



BRITISH MARITIME LAW ASSOCIATION

NATIONAL BRANCH OF THE COMITÉ MARITIME INTERNATIONAL

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2006 GUIDELINES ON FAIR TREATMENT OF SEAFARERS IN THE EVENT OF A MARITIME ACCIDENT (the Guidelines) QUESTIONNAIRE TO MEMBER ORGANISATIONS OF CMI

1. Have the Guidelines been passed into the law/s of your country? Please tick:

NO

2. If the Guidelines have been passed into the law/s of your country, have all or some of the paragraphs of the Guidelines been passed into the law/s of your country? Please tick:

 ALL PARAGRAPHS
 SOME PARAGRAPHS

N/A

3. If some of the paragraphs of the Guidelines have been passed into the law/s of your country, please tick the paragraphs of the Guidelines that have been passed into the law/s of your country. Please tick:

 PARAGRAPH 1
 PARAGRAPH 2
 PARAGRAPH 3
 PARAGRAPH 4
 PARAGRAPH 5
 PARAGRAPH 6
 PARAGRAPH 7
 PARAGRAPH 8
 PARAGRAPH 9 (9.1 – 9.22)
 PARAGRAPH 10 (10.1 – 10.12)
 PARAGRAPH 11 (11.1 – 11.8)
 PARAGRAPH 12 (12.1 – 12.7)
 PARAGRAPH 13 (13.1 – 13.4)

N/A

4. If some or all of the paragraphs of the Guidelines have been passed into the law/s of your country, does the law/s give rights to seafarers which are enforceable in your courts? Please tick:

- YES
 NO

N/A

5. If some or all of the paragraphs of the Guidelines have been passed into the law/s of your country, please identify the specific law/s: ie title of the law/s, and date of the law/s, and relevant provisions in the law/s

N/A

6. If some or all of the paragraphs of the Guidelines have not been passed into the law/s of your country, please explain the reason/s for not passing those paragraphs of the Guidelines into the law/s of your country. Please tick one or more of the following answers:

- The existing law/s adequately protects the rights of seafarers. Please identify the law/s.
 The Guidelines inadequately protect the rights of seafarers
 The Guidelines unduly protect the rights of seafarers and are unfair to other parties
 The Guidelines are unclear and/or ambiguous
 The Guidelines are still under consideration
 Please state any other reason

No reasons have been provided by the UK government as to why the Guidelines have not been implemented.

A discussion of police powers and the rights awarded to suspects generally during criminal investigations and trials in the UK is set out below.

(i) Powers of arrest and rights of detainees pre-charge

Arrest with a warrant

Where an individual has, or is suspected of having, committed an offence, a warrant to arrest that person may be issued by magistrates. Warrants to arrest may only be obtained: (i) in respect of indictable offences (i.e. more serious offences which may be tried in a crown court rather than a magistrates' court); (ii) offences punishable by imprisonment; and/or (iii) in circumstances where the person's address is not sufficiently established for a summons to be served on him. The latter is particularly relevant for seafarers.

Arrest without a warrant

Where an offence has been committed, or a constable reasonably suspects that an offence has been committed, the constable may arrest any individual whom he has reasonable grounds to

suspect may be guilty of it.¹ However, this power may only be exercised if there is a statutory reason, for example, to allow prompt and effective investigation of the offence or conduct of the individual in question or to prevent the disappearance of the person in question.

Detention following arrest

In general, a suspect cannot be detained for more than 24 hours without being charged with an offence.² However, detention can be extended for a further 12 hours for more serious offences in certain circumstances, e.g., to preserve evidence.³ If the police want to detain an individual beyond 36 hours without charge, then they must apply to the magistrates' court for a warrant of further detention which can authorise detention up to a maximum of 96 hours without charge.⁴

Safeguards

The Police and Criminal Evidence Act 1984 ("PACE") codes of practice regulate police powers and protect the rights of individuals detained in custody. In particular, Code of Conduct C governs the rights of individuals during detention, treatment and questioning. For example, paragraph 6.1 of PACE Code of Conduct C states that all detainees must be informed that they may at any time consult privately with a solicitor.

Citizens of independent Commonwealth countries or foreign nationals

Detainees that are citizens of independent Commonwealth countries and foreign nationals have the right to communicate, on request, with the appropriate High Commission, Embassy or Consulate.⁵

(ii) Detainees' rights following charge

After the accused has been charged with an offence, he may be released on bail. There is a general right to bail but bail may be refused in circumstances where, for example, there are substantial grounds for believing that the defendant would fail to surrender to custody if release on bail.⁶

Conditions may be attached to the grant of bail but such conditions must be relevant and proportionate.⁷ Bail conditions may include a prohibition of foreign travel and/or the surrender of the accused person's passport.

The Human Rights Act 1998

The Human Rights Act 1998 gives effect to the European Convention on Human Rights (the "Convention") in English law. As a result, action taken in connection with detainees must

¹ Section 24(2)(3) PACE. A constable may also arrest anyone the officer reasonably expects to be about to commit an offence and anyone who the officer reasonably suspects is in the act of committing an offence (section 24(1) PACE).

² Section 41 PACE

³ Section 42 PACE

⁴ Section 42 and 44 PACE

⁵ Paragraph 7.1, PACE Code C

⁶ Section 4 Bail Act 1976

⁷ Section 3 Bail Act 1976

comply with the rights enshrined in the Convention which include Article 5, the right to liberty and, Article 6, the right to a fair trial.

7. If some or all of the paragraphs of the Guidelines have not been passed into the law/s of your country, please explain what action, if any, your country may require in order for those paragraphs of the Guidelines to be passed into the law/s of your country. Please tick one or more of the following answers:

- The provision of model legislation by the IMO regarding the passing of the Guidelines into national law
- The provision of information by the IMO regarding the meaning of the Guidelines
- The amendment of the Guidelines by the IMO
- Please explain any other action

In order for the Guidelines to given effect in English law, the UK government would need to introduce a new bill into the Houses of Parliament and the bill would need to be approved by both the House of Commons and the House of Lords. The UK government has not indicated why it has not introduced new legislation in connection with the Guidelines, or what action on the IMO's part might persuade it to do so.

8. Do the laws of your country require that a seafarer must be informed of the basis on which an investigation into a maritime accident is being conducted?

If arrested, a seafarer must be informed of the reasons for arrest.⁸

9. Can a seafarer be detained as part of an investigation into a maritime accident, or as part of a trial?

Marine accident investigators do not have any statutory powers to detain individuals as a part of an investigation. However, a seafarer may be detained in connection with criminal proceedings, as discussed above.

10. What safeguards exist if a seafarer is detained as part of an investigation into a maritime accident, or as part of a trial. In particular:

- 10.1 Is there any provision in your county's laws/s whereby a seafarer must be informed of his/her legal rights?

Yes, a seafarer must be informed of his legal rights on arrest.⁹

- 10.2 Does a seafarer have the right to be provided interpretation services?

Yes, if the detainee appears to be someone who does not speak or understand English, the custody officer must ensure that an interpreter is called without delay.¹⁰

⁸ PACE Code G Paragraph 2.2

⁹ PACE Code C 3.1 and 3.2.=

¹⁰ PACE Code C 3.12 (a)

10.3 Does a seafarer have the right to be provided free independent legal advice?

*Yes.*¹¹

10.4 Does a seafarer have the right not to answer questions that may be considered self-incriminating, if so advised?

*Yes. However, if a suspect exercises his right to silence at interview and later raises a defence at trial, an adverse inference may be drawn by the jury or magistrates as to the reasons why he did not offer the explanation at the time of questioning.*¹²

10.5 Are there any other due process safeguards provided to seafarers facing an investigation into a maritime accident, or as part of a trial?

As discussed above, the Human Rights Act 1998 gives effect to the ECHR in English law. Article 5 (the right to liberty) and Article 6 (the right to a fair trial) are especially relevant. In particular, Article 6(1) states that everybody is entitled to a trial within a reasonable time.

11. If the Guidelines have been implemented into your law, have they been relied upon/referenced in any cases? If so, please comment further.

No

12. Does your Association have any comments, suggestions or recommendations on this subject?

No.

RESPONSES TO BE RETURNED PLEASE NO LATER THAN 31 JANUARY 2014

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¹¹ PACE Code C, 3.1

¹² Section 34 Criminal Justice and Public Order Act 1994