



United Kingdom Maritime Pilots' Association

## **Marine Navigation (No.2) Bill**

### **Why Clause 2 should be deleted.**

The clause proposes to reduce a long standing and proven efficient and effective risk mitigation measure (limitation of PEC holders to Master and First mate only).

Nothing in the reasoning behind the clause substantiates the Bill's goal. The clause is based on the specific commercial requirements of a small (aggregate dredging) sector of the UK shipping industry which for operational reasons is falling foul of the Working Time regulations.

The nett result of the clause will be to increase the risk of a serious maritime casualty within a UK port or approaches, seriously threatening: the safety of mariners and riparian communities, the safety of other shipping or vessels, ports' infrastructures and ability to operate efficiently, environmental protection through increased risk of pollution, certain aspects of border security.

1. The clause is in direct contradiction to and in some cases contravention for example of :

- MCA policies and guidance – for example: “The Human Element, A guide to Human Behaviour in the Shipping Industry” especially Pages 23-31 & others.
- Port Marine Safety Code requirements – Guide to Good Practice Chapter 8.4 . This contains the current established provisions for PEC administration and examples of failures of procedure both on board ships and by CHAs.
- IMO STCW regulations - STCW ChapterII Section A-I/1, Section A-II-1 & Section A-II/2 which all refer to the specific duties and differences between officers with Managerial roles on board a ship (Master and First Mate [i.e. Chief officer/second in command]) and those in an Operational capacity (Junior Officers [i.e. Second Mate and others]) whose role is one of support in a bridge team lead by a senior officer under specialist circumstances such as pilotage waters.
- Established Principles of proper and effective Bridge Management practices prescribed by the International ( and UK ) Chamber of Shipping. - The ICS Bridge Procedures Guide.

2. The Clause is based on arguments developed in detail in the supporting Department for Transport's Impact Assessment. Close study of the Impact Assessment reveals that much of the argument for clause 2 on the MN(2)Bill is based on incorrect assumptions and interpretation of available evidence and a number of factual errors. Furthermore, it is clear from the Impact Assessment that one of the prime motivations for the inclusion of clause 2 into the Bill is to achieve the political aspirations of the government's OneIn-OneOut (OIOO) policy on deregulation notwithstanding any adverse effect upon the safety of maritime operations. A paper outlining these points is appended below.

3. The argument that there is protection contained in the clause by the responsibilities of the CHAs to ensure that only appropriately trained and qualified ship's officers other than the Master and First Mate will be awarded a PEC is fundamentally flawed and naïve. Statements of PMSC compliance are at best only received from about 33%of CHAs. MAIB investigations into port related incidents frequently recommend improvements to operations. There are many examples where these recommendations have been ignored or contested and the identified operational failures that contributed in some way to an accident continue unaltered for financial reasons only. CHAs of small ports in particular are under significant commercial influences from customers, especially where a port has a dominant customer upon which the port's economic survival is based. There are a number of examples already documented where questionable practices and undesirable commercial influences on safety management systems are apparent. Any



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deregulation of the current PEC regime will inevitably be exploited by operators in questionable manner where commercial pressures are brought to bear upon safer but less profitable operational regimes.

4. The recently published Final Report of the EU PEC study determines the eligibility of PEC holders throughout Europe that generally the PEC applicant must hold a Master's (STCW II/2) certificate and that different rules exist as to whether a Chief Officer can obtain a PEC. There is no mention of junior officers being permitted to hold a PEC.

A handwritten signature in blue ink, reading "D.P. Cockrill", is displayed on a light grey rectangular background.

D.P. Cockrill  
Chairman UKMPA  
October 2012






## Marine Navigation (No.2) Bill

### Impact Assessment – Comments on Clause 2 United Kingdom Maritime Pilots’ Association

IA Statement & reference	Comment
<p><i>What are the policy objectives and the intended effects? increase flexibility in managing Pilotage Exemption Certificates;</i></p>	
<p><i>Option 1 is the preferred option as the net benefit is expected to be higher.</i></p>	
<p><u>Policy Option 1</u> <i>Other key non-monetised benefits by ‘main affected groups’ 1) Shipping companies would benefit from increased flexibility in who may be issued with a PEC. Savings are likely to arise from avoiding the costs of paying overtime to other PEC holders or, in extreme cases, taking a pilot.</i></p>	<p>No mention of any net gain in the safety or efficiency of operations for the benefit of the port or riparian communities, environmental protection etc.</p>
<p><u>Key assumptions/sensitivities/risks</u> <i>The clauses regarding PECs are considered to be in scope of OIOO. Given the comparative rarity of occasions when a PEC is suspended or revoked, it is expected the direct benefits to business from the increased flexibility in who may be issued with a PEC would outweigh the direct costs to business from these clauses. Therefore, it is considered that Policy Option 1 would qualify as an OUT, although given the limitations of the available evidence base, it has not been possible to quantify the scale of this OUT.</i></p>	<p>One In One Out – the goal for cutting red tape – refers to discarded and replaced. A net gain in “Out” is the target. This is important as the Dft argument is one of “package benefits” regardless of the impact of individual proposals when considered in isolation.</p>
<p><u>Policy Option 2</u> <u>Key assumptions/sensitivities/risks</u> <i>The clauses in the Marine Navigation (No.2) Bill regarding PECs would not be introduced under Policy Option 2. Therefore, it is considered that Policy Option 2 would have no direct impact on business and it is considered to be out of scope of OIOO.</i></p>	<p>This indicates that business impact is considered over and above any safety implications of the clause’s effects on safety.</p>
<p><i>The Transport Select Committee sought oral and written evidence from a wide range of stakeholders and published their report<sup>3</sup> in July 2008. The Department’s response<sup>4</sup> was published in October 2008. The Committee “broadly welcomed the provisions set out in the draft Bill” and the Department sought legislative time to progress the clauses (taking into account recommendations from the Committee).</i></p>	<p>No reference here to the TSC’s comment that they were not happy about the PEC deregulation proposals.</p>
<p><u>The Marine Navigation (No.2) Bill</u> <i>Greater flexibility for the provision, suspension and revocation of Pilotage Exemption Certificates, balancing the financial and safety interests of harbour authorities and shipping companies</i></p>	<p>Again, no reference whatsoever to the impact that the proposal will have on the port, riparian or littoral communities and environment. Where is the evidence for the “balance”</p>
<p><u>Page 3 - Problem under consideration:</u> <i>Working with ports and others in the industry, we have identified a number of specific areas where legislation is out-of-date or imposes unnecessary costs and complications.</i></p>	<p>No consideration as to how the safety and operational efficiency can be improved, only reduction of direct “costs”.</p>
<p><u>Pilotage Exemption Certificates (PEC)</u> <i>Although the term master has been used for many years, the term first mate is gradually ceasing to be used</i></p>	<p>This is simply untrue! The term “First Mate” (Chief Officer) is in daily use within the shipping community and is clearly understood globally to refer to the</p>



	ship's second in command.
<i>it seems to be unnecessarily restrictive to specify specific job titles when the legislation already requires that a PEC holder is suitably qualified and experienced. It is the capability of the individual that should be the primary concern when issuing a PEC.</i>	This shows a complete ignorance and understanding of the importance and meaning of nautical terms and titles used in common parlance throughout the industry and the IMO et-al. This is applying UK political correctness to a global community assuming that all use the same terminology as is used ashore in the UK.
<i>For example, the collision between a dredger and the Thames Barrier in October 1997 occurred while the mate registered with the Port of London Authority as the current PEC holder was asleep in his cabin. Fortunately, in this instance, the Barrier suffered only superficial damage, but such an incident highlights the possibility of expensive damage to property, interruption of trade, and risks to the effective management of tidal waters in the River Thames.</i>	This is exactly the point we are making. Incidents such as this are potentially likely to occur daily. It is the strict and effective current PEC regulatory regime which prevents it from happening. This incident occurred because at the time there was NOT strict and effective regulatory control of PECs.
<p><u>Rationale for intervention</u></p> <p><i>The Department's review of maritime legislation, including as part of the Red Tape Challenge, has identified a number of opportunities for improving existing primary legislation. The legislative amendments identified to tackle the problems described above would succeed in delivering strategic ministerial and departmental objectives...</i></p> <ul style="list-style-type: none"> <li> <i>Eliminating unwanted regulatory and administrative burdens on the maritime industry thereby enhancing the competitiveness of the overall UK maritime sector.</i></li> <li> <i>Simplifying maritime regulation to allow the maritime sector to operate more competitively and cost-effectively.</i></li> <li> <i>Reducing public expenditure in support of deficit reduction</i></li> </ul>	Not in order to improve safety and environmental protection!
<p><u>Policy Objective</u></p> <p><i>The policy objective is to remove burdens on business and ensure that the organisations that businesses rely on have the powers they need to operate effectively. The intended effects are to: ...; increase flexibility in managing PECs</i></p>	No reference to the improvement (or protection of existing) safety provisions.
<p><u>Description of the Policy Options Considered.</u></p> <p><u>6.1 – Do Nothing</u></p> <p><i>This would not contribute to the policy objective to remove burdens on business and ensure that the organisations businesses rely on have the powers they need to operate effectively. Although it is unlikely that there would be significant problems arising from continued inaction in the short-term, the risks of managing harbours would continue at their current level and the potential for expensive accidents occurring in connection with the improper use of a PEC would remain. Whilst no measures can completely eradicate risk, the Government could rightly be criticised for failing to take</i></p>	There is absolutely no evidence substantiate this statement. It is pure conjecture and confirmation of political ambitions being sought at public cost.




<p><i>sensible and proportionate steps to reduce it.</i></p>	
<p><i>6.2 policy Option1 It also offers the opportunity to reduce the risk of potentially expensive accidents involving the improper use of a PEC. This is the preferred option.</i></p>	<p>No evidence to substantiate this statement and no consideration of the increased risk of accidents through the improper application of PECs inadequately qualified and experienced personnel.</p>
<p><u>6.2.2 Pilotage Exemption Certificates</u>  <i>The Government wishes to see a package of measures on pilotage that balance the desire to increase flexibility in who may be issued with a PEC, reflecting modern shipping practices, with appropriate safeguards that ensure cases of incompetence or misconduct can be responded to quickly, protecting safety of shipping in CHA areas.</i></p>	<p>What modern shipping practices are being reflected?</p> <p>This confirms a reactive policy rather than a preventative. Completely contrary to all long established and accepted principles of safe and efficient maritime operations.</p>
<p><i>The Government proposes to make a provision which will allow the CHA to issue a certificate to any suitably qualified and experienced person who will actually navigate the vessel as a bona fide crew member and who satisfies the requirements of the CHA. This change would assist shipping companies in ensuring that properly qualified personnel are available to pilot ships and help to remove the temptation to stretch duty hours so as to ensure that a PEC holder remains on duty for an extended period instead of taking a rest period.</i></p>	<p>No ship should ever operate with the knowledge that this situation is likely to occur. If it does then the on board management system is failing. The immediate and simple short term solution is to take a pilot and to review and where necessary change the on board manning and working practices, not compromise an effective risk management system by reducing the regulatory requirements of that system. Also, this raises the question as to why if junior officers are considered competent enough to obtain a PEC, they can't be trained and utilised to relieve the Master &amp; Mate during both cargo loading and discharge operations on board dredgers? This being the small lobby group that are arguing for this deregulation.</p>
<p><i>Consequent on the changes proposed, the existing offence of misusing a PEC would be amended such that when the master of a ship reported to a CHA that a PEC was being used, the identity of the PEC holder undertaking the pilotage would need to be reported. This is not considered to be a new burden as vessels are already required to report to the CHA that a PEC is being used.</i></p>	<p>This does not require any regulatory change. It is already common practise in a number of ports – London for example.</p>
<p><u>6.3 Policy Option 2</u>  <i>This option would include the measures described under Option 1, with the exception of provisions on PECs (described in section 6.2.2). Though the Department considers that these provisions are on balance beneficial, they received greater challenge than the other elements of the draft 2008 Bill.</i></p>	<p>A point worthy of Note!</p>
<p><u>7.2 Pilotage Exemption Certificates</u>  <u>7.2.1.1 – Costs associated with increased flexibility of who may be</u></p>	<p>Why then bother to change the regulations at all? On the few large</p>



<p><i>issued with a PEC</i>  <i>However, it is considered that in most cases (other than perhaps the largest ships or specific types of vessel) other crew members are unlikely to have the competences that they would know would be required by the CHA in order to be issued with a PEC.</i></p>	<p>ships that are referred to, the “problem” cited by the Dft does not in any case exist.</p>
<p><i>7.2.1.2</i>  <i>Although we do not collect any data on the suspension of PECs, we understand from a sample of CHAs that the numbers are relatively small. One port has confirmed in confidence that over the past five years there have been two occasions on which they have suspended a PEC; this compares with a total of 60 active PEC holders for the port. In addition, a major port reported just one suspension in the last ten years.</i></p>	<p>This begs the question why the need for the legislative proposal at all?</p>
<p><i>Where a PEC is suspended, if there is no other PEC holder on board the vessel able to pilot it, then the owner or operator of the vessel would have to pay the CHA for providing its own pilot. In those circumstances, throughout the currency of the current statutory notice period for representations before the suspension takes effect at least, it is reasonable to expect that additional expenditure would be incurred. Based on published scales of charges for pilotage services, this is likely to be in the order of £100-£4,000 per act of pilotage, with a wide range between small and large ports, and different sizes and types of vessel<sup>23</sup>. However, it is not possible to estimate the number of acts of pilotage that may be affected for each PEC holder that is suspended given that this calculation would vary wildly depending on whether the person was working on a roll on-roll off ferry operating in and out of a port three times a day or on a container ship that might visit three times a year.</i></p>	<p>This statement is evidential confirmation that the Dft Impact Assessment and rationale behind the proposed regulatory change is fundamentally flawed.</p> <p>A pilotage fee of £4000 is that typically incurred by a large container ship (300m length x 13 m draft) visiting London. Not a ship to which PEC regulations would apply. The charge for an aggregate dredger is about £700. A ship visiting a port only 3 times a year would not be eligible to maintain a PEC for the master, assuming he/she was on board for every visit. That the reference is made to ships and not the frequency of the PEC holder’s experience is also evidence of poor research and and a lack of understanding of the facts.</p>
<p><u><i>7.2.2 Benefits associated with increased flexibility in who may be issued with a PEC.</i></u>  <i>Savings to shipping companies are likely to arise from avoiding the costs of paying overtime to PEC holders or, in extreme cases, taking a pilot where the PEC holder is unable to carry out his functions safely, for example due to having worked excessive hours. Where a shipping company is able to avoid taking a pilot the savings could be as much as £4,000 per voyage in the larger ports although for smaller ports and vessels the figure would be much lower, down to around £100 (valuations drawn from the same sources used for section 7.2.1.2). However, as there is no evidence available on the likely number of additional PECs that would be issued, it has not been possible to monetise these benefits in this impact assessment.</i></p>	<p>This statement reaffirms the above comment. It is complete nonsense!</p> <p>This statement is evidential confirmation that the Dft Impact assessment and rational behind the proposed regulatory change is fundamentally flawed.</p> <p>A pilotage fee of £4000 is that typically incurred by a large container ship (300m length x 13 m draft) visiting London. Not a ship to which PEC regulations would apply. The charge for an aggregate dredger is about £700. A ship visiting a port only 3 times a year would not be eligible to maintain a PEC for the master, assuming he/she was on board for every visit.</p>



	<p>That the reference is made to ships and not the frequency of the PEC holder's experience is also evidence of poor research and a lack of understanding of the facts.</p>
<p><i>Improvements in the safety of navigation are also likely given the reduced likelihood of PEC holders working overtime when fatigued with consequent impacts on their capability to pilot a vessel effectively. The result could be a reduced risk of accidents and thereby potential savings in the environmental and financial costs of dealing with accidents.</i></p> <p><i>Fatigue is recognised as a major cause of marine accidents; in a 1998 survey of 2500 seafarers, nearly half the sample felt that their working hours presented a danger to safe operations on their vessel<sup>24</sup>. However, given the lack of quantitative evidence, it has not been possible to monetise these benefits.</i></p>	<p>This is exactly the reason why taking a pilot if there is any concern is the best option. It is poor onboard manning and work operational management that is the cause.</p> <p>Regardless of the final statement, the risk is a real one and will not be reduced simply by the PEC deregulation proposed. There is no evidence presented to support the deregulation argument, yet plenty to show that even the current regulatory system is circumvented with undesirable consequences.</p>
<p><u>7.7 Summary of costs and benefits of option1</u></p> <p> <i>Shipping companies would benefit from a cost saving resulting from the flexibility provided by permitting other crew members to have a PEC. This benefit is balanced by the potential additional costs from having to pay for pilotage services when a PEC holder has been suspended. It is expected that these additional costs will be smaller than the benefits described above given the comparative rarity of occasions when a PEC is suspended or revoked. Furthermore, where there has been wrongdoing, it is arguable that the shipping company should not be benefitting from the use of a PEC.</i></p>	<p>However, there is no mention of the huge potential financial liabilities to the tax payer arising from costs associated with loss of life, infrastructure damage, environmental pollution and damage etc which are more likely to occur with a deregulated PEC eligibility regime. There is no nett gain for the nation as a whole, only for a small number of ship operators. There is overall though great potential for a significant nett loss to the nation by this proposal.</p>
<p><u>9 Risks and Assumptions</u></p> <p><i>9.1 Do Nothing. The main risk to doing nothing arises from the continued exposure of organisations to unexpected costs and legal difficulties when trying to undertake their activities....</i></p>	<p>Note that in this paragraph there is no reference to the proposals of clause 2.1.</p> <p>This suggest that reducing regulation will somehow improve the quality and efficiency of shipping. Millions of pounds are spent annually at the IMO increasing regulation in order to improve shipping safety. There is a clear and established need for a highly regulated shipping industry, the inconvenience of having to comply with this is a factor of operating commercial ships.</p>



<p><u>10 One In One Out</u>  <i>...Given the comparative rarity of occasions when a PEC is suspended or revoked, it is expected that the direct benefits to business from the increased flexibility in who may be issued with a PEC would outweigh the direct costs to business from these clauses, i.e. the “OUT” is larger than the “IN”. In the Department’s consultations with the ports industry, it has been supportive of both clauses. Therefore, it is considered that Policy Option 1 would represent an OUT overall for the purposes of OIOO, although given the limitations of the available evidence base, it has not been possible to quantify the scale of this OUT.</i></p>	<p>This sections confirms that the overriding motivation for the PEC deregulation clause is that it provides a Nett gain in the OIOO campaign. Other provisions of the bill are confirmed as not meeting the goals of this principle.</p>
<p><u>11.4 Environmental and Carbon Impact</u>  <i>None of the measures in the draft Bill is likely to have any adverse environmental or carbon impact. The potential environmental savings from the avoidance of even one major maritime incident are very large, in the order of many millions of pounds.</i></p>	<p>This thus serves to add weight to the question why change the existing PEC eligibility requirements (clause 2.1) when there is clear evidence of a real increase in risk of a serious marine casualty resulting from the deregulation.</p>
<p><u>11.6 Human Rights</u>  <i>We believe that the Minister would be able to make the following statement “In my view the provisions of the Marine Navigation Bill are compatible with the Convention rights.”</i></p>	<p>This statement will be further confirmed with the inclusion of the UKMPA proposed ammendment of an additional clause pertaining to the reestablishment of a proper Appeals procedure.</p>
<p><u>13 Post Implementation review</u>  <i>As a matter of good governance the Department will carry out a PIR within five years of Royal Assent. The review will reflect on the effectiveness of the provisions and will be ongoing from the date of implementation. The review will look at how the legislation is being applied and whether the policy objectives have been met. In particular we will ask for feedback from the ports and shipping industry, and the General Lighthouse Authorities, to evaluate benefits that have been realised.</i></p>	<p>This states that despite argument and evidence being presented that the PEC deregulation increases the risk of a serious maritime casualty, the risk will be taken and that if such an event has occurred in the interim period then the regulation will be reviewed. That the existing regulation was put in place as a result of past experiences is completely ignored.</p>

D. P. Cockrill  
Chairman  
October 2012.