoming reports and taking appropriate action to mitigate the effect on the UK environment.²

1.1.2 Enforcement of Maritime Safety and Pollution Prevention and Control

As mentioned above, 'Enforcement' is one of the six branches of the MCA. The Enforcement branch of the MCA investigates breaches of Merchant Shipping Legislation and prosecutes offenders (for example for pollution, safety and manning, breaches of the COLREGS, forged certificates) where appropriate.³ It should be recognised that only 'significant breach' of the law will lead to an Enforcement Unit investigation (which may result in an Official Caution or, as in approximately 15% of cases, a prosecution).⁴

1.2 The Environment Agency (EA)

1.2.1 Administering Maritime Safety and Marine Pollution Prevention and Control

¹ Memorandum of Understanding between the Health and Safety Executive, the Maritime and Coastguard Agency and the Marine Accident Investigation Branch for health and safety enforcement activities etc at the water margin and offshore.

² www.mcga.gov.uk

³ *Ibid.*

⁴ For further details of a 'significant breach' see para 2.1.3 below.

The Environment Agency (EA), established pursuant to the 1995 Environment Act as a non-departmental public body is sponsored largely by the Department for Environment, Food & Rural Affairs (DEFRA) and the National Assembly for Wales (NAW). The Secretary of State for Environment, Food and Rural Affairs has the lead sponsorship responsibility for the Agency as a whole.⁵ The EA aims to protect and enhance the environment and, in so doing, to make a contribution towards the objective of achieving sustainable development.⁶ In working towards this aim the EA has many functions, only some of which are related to maritime safety and marine pollution. These functions include:

- Integrated Pollution Prevention and Control
- Integrated Pollution Control, radioactive substances regulation
- Waste Management
- Water Quality
- Land Quality
- Water Resources
- Flood Defence
- Navigation
- Conservation
- Recreation
- Fisheries

Within the areas for which it has responsibility, the EA not only informs and educates but also regulates. As part of its regulatory role, the EA grants various authorisations (licences, permits etc), gives advice, inspects and monitors licence holders.

1.2.2 Enforcement of Maritime Safety and Pollution Prevention and Control

The Environment Agency is responsible for enforcing environmental legislation in England and Wales, and it has published an Enforcement and Prosecution Policy ("the Policy"). The offences with which the EA is concerned may overlap with those investigated by the MCA, and in this connection the Policy provides that: "*where the Agency and another enforcement body both have the power to prosecute, the Agency will liaise with that other body, to ensure effective co-ordination, to avoid inconsistencies, and to ensure that any proceedings instituted are for the most appropriate offence.*" With respect to incidents at sea, the EA's website highlights the fact that operational discharges from vessels are the responsibility of the MCA. Although the EA has a joint regulatory role for spillage of oil, the lead is normally taken by the MCA.⁷

1.3 Role of the Crown Prosecution Service ("the CPS") and relationship with other prosecuting authorities

The Crown Prosecution Service (CPS) has a duty to take over proceedings instituted by or on behalf of the Police.⁸ However, the CPS also has a discretion to take over proceedings in any other case.⁹ In particular areas such as maritime safety and marine pollution, however, it is recognised that certain other prosecuting authorities have special expertise or statutory power and are therefore able to bring prosecutions directly. In such cases the CPS will not usually become involved; indeed sometimes it may be appropriate for proceedings originally brought by the CPS to be delegated to a different prosecuting authority. The CPS may on occasion have to take over the conduct of proceedings which would otherwise be pursued by another body, but only in exceptional circumstances would this be against the wishes of the other prosecuting authority.

With respect to enforcement of the criminal law, various prosecuting authorities (including the CPS, the MCA and the EA) co-ordinate their respective roles pursuant to arrangements contained in the *Convention Between Prosecuting Authorities To Provide Arrangements For Ensuring Effective Co-*

⁵ www.defra.gov.uk.

⁶ *Ibid.*

⁷ See www.environment-agency.gov.uk.

⁸ Prosecution of Offences Act 1985 s.3(2)(a).

⁹ Prosecution of Offences Act 1985 s.6(2).

ordination Of Decision Making And Handling In Related Cases Which Are The Responsibility Of Different Authorities ("the Convention"). This Convention, drawn up in 1998, is of course a purely domestic rather than international agreement.

The object of the Convention is to address the difficulties and uncertainties which may arise where two or more prosecuting authorities propose to proceed against an individual or company for related offences, and where decisions are made and announced at different times.¹⁰ The term "related" refers to a situation where two or more prosecuting authorities plan to prosecute the same individual or company for offences which may lead to associated court proceedings. The Convention provides a structure to ensure a co-ordinated approach to the decision-making process. The Convention focuses on the need for effective lines of communication; prescribes issues to be discussed by contracting prosecuting authorities (for example, the possibility of a prosecution being jointly conducted); and provides for the appointment of a liaison officer from each prosecuting authority.

2. When maritime accidents and/or marine pollution incidents occur within the waters under the jurisdiction of your State, what process of accident investigation is legally required?

2.1 MCA

2.1.1 MCA Power to Investigate

The MCA deals with suspected breaches of merchant shipping legislation and uses its powers of investigation to determine whether prosecution is appropriate.

2.1.2 Surveyors and Inspectors

MCA surveyors may be appointed under the MSA 95.¹¹ These surveyors have powers to inspect ships whilst in UK waters and to detain them if they are unsafe.¹²

The MSA 95 also provides for the appointment of inspectors with a wider range of powers.¹³ These include powers –

- to enter any premises or board any ship in the UK if the inspector has reason to believe it is necessary
- to make examinations and investigations as he considers necessary
- to give directions requesting that the premises or ship be left undisturbed as is reasonably necessary
- to take measurements and photographs and make readings as he considers necessary
- to take samples of articles or substances and if necessary take possession of such article or substance and detain it for as long as necessary, and
- to require production of, inspect and take copies of documents.¹⁴

If a surveyor or inspector finds that a ship fails to meet applicable standards the MCA has power to impose various sanctions including Improvement Notices (which specify a deficiency or deficiencies to

¹⁰ Clause 1.1.

¹¹ Merchant Shipping Act 1995 s.256.

¹² *Ibid.* s 258.

¹³ *Ibid.* s 256.

¹⁴ *Ibid.* s.259.

1.03.7319.00 4501024

be remedied within a specified time),¹⁵ or Prohibition Notices (which may prevent the vessel from sailing).¹⁶

2.1.3 Investigations and “Significant Breaches”

Where there is a “significant breach” of merchant shipping legislation the MCA’s Enforcement Unit will probably commence an investigation which, in turn, may result in a prosecution. The MCA defines a “significant breach” as:

“A contravention of Merchant Shipping or MARPOL legislation which could cause, or has caused, loss of life, serious injury, significant pollution or damage to property or the environment.”¹⁷

Each case is judged on its merits and therefore a ‘significant breach’ may arise from a major incident that clearly falls within the above definition (e.g. a collision or grounding) or from a failure to comply with the lower level sanctions such as formal cautions.

2.1.4 Investigation and compliance with other, related, legislation

The MCA must conduct its investigations in accordance with legislation which safeguards the rights of the individual being investigated. These include:

- The Police and Criminal Evidence Act 1984 (‘PACE 1984’) and its associated codes of practice.
- The Regulation of Investigatory Powers Act 2000 (RIPA). RIPA was enacted to ensure that human rights are duly respected in the exercise of certain investigatory powers (including the interception of communications; the acquisition of communications data; intrusive surveillance; covert surveillance in the course of specific operations; the use of covert human intelligence sources and access to encrypted data).
- The Human Rights Act 1998 which implements the European Convention on Human Rights 1950.
- The Data Protection Act 1998.

2.1.5 The Decision to Prosecute

In deciding whether or not to prosecute, the MCA must apply a two-stage test established by the CPS:

1. Is there sufficient **evidence** to provide a realistic prospect of conviction? If so -
2. Is it in the **public interest** to prosecute?

The MCA will refer to the Code for Crown Prosecutors which gives detailed guidance on application of the above test.¹⁸

2.2 Marine Accident Investigation Branch (MAIB)

2.2.1 MAIB Investigations

Under the MSA 95 the Secretary of State may appoint an inspector or inspectors to conduct investigations into maritime accidents involving or occurring on board any ships in UK territorial waters.¹⁹ The MAIB has been appointed to carry out this function. It was set up in 1989 to investigate

¹⁵ *Ibid.* s.261.

¹⁶ *Ibid.* s.262.

¹⁷ See Jeremy Smart (Principal Enforcement Officer, MCA), *The Enforcement of Merchant Shipping Legislation and the Conduct of Criminal Prosecutions within the United Kingdom* (paper given at International Conference on Criminalisation of Masters and Seafarers, 17-18 February 2005).

¹⁸ Available online at: http://www.cps.gov.uk/victims_witnesses/code.html.

¹⁹ Merchant Shipping Act 1995 s.267.

accidents in order to determine their circumstances and causes and is part of the Railways, Aviation, Logistics, Maritime, and Security Group of the Department for Transport. The current Chief Inspector of Marine Accidents is Mr Stephen Meyer who reports directly to the Secretary of State on the investigation of specific accidents.

Investigations conducted by the MAIB are governed by regulations which define its remit and powers.²⁰ These regulations do not confer any power of prosecution and provide *inter alia* that:

- The fundamental purpose of an MAIB investigation of an accident is to “*determine its circumstances and the causes with the aim of improving the safety of life at sea and the avoidance of accidents in the future. It is not the purpose to apportion liability, nor, except so far as is necessary to achieve the fundamental purpose, to apportion blame.*”²¹
- Any accident (as defined by the regulations) may be investigated and the Chief Inspector shall decide whether or not this should be carried out.²²
- Where the Secretary of State orders a formal investigation (see below at para 2.3), any investigation by the MAIB will be discontinued.²³
- Public notice of the investigation may be given.²⁴
- The Secretary of State may require an investigation into the further consequences of an accident to be carried out (for example on salvage or pollution aspects).²⁵
- The inspector has a wide discretion as to the manner of conducting the investigation so as to achieve the fundamental purpose.²⁶
- All persons required to attend before an inspector shall have their reasonable expenses of attending paid.²⁷
- A report of the conclusions reached as a result of the investigation shall be made public (unless the investigation is being undertaken on behalf of a State other than the UK) in the shortest possible time and in the manner the Chief Inspector sees fit.²⁸ This is qualified by the requirement to serve notice of the report on certain persons/organisations (where their reputation may be adversely affected by the report) and consider their responses (amending the report where necessary).²⁹ The Secretary of State may also order that the report should not be made public.³⁰
- The regulations also prescribe criminal offences, punishable by fines, for failure to report accidents or provide information; for false claims of ability to provide new evidence or information; for failing to preserve evidence as required by the regulations, and for irregular disclosure of information.³¹

2.2.2 MAIB Investigation Reports

²⁰ The Merchant Shipping (Accident Reporting and Investigation) Regulations 1999 (SI 1999 No 2567).

²¹ *Ibid.*, s.4.

²² *Ibid.*, s.6(1).

²³ *Ibid.*, s.6(3).

²⁴ *Ibid.*, s.6(5).

²⁵ *Ibid.*, s. 6(6).

²⁶ *Ibid.*, s.8(1).

²⁷ *Ibid.*, s.8(3).

²⁸ *Ibid.*, s.10(1).

²⁹ *Ibid.*, s.10(2)(a) and (b).

³⁰ *Ibid.*, s.10(7).

³¹ *Ibid.*, s.14(1)-(3).

When a decision is made to investigate an incident the results of the investigation will generally be made available to the public in an accident investigation report. As it is part of the MAIB's remit to improve safety for the future, such reports generally conclude with recommendations for measures to be taken to avoid a recurrence. Examples of such reports published after well known major incidents in UK waters in recent years include reports of MAIB investigations into the *Braer* and *Sea Empress* major oil spills in 1993 and 1996 respectively. At the time of writing, three reports have been published by the MAIB in 2005, namely those of investigations into accidents involving the vessels *Star Clipper*,³² *Attilio Ievoli*³³ and *Waverley*.³⁴

The MAIB also publishes a "Safety Digest" three times a year, with short reports of lessons learnt from investigations.

2.2.3 Recent developments

New regulations have been prepared which are intended to replace those summarised above. During the consultation phase, the MAIB requested comments and suggestions from various parties. Further to the receipt of responses, the MAIB has compiled a document entitled "Analysis of Responses to Public Consultation" dated January 2005. This gives details of the new draft regulations and the nature and substance of comments received (some which have resulted in 'significant amendments' and some of which have resulted in 'minor amendments').³⁵ The draft regulations were laid before Parliament on 24 March 2005 and are now due to come into force on 18 April 2005.

2.2.4 Relationship with other organisations

As the investigatory powers of the MAIB and MCA often overlap with those of the Health and Safety Executive (HSE), there is a Memorandum of Understanding between the three bodies as to which organisation will take the lead in a particular case.

2.3 Formal Investigations

The Secretary of State may cause a formal investigation to be held into any marine accident,³⁶ and regulations exist to govern the conduct of such investigations.³⁷ One of the main differences between this type of investigation and MAIB investigations is that a formal investigation may result in sanctions involving the suspension or revocation of an officer's certificate. An investigation of this kind is not conducted by the MAIB but by a wreck commissioner. The regulations provide for the presentation of a report by the wreck commissioner to the Secretary of State rather than criminal proceedings.

3. Does your State's maritime accident and/or marine pollution investigative processes contemplate criminal charges against any ships' personnel involved and, if so, what action may be involved?

3.1 Jurisdiction

The English courts will exercise jurisdiction over offences alleged to have taken place in the UK, including those alleged to have been committed by or on board vessels within UK territorial waters (whatever the flag of the ship or nationality of the accused).³⁸ They also have jurisdiction in respect of /offences committed on board British ships on the high seas (by an individual of any nationality) and in

³² Incident of 2 May 2004.

³³ Incident of 4 June 2004.

³⁴ Incident of 1 February 2005.

³⁵ For further information see the MAIB's website at: <http://www.maib.dft.gov.uk>.

³⁶ Merchant Shipping Act 1995 s.268.

³⁷ The Merchant Shipping (Formal Investigations) Rules 1985 SI 1995/1001, as amended in 1999 and 2000.

³⁸ Territorial Waters Jurisdiction Act 1878, s.2.

relation to offences committed by a British citizen in a foreign port or harbour.³⁹ Otherwise they do not have jurisdiction over offences alleged to have been committed outside England and Wales, even if the accused is a British subject.⁴⁰

3.2 Investigation and Prosecution

The CPS and other prosecuting authorities such as the MCA and EA have powers to investigate breaches of merchant shipping legislation and, where appropriate, make a decision to prosecute. Where prosecution is deemed appropriate, the proceedings will be conducted in the same way (through the adversarial court system) as non marine offences.

4. If there is no criminal process, what other investigative processes are utilised?

There is the possibility of criminal proceedings (see answers to questions 2 and 3 above) but, as explained in the response to question 2, there is also the possibility of an MAIB public inquiry or of a 'formal investigation' being ordered by the Secretary of State.

5. Does your State's investigative process permit detention of seafarers and, if so, under what circumstances and with what safeguards?

The UK's investigative process does permit the detention of seafarers (by way of arrest and subsequent detention). This may only be carried out, however, in certain circumstances and in accordance with strict safeguards as follows:

5.1 Arrest

Under English law, arrest is considered to be the "beginning of imprisonment" and must therefore be clearly justified by an express rule of law.⁴¹ If the arrest is not based on the proper exercise of a specific legal power it is unlawful and will constitute the tort of false imprisonment.

In some cases an arrest is lawful only if a court order has first been obtained to authorise the arrest. This order, known as an arrest warrant, may be issued by a magistrates' court or the Crown Court. Applications are normally made to a magistrates' court, which may issue a warrant only where the alleged offence is classified as 'triable on indictment',⁴² or punishable with imprisonment, or where the address of the accused cannot be sufficiently established for service of a summons. In certain other particular circumstances warrants may be issued by the Crown Court, e.g. where an indictment has been signed but the person charged with the offence has not been committed for trial.⁴³

In certain cases the police may make an arrest without a warrant. However this power is limited to cases where they have reasonable cause for believing that the accused has committed, is committing, or is about to commit, and an 'arrestable offence'.

Arrestable offences are normally of a serious character and generally do not include most offences involving breach of merchant shipping legislation. However, in exceptional cases, e.g. where a maritime accident gives rise to possible charges of manslaughter, an arrest without warrant is possible.

In other cases an arrest warrant may be obtained in relation to potential merchant shipping offences which are punishable by imprisonment if the facts are sufficiently serious. An example is the offence

³⁹ Blackstone's Criminal Practice 2005, para A8.12.

⁴⁰ *Harden* [1963] 1QB 8.

⁴¹ *Christie v Leachinsky* [1947] AC 573, 600.

⁴² A trial on indictment takes place in the Crown Court before a judge and (if the accused pleads not guilty) a jury.

⁴³ Supreme Court Act 1981.

under the MSA 95 of conduct endangering ships, structures or individuals.⁴⁴ This consists of any deliberate act or omission, any neglect or breach of duty, or any act or omission whilst under the influence of drink or any drug, which causes or is likely to cause the loss or serious damage to a ship or its machinery, or the death of or serious injury to any person.⁴⁵ This offence is not, incidentally, established by proof of conduct causing or likely to cause pollution, but where pollution results from a casualty involving serious damage to a ship, that damage may justify prosecution (and possibly arrest) for such an offence.

An arrest must be carried out in a particular way in order to be lawful – for example an individual must be informed of the facts and grounds of arrest.

5.2 Detention and treatment of suspects (PACE Codes of Conduct)

The Police and Criminal Evidence Act 1984 (PACE), and accompanying codes of conduct, provide safeguards to protect detained suspects. The leading principle is that all persons in custody must be dealt with expeditiously and released as soon as the need for detention has ceased to apply.⁴⁶

PACE provides that only an arrested person may be kept in police custody and that such detention must comply with safeguards set out in the Act.⁴⁷ A person who voluntarily attends at a police station to assist in an investigation is entitled to leave at will unless he is arrested. The safeguards prescribed by the Act and the Codes include the following requirements:

- A custody officer (at least the rank of sergeant) is responsible for detention conditions. The custody officer cannot be a police officer who has been involved in the matter under investigation. A custody officer is entitled to assume that the arrest of a person was lawful.⁴⁸
- A custody record must be opened in respect of the person arrested. This may later be examined by the arrested person or legal representative.
- The custody officer must inform the arrested person of his rights to have someone informed of his arrest, to consult privately with a solicitor, and to consult the appropriate Codes of Practice. He must also inform the arrested person that independent free legal advice is freely available.
- The arrested person must be given a written notice of his rights (including a right to a copy of the custody record) as well as a caution that he is not obliged to say anything but that what he says may be taken down and given in evidence.
- All interviews (by police and other prosecuting authorities such as the MCA) must be carried out in accordance with the PACE and Code C, otherwise the evidence obtained may be inadmissible.
- Code C provides safeguards *inter alia* with respect to detention and interrogation including: conditions of detention, care and treatment of detained persons, interpreters and reviews of detention.
- A custody officer must decide as soon as practicable after the suspect arrives at the police station whether he has sufficient evidence to charge the suspect with the offence for which he is arrested.
- Unless an extension of time for detention has been authorised (for example in the case of a serious arrestable offence such as murder or rape) a suspect may not be held in detention without charge for more than 24 hours. If, after 24 hours he has not been charged he must be released either with

⁴⁴ Merchant Shipping Act 1995 s.58.

⁴⁵ *Ibid.*, s.58(2)-(3).

⁴⁶ Police and Criminal Evidence Act 1984, Code C, para 1.1.

⁴⁷ Police and Criminal Evidence Act 1984 s.34(1). The safeguards are set out in Part IV of the Act.

⁴⁸ *DPP v L* [1999] Crim. LR 752.

or without bail. He cannot then be rearrested without warrant for the same offence in the absence of new evidence.

5.3 Citizens of independent Commonwealth countries or foreign nationals

Additional protection is given to citizens of independent Commonwealth countries or foreign nationals.⁴⁹ Such individuals have the right to communicate at any time with the appropriate High Commission, Embassy or Consulate. They must be informed of this as soon as practicable, and of the right, upon request, to have their High Commission, Embassy or Consulate told of their whereabouts and grounds for their detention. If this latter request is made it must be acted upon as soon as practicable. Consular officers are also able to visit their nationals in police detention to talk to them and, if necessary, arrange for legal advice. These visits are to take place outside the hearing of a police officer. Additionally, a record will be made when a detainee is informed of the above rights and of any communications with a High Commission, Embassy or Consulate.

5.4 The Human Rights Act 1998

The Human Rights Act gives effect in UK domestic law to the European Convention on Human Rights. All action taken with respect to a suspect must therefore comply with the rights enshrined in the Convention.

5.5 Case studies

There have been various examples in recent years of seafarers who have been prosecuted under English criminal law and who have been subject to the criminal law procedures outlined above:

- *Vessel: Dutch Aquamarine:* On 9 October 2003 the Dutch flagged chemical tanker, *Dutch Aquamarine* (4671 gt) collided with the 1009 gt vessel *Ash*, running into the stern of the smaller vessel. The damage sustained by the *Ash* was such that she sank quickly, bow first, resulting in the death of the Master of the *Ash*. The Second Officer of the *Dutch Aquamarine* was the officer on watch at the time of the collision, and the MCA's Director of Operations stated that his standard of watch keeping "fell so far below the level required that this collision was inevitable." Although the Second Officer pleaded guilty to a breach of the MSA 95 (endangering his vessel) but was also found guilty of manslaughter and sentenced to 12 months imprisonment.
- *Defendant: Adam Cowell:* The defendant was found to have forged certificates as an Efficient Deck Hand, and for Proficiency in Survival Craft and Rescue Craft, and as a result to have sailed in a position for which he was not qualified. He pleaded guilty to two offences of making false instruments and one offence of obtaining pecuniary gain under the Forgery and Counterfeiting Act 1981. He also pleaded guilty to five specimen charges of sailing in a position for which he was unqualified,⁵⁰ with another nineteen of the same offences being taken into consideration. The defendant was sentenced on 14 October 2004. The Court considered a custodial sentence but, in light of the defendant's previous good character and guilty plea, restricted the penalty to one of community service, imposing the maximum community service order (240 hours) without any reduction for mitigating circumstances.
- *Defendant: Neville George Young.* At a court hearing on 9 June 2003, Young was convicted on 4 charges of possessing and using forged qualifications and sailing as a senior officer on a British Ship without holding a valid Certificate of Competence. He was sentenced to 9 months imprisonment and fined £500 for sailing as an unqualified Officer. His Honour Judge Brown said: "*Forgery is a very serious offence and this act could have put other sea-fares' lives at risk.*"

⁴⁹ Police and Criminal Evidence Act 1984, Code C.

⁵⁰ Contrary to the Merchant Shipping Act 1995 s.52.

Only a custodial sentence is justified". Having noted the mitigating facts, however, Judge Brown suspended the sentences for 2 years and ordered that they run concurrently.

- *Defendant: Jerzy Pawluk, Chief Officer of MV Roustel*. On 27 January 2000 the defendant was convicted of conduct endangering ships, structures or individuals.⁵¹ He had admitted to drinking on watch, and leaving the bridge to go to bed. The watchkeeping alarm was disabled and the ship was set on a landward course. The defendant was sentenced to 12 months imprisonment.

6. If seafarers are required to be present for an investigation, trial or other hearing will they be permitted to leave your State until such investigation, trial or other hearing takes place?

Seafarers will be permitted to leave the UK unless they are refused bail or are granted bail subject to conditions which restrict them to staying within the UK.

Under the Bail Act 1976 ("BA 76"), there is a rebuttable presumption in favour of granting bail.⁵² This applies only before a person has been convicted of an offence; thereafter there is no *right* to bail.

The court will consider various factors in deciding whether or not to grant bail. These depend on whether the alleged offence, if proved, will be punishable by imprisonment. For imprisonable offences grounds for refusing bail include the existence of substantial grounds to believe that a defendant would (if released) fail to surrender to custody. In such cases bail may be granted subject to conditions to ensure that the defendant surrenders to custody and makes himself available for enquiries to be made. These conditions may involve provision of one or more sureties; security; reporting, curfew or residence restrictions.

These grounds for refusing bail, or for granting bail only on conditions, do not apply to offences not punishable by imprisonment. In relation to such offences bail can be refused only on very limited grounds, e.g. that custody is considered necessary for the defendant's own protection, or that there has been a previous failure to comply with bail conditions.

If a defendant charged with an imprisonable offence is a foreign national, and the question arises whether bail should be granted on condition that he remains in the UK, it will be relevant whether he is a national of another EU member state. EC law provides for a European Arrest Warrant, recognised throughout the Community as binding on member states, to facilitate the surrender of defendants from one EU state to another. The availability of this process is a factor which in some cases may persuade the court to permit the defendant to return to his home country pending trial.

7. Does your State require a financial surety to ensure that seafarers return for any subsequent hearing and, if so, how is the amount of such surety determined and what form is required?

A financial surety, or the provision of security by the defendant, is envisaged by the BA 76 as a possible condition of bail.

7.1. Surety

A custody officer, as well as a court, may require a surety. A surety's only obligation is to ensure the accused's attendance at court; the surety is not expected to prevent further offences or interference with witnesses. It is therefore logical that sureties should only be required when there is a risk of absconding. In considering whether a proposed surety is suitable, the BA 76 provides that regard may be had, *inter alia* to:

- the 'financial resources' of the proposed surety

⁵¹ Contrary to the Merchant Shipping Act 1995 s.58.

⁵² Bail Act 1976 s. 4(1).

- the 'character' of the proposed surety and whether he has any previous convictions
- the 'proximity' of the proposed surety to the person for whom he is to be surety. This is considered the most important factor since it is regarded as reflecting the extent of the surety's ability to control whether the accused will attend at court.⁵³

In setting the amount of the surety, the court considers the seriousness of the offence and the degree of risk that the accused will abscond. If the surety cannot meet the required sum then (as is quite common) one or more additional sureties must be found. Usually, if the accused fails to answer to his bail, the entire sum in which he stood surety must be forfeited by the surety.

7.2 Security

Although a person cannot stand surety for himself he may be required to deposit with the court money or another item of value which will be forfeited if he fails to answer to bail.⁵⁴ This security may be given by either the accused or by somebody else on his behalf.

8. Is your State's maritime administration or other authority given legal responsibility for the protection, rights and welfare of all seafarers and, if so, how is this responsibility administered?

The UK's maritime administration has various obligations with respect to the protection, rights and welfare of seafarers on both UK flagged vessels and, in some cases, on foreign ships. These obligations derive from International Law (such as UNCLOS 1982 and numerous International Labour Organisation (ILO) conventions) and from domestic legislation.

8.1 International Law

The UK has ratified 86 ILO conventions, a number of which deal specifically with seafarers' rights. Of particular relevance are the following, which oblige contracting states to introduce implementing national legislation:

- Seamen's Articles of Agreement Convention, 1926
- Repatriation of Seamen Convention, 1926
- Social Security (Seafarers) Convention, 1946
- Accommodation of Crews Convention, 1949
- Seafarers' Identity Documents Convention, 1958
- Accommodation of Crews (Supplementary Provisions) Convention, 1970
- Merchant Shipping (Minimum Standards) Convention, 1976
- Labour Inspection (Seafarers) Convention, 1996
- Seafarers' Hours of Work and the Manning of Ships Convention, 1996
- Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976

8.2 Domestic Legislation

Domestic legislation largely takes the form of secondary legislation, created pursuant to the Merchant Shipping Act 1995. Please see the attached Appendix for examples of domestic legislation in this area (much of which implements conventions such as those mentioned above).⁵⁵

⁵³ *Ibid.*, s.8.

⁵⁴ *Ibid.*, s.3(2).

⁵⁵ See further the ILO website: http://www.ilo.org/dyn/natlex/natlex_browse.home?p_lang=en

1.03.7319.00.4501024

PART 2 (ANSWERS TO THESE QUESTIONS WOULD BE MOST HELPFUL)

9. If a maritime accident resulting in serious pollution occurs in waters under the jurisdiction of your State that involves a foreign-flag vessel with a crew of different nationalities, what is the expected role of vessel crew members held responsible in the subsequent investigative process?

Criminal liability for oil pollution from ships in UK waters depends on whether the incident occurred in internal or territorial waters, and on whether the pollution resulted from damage to the ship or its equipment. Further, under regulations which came into force in September 1996⁵⁶, the UK's powers to prosecute for pollution offences was extended by the creation of a 'pollution zone' which extends 200 nautical miles from the UK coast. The Secretary of State's Representative (SOSREP) has various intervention powers within this zone and such powers are discussed at 12.2 below.

9.1 UK Territorial Waters

In UK territorial waters the position is governed by regulations which give effect to MARPOL Annex I.⁵⁷ This provides that discharges of oil from a ship shall be unlawful unless they comply with the controls and restrictions set out in Annex I,⁵⁸ but that there is no liability for pollution resulting from damage to the ship or its equipment, provided the damage is not attributable to personal act or omission of the owner or master committed with intent to cause damage, or recklessly and with knowledge that such damage would probably result.⁵⁹

In the absence of such conduct seafarers are exempt from criminal liability for pollution resulting from damage to a ship or its equipment in a maritime casualty. However this defence will not avail them in the case of spills which are not attributable to such damage, notably escapes of oil resulting from mishandling of equipment during oil transfer operations, or leakages resulting from wear and tear or other defects in the ship's equipment. In such cases prosecutions could be brought on a strict liability basis, but in practice proceedings have not normally been brought if it has been clear that no negligence was involved on the part of the owner or master.

9.2 UK Internal Waters

In the internal waters of the UK the legal framework is different. Here the position is governed by the MSA 95.⁶⁰ These provisions owe their origin to legislation which pre-dated MARPOL and originally applied in territorial as well as internal waters, prior to being superseded in territorial waters by the regulations based on MARPOL. There are technical differences between the two regimes but in substance they are similar.

9.3 Other grounds for prosecution

A maritime accident resulting in pollution may give rise to other charges which do not depend on the pollution itself but are founded on conduct endangering the ship or other persons. Such an offence may be established by proof of acts or omissions involving neglect or breach of duty which would not necessarily be sufficient for the purposes of a prosecution under legislation referred to in paras 9.1 and 9.2 above.⁶¹

9.4 EU Draft Directive on Criminal Sanctions for Ship-source Pollution

⁵⁶ The Merchant Shipping Regulations, 1996 (Prevention of Pollution, Limits), SI 1996/2128 (as amended)

⁵⁷ The Merchant Shipping (Prevention of Oil Pollution) Regulations 1996, SI 1996/2154 (as amended).

⁵⁸ MARPOL Annex I Reg. 9.

⁵⁹ *Ibid.*, Reg. 11.

⁶⁰ Merchant Shipping Act 1995 ss.131–133.

⁶¹ See the discussion at para 5.1 above of the offence under the Merchant Shipping Act 1995 s.58.

There are proposals to change the position outlined in 9.1 and 9.2 above by the EU Draft Directive on Criminal Sanctions for Ship-source Pollution. In its current form the Draft does not distinguish between operational and accidental discharges of oil, and any discharge would be "illegal" if it results from "serious negligence" on the part of the defendant. This test is different from that prescribed by MARPOL in respect of spills resulting from damage to the ship or its equipment. The Draft Directive provides that MARPOL prevails in waters beyond the territorial sea,⁶² but otherwise it asserts precedence over MARPOL, notably in territorial waters. The Draft Directive has provoked considerable protest from a coalition of shipping industry and seafaring bodies. The main objections are firstly that "serious negligence" is a subjective and unsuitable test of liability for oil spills, and secondly that this test is inconsistent with MARPOL.

10. If the accident, as outlined in the above question is due to negligence but not wilful misconduct by responsible crew members, will your State proceed only with pollution damage claims under the accepted International Civil Liability Compensation system?

10.1. Criminal Liability

Criminal prosecution for an oil spill resulting from negligence without wilful misconduct will depend on whether the spill resulted from damage to the ship or its equipment. Major oil spills of this kind in the UK, such as the *Braer* and *Sea Empress*, did not result in any prosecution of seafarers. However there have been many prosecutions in magistrates' courts (and sometimes the Crown Court) resulting in fines being imposed for relatively small spills resulting from leakages, typically during pumping operations in port. A couple of recent examples are as follows:

10.1.1 Case Study: MSC Ariane

On 13 March 2003 the owners of the cargo vessel *MSC Ariane* were prosecuted at Southampton Magistrates Court after the vessel had been identified by reports and aerial photographs as the source of an oil slick. The incident took place in UK territorial waters and was therefore governed by regulations giving effect to MARPOL Annex I.⁶³ The magistrates convicted the owners of pollution, but the fine they imposed was reduced on appeal to the Crown Court.⁶⁴ Investigations indicated that the pollution probably was probably caused by a metal insert not being properly installed, as a result of which an inadvertent discharge of oily water occurred beneath the waterline and went unobserved by the bridge. The court stated that: "*sloppy, inadequate working practices on Ariane and from engineers onboard led to a lengthy slick*". Mitigating factors that were taken into consideration included:

- changes to the faulty pipeline since the accident (although not carried out immediately)
- the discharge being light oil not heavy crude
- no risk to health and safety (although the court noted that this "*seemed to be a matter of good fortune rather than action taken by crewmen on Ariane*")

It was also clear that the incident resulted from an act of negligence rather than a deliberate failure to comply with operational discharge controls.

10.1.2 Case Study: Averity

On 26 September 2001 the coastal tanker *Averity* was involved in an incident at Stanlow Oil Refinery which resulted in her owners being prosecuted for an offence of pollution contrary to the MSA 95.⁶⁵ Whilst loading a cargo of Ultra Low Sulphur Diesel (ULSD) a discoloration in the water had been

⁶² I.e. in Exclusive Economic Zones of EU member states and on the High Seas.

⁶³ See para 9.1 above.

⁶⁴ From £100,000 (plus £4,968 costs) to £30,000 fine. No costs were awarded to Owners, however, for the appeal.

⁶⁵ This was a spill in internal waters, governed by the Merchant Shipping Act 1995 s.131, as set out in para. 9.2 above.

noticed and it transpired that both of the sea valves were open. Although the valves were closed loading was not stopped and, soon after, loading of kerosene commenced. It was later discovered that there was a discrepancy in the figures and that ULSD had entered the enclosed dock. It had, however been prevented from entering the Manchester Ship Canal by a "bubble barrier" across the entrance. The magistrates fined the Owners £10,000 plus £7,173 costs but noted, in mitigation, that Owners had entered an early guilty plea, had no previous convictions, had paid the full clean up costs and had taken measures to avoid a recurrence. The magistrates did, however, state that this was a serious offence that had resulted in a large spillage and had borne in mind the delay in raising the alarm and a breakdown in communication between the crew.

10.2 Civil Liability

Civil liability for pollution by persistent oil from tankers is governed in the UK by the Civil Liability Convention 1992. In accordance with the Convention, strict liability for such pollution is imposed on the registered owner of the ship,⁶⁶ and the servants or agents of the owner are exempt from liability in the absence of wilful or reckless conduct.⁶⁷

Civil liability for pollution by oil from other ships – notably by pollution from ships' bunkers – will be governed in due course by the Bunker Pollution Convention 2001, if and when this enters into force and is implemented by the UK. In the meantime liability of this kind is governed by provisions in the MSA 95 which are similar to those applying to spills from tankers, and the servants or agents of the owner are exempt from liability to the same extent.⁶⁸ Liability for spills from ships other than tankers may currently be limited under the Convention on Limitation of Liability for Maritime Claims, London, 1976 ("the London Convention")⁶⁹

It is also worth mentioning that a new instrument⁷⁰ dealing with compensation for accidents involving hazardous and noxious substances (HNS) has been drafted. This Convention will make it possible for up to 250 million SDR to be paid out to victims of disasters involving HNS (such as chemicals) but has not, as yet, entered into force.

11. If the answer to Question 10 is "No", what other processes or procedures will be undertaken by your State?

In the event of serious pollution there will be a full inquiry by the MAIB. As mentioned earlier, the investigation is not primarily concerned with apportioning fault but with identifying causes with a view to avoiding a recurrence. Nonetheless the conclusions and recommendations of an MAIB report may lead to a decision by prosecuting authorities to institute proceedings.

In the *Sea Empress* incident the MAIB report identified pilot error as the primary cause of the casualty and identified deficiencies in the systems operated by the Milford Haven Port Authority for training pilots and ensuring that pilots of appropriate experience were assigned to large tankers. This led to a prosecution of the MHPA by the Environment Agency under the Water Resources Act 1991. The MHPA pleaded guilty and was fined £750,000. No proceedings were instituted against the owners, master or crew of the tanker. Concerns were voiced in some quarters, notably by the salvage industry, that the Act represented an unexpected source of potential criminal liability for shipowners and seafarers in circumstances where they would not incur liability under merchant shipping legislation. To date there has been no instance of shipowners or seafarers being prosecuted under the 1991 Act.

⁶⁶ CLC 92 Art. III.1; Merchant Shipping Act 1995 s.153.

⁶⁷ CLC 92 Art. III.4; Merchant Shipping Act 1995 s.156.

⁶⁸ Merchant Shipping Act 1995 ss.154 and 156.

⁶⁹ The London Convention was implemented in the UK by Merchant Shipping Act 1995 s.185.

⁷⁰ The International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS), 1996

12. If the Maritime Accident outlined in Question 9 occurred outside your State's territorial seas, although damage occurs in areas under your State's jurisdiction, would the procedures involved be different?

12.1 Jurisdiction of the MAIB

The jurisdiction of the MAIB is not limited to accidents occurring in the territory of the UK but could include accidents causing pollution within territorial limits. The MAIB may also investigate accidents involving UK ships wherever they occur. The role of the crew in relation to the inquiry might well depend on whether they had evacuated the vessel and been brought ashore in the UK.

12.2 Jurisdiction of the MCA – Secretary of State's Representative (SOSREP)

The Secretary of State's Representative (SOSREP) is appointed on behalf of the Secretary of State and may oversee, control, and intervene where necessary, and exercise "ultimate command and control" in connection with salvage operations within UK waters involving vessels or fixed platforms where there is significant risk of pollution. Some of the more significant SOSREP powers, with respect to areas outside territorial waters, are outlined below.

12.2.1 Powers of intervention – Power to Intervene and Issue Directions

Under the MSA 95⁷¹ the SOSREP may, for purposes of preventing or reducing the risk to safety or of pollution by a hazardous substance, give directions to take action of any kind whatsoever; this includes the destruction of a vessel. This power applies, with respect to safety, in UK territorial waters (up to 12 miles from the UK coast) and, with respect to pollution, in the Pollution Zone (up to 200 miles from UK coast or to the international median line).

12.2.2 Powers of intervention – Power to establish Temporary Exclusion Zones

The SOSREP may⁷², for the purpose of preventing significant damage to persons or property, or pollution or reducing such risk, establish a Temporary Exclusion Zone. This can apply to any ship, structure or other thing which must be wrecked, damaged or in distress. The power applies within the UK Pollution Zone (up to 200 miles from the UK coast or to the international median line).

12.2.3 Case Study: Ever Decent/Norwegian Dream

In August 1999 the *Ever Decent* (Panamanian flagged container ship) and the *Norwegian Dream* (Bahamian registered passenger ship) collided off Margate. The precise location was outside UK territorial limits but within the UK pollution zone and therefore the Dover Maritime Rescue Co-ordination Centre had jurisdiction to co-ordinate. The damage to the *Ever Decent* was such that it led to a fire which started at the collision point and soon after became out of control. The SOSREP formally intervened under S. 137 of the MSA 95, firstly to require salvage plans to be approved by the MCA; this was due to the risk of significant pollution (the mixed containers on board the *Ever Decent* contained significant quantities of Hazardous cargo, particularly as the seat of the fire was close to two containers with 32 tonnes of potassium and sodium cyanide). Subsequently the SOSREP intervened in order to establish a Temporary Exclusion Zone around the casualty preventing any non salvage related vessels from entering the area. A Salvage Control Unit (SCU) was also set up comprising of the SOSREP, MCA Pollution and salvage officer, owners/insurers representative, Salvage Manager and Environmental Liaison Officer which monitored and reduced the fire's intensity over some days before an escorted passage plan to Zeebrugge was finally approved. Throughout the operation the *Ever Decent* maintained a position outside UK territorial waters but still within the UK pollution zone.

13. Regardless whether your State's investigative process utilises the criminal justice system or any other system, will the relevant vessel crew members be detained? If so,

⁷¹ *Ibid.*, Schedule 3A para. 1 (inserted by the Marine Safety Act 2003).

⁷² Merchant Shipping Act 1995 s.100A (inserted by the Merchant Shipping and Maritime Security Act 1997).

(a) What is the legal reason for such detention?

There can be no arrest or detention under English law without justification under a specific legal power.⁷³ There can therefore be no arrest or detention unless there is reasonable cause to believe that an arrestable offence has been committed or an arrest warrant has been obtained. In either case it would be necessary for the circumstances to involve a suspected or alleged offence of a serious nature and punishable by imprisonment.

(b) What rights will the accused/detained crew member have during the process, and do such rights differ from those available to citizens of your State?

As explained in 5.2 above, the accused/detained crew member will have rights guaranteed under various statutory provisions such as PACE and associated codes of conduct as well as under legislation such as the Human Rights Act 1998. As explained under 5.3 above, foreign nationals have additional protection under PACE Code C. There are also provisions under PACE Code C which deal with the need to make interpreters available where necessary.

(c) Will full reasons and/or charges be provided to those detained?

When a person is arrested he must be informed of the reasons for such arrest. This must be either at the time of arrest or as soon as practicable thereafter. If this information is not given the arrest is unlawful. Although the duty is to give information "at the time of the arrest" this does not have to be fulfilled at the precise moment of arrest. The information may be given during a reasonable period before and after that moment.⁷⁴

(d) What is the expected length of such detention?

The length of detention after arrest will depend on the circumstances and nature of the offence in question. The governing principle is that persons in custody must be dealt with expeditiously and released as soon as the need for detention has ceased to apply. Initially, the custody officer is authorised to detain an arrested person at a police station for such period as is necessary to enable him to decide what action to take.⁷⁵ Generally this period should be a maximum of 6 hours. Unless prolonged detention has been authorised (where there is a "serious arrestable offence" and certain criteria are fulfilled), a suspect may not be held in detention without charge for more than 24 hours. When that period expires, if the suspect has not been charged, he must be released either on bail or without bail.⁷⁶

(e) Where and how will the seafarers involved be detained?

Seafarers may be detained at a police station in accordance with the procedures outlined above.

(f) What access to legal advice and/or defence will such personnel have available to them?

All detainees must be informed that they may at any time consult and communicate privately with a solicitor, whether in person, in writing or by telephone, and that free independent legal advice is available from the duty solicitor.⁷⁷ The exercise of this right may be delayed where

⁷³ See para 5.1 above.

⁷⁴ Blackstone's Criminal Practice 2005, p.1043.

⁷⁵ Police and Criminal Evidence Act 1984 s.37(1).

⁷⁶ *Ibid.*, s. 41(1) and (7).

⁷⁷ *Ibid.*, Code C, Section 6.

1.03.7319.00 4501024

“Annex B” applies⁷⁸. Further, where the detainee is a foreign national, consular officers from the country in question may visit the detainee in police detention and, if required, arrange for legal advice. This visit will take place out of the hearing of any police officer.

(g) Will the vessel’s representatives, agents, family members, labour organisations representatives or lawyers be given immediate and full access to those detained?

A foreign detainee may be visited by a consular officer in private. Additionally, any person arrested and held in custody at a police station or other premises may, on request, have one person known to them (or a person likely to take an interest in their welfare) informed, at public expense, of their whereabouts as soon as practicable. There are restrictions on this right in certain circumstances (where a serious arrestable offence is concerned) but such restrictions must be applied in accordance with legal safeguards. The detainee may receive visits at the custody officer’s discretion; these should be allowed when possible, subject to sufficient personnel being available to supervise a visit, and subject to any possible hindrance to the investigation. Where a friend or relative (or a person with an interest in the detainee’s welfare) enquires about their whereabouts, the information must generally be given. Further, where a person does not understand English, the duty officer is responsible for making sure that appropriate arrangements are in place for provision of suitably qualified interpreters.⁷⁹

(h) Will the relevant seafarers have the legal right not to answer questions that may be considered self-incriminating, if so advised?

1. Out of Court silence

At common law, in addition to the right to silence, no inferences were generally permitted to be drawn from the exercise of the right to silence (whether during investigations or trial). This has been altered by legislation which specifies circumstances in which “adverse inferences” may be drawn from the exercise of the right to silence.⁸⁰ An example of such “adverse inferences” include the situation where the accused withholds his defence under interrogation but presents it at trial. It is now accepted that the adverse inference that may be drawn is a general inference of guilt. Inferences before a suspect is charged may not be drawn except “*on being questioned under caution by a constable*”. The caution (which sets out the risks involved in not mentioning facts later to be relied upon) is as follows:- “*you do not have to say anything, but it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence*”.

2. Privilege against Self-Incrimination

No witness is bound to answer questions in court if to do so would, in the opinion of the court, have a tendency to expose him to any criminal charge, penalty or forfeiture (of property) which the court regards as reasonably likely to be brought or sued for.⁸¹ The witness may not claim privilege on the basis that his answer to the question would expose him to civil liability,⁸² nor does the right of privilege extend to answers which would expose the witness to criminal liability under foreign law. The witness may claim the privilege only after he has been sworn and been

⁷⁸ Annex B applies when a person is detained in connection with a “serious arrestable offence”, has not yet been charged, and an officer of superintendent rank or above has reasonable grounds to believe that certain consequences may arise if the right is exercised (for example that exercising the right will interfere with, or physically harm, another person).

⁷⁹ Police and Criminal Evidence Act 1984, Annex B, Code C.

⁸⁰ Criminal Justice and Public Order Act 1994.

⁸¹ *Blunt v. Park Lane Hotel Limited* [1942] 2 KB 253.

⁸² Witnesses Act 1806.

asked a particular question. He cannot refuse to take the oath on the grounds of privilege.⁸³ There are some exceptions to this rule which require certain individuals, in specific circumstances, to answer questions even where this may incriminate them. In such circumstances the court must balance the public interest in obtaining the information and the “right to silence” to be affected and the merits of preserving such right.

14. Does your association have any other comments, suggestions or recommendations on this subject?

On a number of occasions members of this association have co-operated with professional colleagues in other jurisdictions in efforts to resolve problems resulting from major maritime accidents, including the detention of seafarers involved.

It is beyond the scope of this paper to comment on the facts of individual cases outside the UK, or on the laws which were applied. Mention here is made only of certain common features which may be discerned from these and other cases, and which may be considered relevant in reviewing the subject from an international perspective.

1. Media reporting of maritime casualties, and especially serious oil spills, has often given rise to reasonable concerns of serious prejudice to the legitimate interests of seafarers and others detained and/or prosecuted after such events. It is for consideration whether measures can be taken to make courts and legislators more aware of this fact, and to promote the adoption of safeguards to protect the rights of the individual.

Experience has shown that the causes of serious maritime accidents identified after thorough investigation by appropriate experts are frequently very different from those initially assumed by journalists, politicians and other lay observers. For example –

- In one major oil pollution incident wide publicity was given to statements by high-level politicians that the ship was an example of “rust-buckets” operated by “rascals”, but thorough investigations by experts appointed by the flag state authority have revealed no evidence to support these remarks.
- In the last decade at least two major oil spills have occurred as a result of vessels grounding in channels where dredging operations had fallen behind schedule, and where there are concerns that the information supplied to the ship about the state of the channel was incorrect or misleading. In both cases the relevant evidence came to light only after initial hostile media reactions and lengthy detentions of the ship masters involved.
- In at least two other major oil spills since 1990 pilot error has been identified by official investigations as the main or a significant cause of the incident.

An additional cause of prejudice lies in the fact that the reporting of oil spills, including graphic images of oiled birds and similar effects on wildlife, has a well-known capacity to arouse public outrage out of proportion to any culpability on the part of those assumed to be responsible.

2. In some countries courts and legislators have recognised the possible effect of prejudicial reporting on lay tribunals such as juries, but have been slow to acknowledge any effect on prosecutors or professional judges. Nonetheless, in most parts of the world law officers have some degree of public accountability, and justice may not be seen to be done if the rights of the individual depend on courts making discretionary decisions which are plainly contrary to strong public sentiments. Difficulties may be reduced in relation, for example, to

⁸³ *Boyle v. Wiseman* [1855] 1 Exch 647.
1.03.7319.00 4501024

bail applications if discretionary powers are kept to a minimum and release is governed by mandatory rules in all but clearly defined cases.

3. In a number of cases maritime authorities in coastal states have faced allegations that they were wholly or partially responsible for pollution by reason of factors such as the state of a port or its approaches, the training of pilots, or their handling of an initial incident. Cases of this kind have also tended to be notable for relatively severe action against the master or crew. There may be some cause for concern that prosecution of seafarers is more vigorous if shore-side authorities are on the defensive, and that it is therefore desirable for prosecuting authorities to be as independent as possible from other coastal state authorities who may be involved in the incident.
4. In at least two oil spill cases since 2000 seafarers have been detained for periods of several months, notwithstanding that some of those detained were engineers who could not reasonably be held responsible for alleged navigational faults, and it has been plain that their detention was designed to put pressure on the shipowners or their insurers to provide substantial security for extravagant civil claims. In one of these cases domestic legislation was said to support detention of foreign crew pending provision of security. It may be worth emphasising that detention for such reasons is wholly unacceptable to the international community.
5. Finally, as the CMI Working Group will appreciate, UNCLOS includes some highly relevant provisions in this area including, notably, Article 230. For ease of reference this provides:

Article 230

Monetary penalties and the observance of recognized rights of the accused

1. *Monetary penalties only may be imposed with respect to violations of national laws and regulations or applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment, committed by foreign vessels beyond the territorial sea.*
2. *Monetary penalties only may be imposed with respect to violations of national laws and regulations or applicable international rules and standards for the prevention, reduction and control of pollution of the marine environment, committed by foreign vessels in the territorial sea, except in the case of a wilful and serious act of pollution in the territorial sea.*
3. *In the conduct of proceedings in respect of such violations committed by a foreign vessel which may result in the imposition of penalties, recognized rights of the accused shall be observed.*

There is concern in the BMLA that in some jurisdictions national laws on this subject do not clearly reflect these restrictions or may not always be applied in full conformity with them. This is therefore suggested as an issue which the Working Group may wish to examine.

Appendix: Domestic Legislation regarding the Protection, Rights and Welfare of Seafarers

Conditions of Work

- **The Merchant Shipping (Hours of Work) (Amendment) Regulations 2004 (No. 1469). S.I. No. 1469 of 2004:** This amends the Merchant Shipping (Hours of Work) Regulations 2002 and extends provisions relating to inspections of ships and rectification of deficiencies to ships not registered in the United Kingdom or other member States of the European Union. Entered into force on 7 July 2004.
- **Merchant Shipping (Hours of Work) Regulations 2002 (S.I. No. 2125 of 2002). S.I. No. 2125 of 2002:** This legislation was made under the Merchant Shipping Act 1995. Requires employers to ensure seafarers have at least the specified minimum hours of rest. Also requires records to be kept of seafarers' daily hours of rest. Prohibits employment on a ship of a person under 16 years of age, and establishes seafarers' entitlement to annual leave. Entered into force on 7 September 2002 (amended by the Merchant Shipping (Hours of Work) (Amendment) Regulations 2004 (No. 1469).
- **Merchant Shipping (Hours of Work) Regulations 1995 (No. 157 of 1995):** Gives effect in part to the Merchant Shipping (Minimum Standards) Convention 1976 (International Labour Organisation Convention No. 147) laid before Parliament on 24 April 1978 and ratified by the United Kingdom and in force internationally, which requires that safety standards regarding hours of work be established. These Regulations place general duties on operators, employers and masters of United Kingdom sea-going merchant ships (excluding fishing vessels and pleasure craft) to ensure that masters and seamen do not work more hours than are safe for the ship. Entered into force: 28 February 1995

Occupational Safety, Health and Welfare

- **Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997 (No. 1320):** Gives effect to the International Convention on Standards of Training, Certification and Watchkeeping (STWC) for Seafarers, as amended on 7 July 1995. Revokes the Merchant Shipping (Certification and Watchkeeping) Regulations 1982, the Merchant Shipping (Safe Manning Document) Regulations 1992 and the Merchant Shipping (Hours of Work) Regulations 1995. Defines the responsibility of owners and others responsible for the operation of ships in relation to the certification and training of seamen working on their ships, the availability of relevant documentation and the provision of instructions on familiarisation of seamen who are newly-appointed to their ships. Entered into force: 20 June 1997
- **Merchant Shipping (Delegation of Type Approval) Regulations 1996 (S.I. No. 147 of 1996):** Enables certain bodies specified in a Merchant Shipping Notice to give type approval of safety equipment and arrangements for ships under regulations having effect as if made under section 85(1)(a) and (b), and under regulations made under the Merchant Shipping (Prevention of Oil Pollution) Order 1983. Entered into force: 1 March
- **Merchant Shipping (Ships' Doctors) Regulations 1995 (S.I. No. 1803 of 1995):** Replaces Merchant Shipping (Ships' Doctors) Regulations 1981 to implement Council Directive 92/29/EEC of 31 March 1992 (O.J. No. L113, 30.04.92, p. 19). UK ships are required to have a doctor on board if carrying 100 or more persons on an international voyage of more than three days, or on a voyage during which it is more than one and a half days' sailing time from a port with adequate medical equipment. Entered into force 1 August 1995
- **Merchant Shipping and Fishing Vessels (Medical Stores) Regulations 1995 (S.I. No. 1802 of 1995):** Replaces Merchant Shipping (Medical Stores) Regulations 1986 and the Merchant Shipping (Medical Stores)(Fishing Vessels) Regulations 1988. Implements Council Directive 92/29/EEC of 31 March 1992 (O.J. No. L113, 30.04.92 p.19) on the minimum safety and health requirements for improved medical treatment on board vessels, so far as that Directive relates to the carriage of medicines and other medical stores. Entered into force: 1 August 1995
- **Merchant Shipping (Safety Officials and Reporting of Accidents and Dangerous Occurrences) (Amendment) Regulations 1994 (S.I. No. 2014 of 1994):** Omits provisions dealing with the reporting of accidents and dangerous occurrences (now provided in the

Merchant Shipping (Accident Reporting and Investigation) Regulations 1994. Entered into force: 26 August 1994

- **Merchant Shipping (Accident Reporting and Investigation) Regulations 1994 (S.I. No. 2013 of 1994):** Replaces the Merchant Shipping (Accident Investigation) Regulations 1989. They include, with amendments, provisions for the reporting and investigation of marine accidents contained in those Regulations and also those in the Merchant Shipping (Safety Officials and Reporting of Accidents and Dangerous Occurrences) Regulations 1982 and the Fishing Vessels (Reporting of Accidents) Regulations 1985. The latter Regulations are revoked; the former are amended separately by the Merchant Shipping (Safety Officials and Reporting of Accidents and Dangerous Occurrences) (Amendment) Regulations 1994 to remove those provisions now covered by these Regulations. Entered into force 26 August 1994
- **Merchant Shipping (Life-Saving Appliances for Passenger Ships of Classes III to VI(A)) Regulations 1992 (S.I. No. 2359 of 1992):** Harmonizes the requirements for life-saving appliances for passenger ships of Classes III to VI(A) with those for passenger ships of the Classes included in the Merchant Shipping (Life-Saving Appliances) Regulations 1986 while taking into account the restricted service in which these Classes of passenger ships are engaged. Revokes the Merchant Shipping (Life-Saving Appliances) Regulations 1980. Entered into force 31 October 1992
- **Merchant Shipping (Safe Manning Document) Regulations 1992 (S.I. No. 1564 of 1992):** Gives effect to an amendment of the International Convention for the Safety at Sea 1974 (SOLAS) adopted by the Maritime Safety Committee of the International Maritime Organisation at its 57th Session on 11 April 1989. The amendment concerns the provision of an appropriate safe manning document or equivalent to every ship to which chapter I of the Convention applies. Entered into force 28 July 1992
- **Aviation and Maritime Security Act 1990 (Chapter 31):** Gives effect to the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation and 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.
- **Merchant Shipping (Distress Signals and Prevention of Collisions) Regulations 1989 (S.I. No. 1798 of 1989):** Section 5 provides for fines and imprisonment for up to two years for contravention of the Regulations and by s.6, a ship shall be liable to be detained in any case where it does not comply with the requirements. Entered into force 19 November 1989
- **Merchant Shipping (Accident Investigation) Regulations 1989 (S.I. No. 1172 of 1989):** Gives effect to section 33 of the Merchant Shipping Act 1988 which relates to the investigations of marine accidents. Entered into force 7 August 1989
- **Merchant Shipping (Safety at Work Regulations) (Non-UK Ships) Regulations 1988 (S.I. No. 2274 of 1988):** Intends to give effect in part to the ILO Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) in relation to the prevention of accidents for seafarers. The Regulations also concern occupational safety and health in dock work. Entered into force 1 January 1989
- **Merchant Shipping (Hatches and Lifting Plant) Regulations 1988 (S.I. No. 1639 of 1988):** Adopted in relation to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). Entered into force: 1 January 1989
- **Merchant Shipping (Entry into Dangerous Spaces) Regulations 1988 (S.I. No. 1638 of 1988):** Adopted in relation to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). Entered into force 1 January 1989
- **Merchant Shipping (Guarding of Machinery and Safety of Electrical Equipment) Regulations 1988 (S.I. No. 1636 of 1988):** Adopted in relation to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. ~~147~~). Entered into force 1 January 1989
- **Merchant Shipping (Means of Access) Regulations 1988 (S.I. No. 1637 of 1988):** Replaces and re-enacts with amendments, the Merchant Shipping (Means of Access) Regulations 1981, as amended. Adopted in relation to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). Entered into force: 1 January 1989
- **Merchant Shipping (Safe Movement on Board Ship) Regulations 1988 (S.I. No. 1641 of 1988):** Adopted in relation to the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). Entered into force: 1 January 1989

Deleted: 147

- **Merchant Shipping (Medical Stores) (Fishing Vessels) Regulations 1988 (S.I. No. 1547 of 1988):** Supersedes the Merchant Shipping (Medical Stores) (Fishing Vessels) Regulations 1974.
- **Merchant Shipping (Medical Stores) (Amendment) Regulations 1988 (S.I. No. 1116 of 1988):** Minor amendments to the Merchant Shipping (Medical Stores) Regulations 1986.
- **Safety at Sea Act 1986 (Commencement No. 1) Order 1986 (S.I. No. 1759 (C. 61) of 1986)**
- **Safety at Sea Act 1986 (Chapter 23) :** Promotes the safety of fishing and other vessels at sea and the persons in them. In particular, section 7 addresses training in safety matters.
- **The Merchant Shipping (Life-Saving Appliances) Regulations 1986 (S.I. No. 1066 of 1986):** Issued by the Secretary of State for Transport under the Merchant Shipping Act 1979.
- **The Merchant Shipping (Medical Stores) Regulations 1986 (S.I. No. 144 of 1986):** Regulations concerning safety on board ships (except fishing vessels and pleasure craft), providing for an obligation to carry appropriate medical supplies on sea voyages.
- **Merchant Shipping (Protective Clothing and Equipment) Regulations 1985 (S.I. No. 1664 of 1985)**
- **Merchant Shipping (Medical Examination) (Amendment) Regulations 1985 (S.I. No. 512 of 1985):** Amends the 1983 Regulations of the same name in regard to the exemption provision, treatment of equivalent certificates and the review procedure.
- **Merchant Shipping (Cargo Ship Safety Equipment Survey) (Amendment) Regulations 1985 (S.I. No. 211 of 1985):** Amends the Merchant Shipping (Cargo Ship Safety Equipment Survey) Regulations 1981 to give effect in part to the Amendments to the International Convention for the Safety of Life at Sea.
- **Merchant Shipping (Health and Safety: General Duties) Regulations 1984 (S.I. No. 408 of 1984):** Gives effect in part to convention 147. Require employer, inter alia, to ensure health and safety on board ship; to make provision for maintenance of vessel and occupation and safe use, handling, storage and transport of articles used and for a safe environment; employees are required to take reasonable care of the health and safety of themselves and of other persons on board ship and cooperate with employer in applying Merchant Shipping Act.
- **Merchant Shipping (Crew Accommodation) (Fishing Vessels) Regulations 1975 (S.I. No. 2220 of 1975)**
- **Merchant Shipping (Medical Stores) Regulations 1974 (S.I. No. 1193 of 1974):** Medicines and other medical stores to be carried in ships.

Social Security

- **Social Security (Contributions) Amendment (No. 2) Regulations 1988 (S.I. No. 674 of 1988):** Inter alia, changes method of calculating contributions for seafarers.
- **Merchant Shipping (Maintenance of Seamen's Dependants) (Amendment) Regulations 1988 (S.I. No. 479 of 1988):** Amends the 1972 Regulations of the same name in relation to deductions from wages to cover social security benefits.
- **Statutory Sick Pay (Mariners, Airmen and Persons Abroad) Regulations 1982 (S.I. No. 1349 of 1982)**
- **Social Security (Industrial Injuries) (Mariners' Benefits) Regulations 1975 (S.I. No. 470 of 1975):** Modifies and amplifies the general provisions on the subject contained in the social Security Act 1975.