

Section 5: Response form

What is your name? John Pottle

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What is your job title? Director, Royal Institute of Navigation

When responding please state whether you are responding as an individual or representing the views of an organisation:

- I am responding as an individual
- I am responding on behalf of an organisation

(name of organisation) Royal Institute of Navigation

Please check the box that best describes you as a respondent and the size of your organisation:

Respondent Type

- Classification Society
- Government Agency/Department
- Individual
- Legal representative
- Protection & Indemnity
- Seafarer
- Ship Operator
- Ship Owner
- Trade Union
- Other

(please describe)

Size of Organisation

- Large business (over 250 staff)
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)

Learned society and professional body, with charitable status uniting all those who have an interest in any aspect of positioning, navigation and timing including members involved or interested in small craft navigation

Section 5.1 Consultation Questions

a) Does the proposed guidance meet your needs in terms of content?

Yes

No

We welcome further explanation for your answer.

Comments: The draft wording of the MGNs do not clearly distinguish between what applies to Small Commercial Vessels (“Coded Vessels”) and what applies to pleasure craft. As a result, there is confusion and concern amongst our members as to what does or does not apply to them. The MGNs’ give the impression that the obligations on pleasure craft are greater than they actually are. It is the view of the Institute that to avoid any confusion any MGNs that apply to small commercial vessels/commercially operated yachts should be completely separate from those applying to pleasure vessels.

It is appreciated that the MGN’s are non-mandatory and are intended for guidance only. However, it is considered that some aspects of the advice contained in these MGNs will inevitably put an un-necessary extra burden of bureaucracy, not to mention expense, on pleasure craft owners. We are concerned that this may put a lot of people off going on the water. Precedent indicates that insurance companies may either make it compulsory that the guidance contained in MGNs is followed or, in the event of an incident at sea, if the guidance had not been followed to the letter or cannot be proved to have been so followed, they could refuse a claim, which otherwise would normally have been settled. There could therefore be an unintended reality that the guidance is effectively mandatory. This in turn could have further unintended consequences, as many pleasure craft owners carry out maintenance on their own yachts, as well assisting others with maintenance work, without the need for professional indemnity insurance. The same applies to repairs and modifications. In addition, those owners of older pleasure craft, including classic yachts, may find insurance more difficult or expensive to obtain thereby increasing the number of “end of life” pleasure vessels.

Some of the text within the different MGNs is not only confusing as to its application but is also contradictory.

We have not commented on typos or incorrect use of defined terms nor highlighted clauses which are clearly not relevant to Pleasure Vessels.

b) Do you agree with the way the MCA has applied each of the MGN requirements?

No

We welcome further explanation for your answer.

Comments: There is inconsistency in the wording of the MGNs. For instance in the draft MGN relating to Preparedness for non-coastal passages the summary advises that owners, managing agents and skippers should, prior to undertaking a voyage, take all reasonable measures to have the condition of the vessel assessed by a “qualified marine professional” and in the case of a sailing vessel, ensure that this assessment includes the mast, rigging and sails, as well as the keel, bolts, hull shell etc. This implies that the recommended guidance is that a “qualified marine professional”, such as a marine surveyor, should be engaged to inspect the mast rigging and sails before any prolonged voyage or one involving a passage of 60 miles from a safe haven. This would actually require the vessel to be hauled out and possibly the mast lowered. Aside from the concerns already mentioned in our response to question A above, under para 5 of this MGN the text specifically refers to “experienced marine professional” in respect of the mast rigging and sails and a “qualified marine professional” in respect of the structure and machinery in para 4.

In addition, there is no definition in this particular MGN of what is considered to be an “experienced marine professional”, “qualified marine professional” or “a prolonged period at sea”, which is needed if these MGNs are expected to be stand-alone documents.

For pleasure vessels, the checks recommended would actually be far in excess of the checks currently carried out on the yachts prior to the ARC - the annual Transatlantic Rally for Cruisers. They are therefore unrealistic and risk being struck down by the courts.

The MGNs also purport to list the checks which should be undertaken. Although it is stated that the lists are not exhaustive (Para 2.8 of the Maintenance MGN) the danger is that they will be treated as a check list for maintenance thereby absolving the owner/skipper of responsibility to think for themselves.

Also the MGNs as currently drafted are unlikely to be able to apply when new technology or manufacturing techniques are introduced.

Cont.

The draft MGN on Yacht and Powerboat Safety at Sea – Maintenance, Modification, Damage and Repairs:

On many points there is a lack of clarity as to whether pleasure craft would be expected to comply. Overall, many of the points are too simplistic to be of any real value and, again, the listed advice is incomplete. “Examples are shown below but are not exhaustive” is used to expand on some points but there is a great deal that isn’t covered here, which undermines the usefulness of the document.

The wording of para 4.4 is of concern as many owners/skippers of pleasure vessels currently carry out repairs and modifications to their own vessels. The wording of this guidance may be interpreted by many that this actually prevents them from doing so in the future, and again will lead to increased costs and may well deter owners/skippers from going to sea or continuing to own vessels. It also distances pleasure boat owners/skippers from taking responsibility for their own checks and maintenance and this would be very detrimental to safety. In our experience, the safest pleasure craft are the ones known inside and out by their owners/skippers who become tuned in to every sight, sound, smell and touch and thereby pick up problems in the earliest stages.

The draft MGN on Yacht and Powerboat Safety at Sea – Emergency Procedures, Equipment and Actions - Good Practice

Guidance under Para 1.4 suggesting application of the minimum equipment requirements for Small Commercial Vessels as detailed in the Code of Practice for which the vessel is certified is also of concern. By saying this MGN provides guidance for Pleasure Vessels implies one of the requirements does apply. However, we are not clear which one. There are some leisure sailors who choose to sail using traditional navigation techniques and therefore choose to have minimal electronic navigation equipment (possibly obsolete) fitted. They may assume that they will be forced to upgrade to the latest technology.

Paras 3.6, 3.7 and 3.8 appear to overlook other location systems which are on the market and possibly more effective for the location of a detached MoB.

The draft MGN on Yacht and Powerboat Safety at Sea – Grounding of Fixed Fin Keel GRP Yachts:

The summary does not make it clear that the guidance contained in the MGN is also good practice for powerboats and non – fin keeled sailing yachts, as detailed in para 1.6. As the guidance is relevant to these it is suggested that this should be made clear in both the summary and the title of the MGN.

Para 3.1 describes vessels as “vehicles”.

Para 3.3 the wording is confusing as it implies that in the event of any pleasure vessel grounding, the incident should be discussed with the Certifying Authority surveyor, which is only applicable to Code of Practice vessels.

Para 3.4 assumes that the vessel’s manufacturer or designer is still trading, which may well not be the case for older vessels. A ‘professional repair yard’ would need to be defined. Depending on where in the world the repair is done the requirements for professional consultations may be unrealistic. Which is not to say that repairs would necessarily be inappropriate or unsafe, but they are unlikely to conform to manufacturers design specifications.

Under para 3.5 skippers are included within the subject matter of this para. However, under the draft MGN on Preparedness for non-coastal passages, ensuring the need for an inspection of the structure, i.e. keel bolts etc, falls to owners/managing agents only. The issue of guidance that a professional annual inspection should be undertaken of the keel bolts, keel to hull interface etc, as well as before any long-distance passages or prolonged period of racing is not realistic, will lead to increased costs and be excessively time consuming and onerous. However, it is unrealistic to assume that visual inspection or even torque tests will necessarily indicate problem areas unless owners/agents/skippers understand exactly what they are looking for when they decide whether or not they should be concerned enough to involve a surveyor. And this is a can of worms because the possibilities are extensive and, if you don't list every possibility it will be the one that's not on the list that actually leads to a failure. There is therefore a danger that this draft MGN is going into too much detail in some areas. Requiring all such inspections to be 'professional/qualified' is certainly unrealistic in our opinion.

The draft MGN on Yacht and Powerboat Safety at Sea – Stowage of Life-Saving Appliances:

Para 5.1 does not state who should carry out such inspection. If it is considered satisfactory for unqualified and inexperienced people to do this then why is that not extended elsewhere?

The draft MGN on Yacht and Powerboat Safety at Sea – Preparedness for Non-Coastal Passages:

Para 1.4 appears to remove from the skipper (if not the owner) any responsibility for the condition of the vessel they are taking to sea.

Para 4.1 uses the wording "it is prudent to arrange for a qualified marine professional to assess the vessel's suitability to undertake the passage". This implies that not to do so is to act imprudently. It is also a confusion of "suitability" (i.e. the vessel is designed and constructed for such a passage) with the vessel being in adequate condition (i.e. well-found) to undertake the passage.

The draft MGN on Yacht and Powerboat Safety at Sea – Rigs and Rigging:

We were not aware that rig failure is an issue on powerboats.

Para 2.3 which gives guidance that expects all pleasure craft owners to have a rigging survey carried out by an experienced marine professional prior to a voyage (Para 1.1 states the purpose of this MGN) is unrealistic in practice. Is this intended to apply to all vessels with masts, even dinghies? There is a very mixed message: on the one hand encouraging self-inspection and "Know your rig" and on the other hand repeatedly saying that it requires a marine professional. What would constitute a professional when it comes to rig? Are any qualifications required?

Section 5.2

Do you have any additional comments to add to the response?

Overall, we believe the draft guidance, though well intentioned, is excessive in its scope and application to Pleasure Vessels. Even for Coded Vessels the requirements are unworkable. Many Coded Vessels will make several long passages a week including to foreign ports. It is simply unrealistic to carry out inspections of the type envisaged in the draft MGNs before each passage.

For Coded Vessels annual inspections may well be more appropriate and realistic, unless the vessel had suffered damage to its structure or been involved in a grounding.

We do not believe the MGNs as currently drafted should apply to leisure vessels.