

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING AND FISHING VESSELS (PROVISION AND USE OF
WORK EQUIPMENT) REGULATIONS 2006

S.I. 2006 No. 2183

and

THE MERCHANT SHIPPING AND FISHING VESSELS (LIFTING OPERATIONS
AND LIFTING EQUIPMENT) REGULATIONS 2006

S.I. 2006 No. 2184

1. This explanatory memorandum has been prepared by the Maritime and Coastguard Agency and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

2.1 The Regulations complete implementation of Council Directive 89/655/EEC of 30 December 1989 as amended by Directive 95/63/EC of 30 December 1995 concerning the minimum safety and health requirements for the use of work equipment by workers at work. Regulations introduced by the Health and Safety Executive have already implemented the Directive for land based workers.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Background**

4.1 Council Directive 89/391/EEC (the “Framework Directive”) introduced general measures to encourage improvements in the safety and health of workers at work and was implemented by the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (SI 1997/2962).

4.2 Council Directive 1989/655/EC (the second individual Directive within the meaning of Article 16(1) of the Framework Directive), as amended by Directive 95/63/EC, introduced minimum safety and health requirements for the use of work equipment by workers at work. These requirements, which build on the general safety and health provisions contained in the Framework Directive, are being implemented by means of the **Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006** (“PUWER 2006”) and the **Merchant Shipping and**

Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006 (“LOLER 2006”). LOLER 2006 also implement in part International Labour Organisation Convention No 152 (The “Dock Work Convention”). Regulations introduced by the Health and Safety Executive (S.I. 1998/2306 and S.I. 1998/2307) have already implemented the Directives for land based workers and these new Merchant Shipping and Fishing Vessel Regulations complete the United Kingdom’s implementation of these Directives. In line with HSE, MCA has introduced one set of Regulations to cover the general provision and use of work equipment and another to cover specifically work equipment used for lifting as well as the carrying out of lifting operations.

5. Extent

5.1 These instruments apply to all United Kingdom ships wherever they may be in the world and to non-UK ships when in UK waters in the normal course of business, other than when exercising their right of innocent passage.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 PUWER 2006 and LOLER 2006 complete the UK implementation of Council Directive 89/655/EEC, as amended by Council Directive 95/63/EC, concerning the introduction of minimum safety and health requirements for the use of work equipment by workers at work. As mentioned above, corresponding Regulations have been produced for land based workers. It is therefore necessary to make these Regulations to ensure application of the Directive to workers in the Merchant Shipping and Fishing Sectors to avoid disparity of regulatory coverage between land based workers and those working on ships. This is especially the case at the water margin, i.e. in dock and port areas, where land based workers (e.g. stevedores and other dock workers) could be working on board a ship alongside members of the crew.

7.2 In addition to implementing Directive 89/655/EEC, as amended by Council Directive 95/63/EC, the Regulations give effect in part to the Merchant Shipping (Minimum Standards) Convention 1976 (International Labour Organization Convention 147)(Cmnd. 7163), ratified by the United Kingdom in 1980. ILO 147 requires provisions to be made substantially equivalent to those of (amongst other Conventions) the Prevention of Accidents (Seafarers) Convention 1970 (ILO 134 Article 4). LOLER 2006 also give effect in part to the Occupational Safety and Health (Dock Work) Convention 1979 (International Labour Organization Convention 152) and the Occupational Safety and Health (Dock Work) Recommendation 1979 (Recommendation No. 160) (Cmnd 8118.)

7.3 The provisions which give effect to the ILO standards were formerly contained in the Merchant Shipping (Guarding of Machinery and Safety of Electrical Equipment) Regulations 1988 and the Merchant Shipping (Hatches and Lifting Plant) Regulations 1988. These sets of Regulations are revoked respectively by PUWER 2006 and LOLER 2006. Provisions giving effect to the ILO standards were also contained in regulation 10

of the Merchant Shipping (Safe Movement on Board Ships) Regulations 1988 and regulation 2 of the Merchant Shipping (Safety at Work) (Non-UK Ships) Regulations 1988. These particular regulations are also revoked and replaced by PUWER 2006.

7.4 In introducing these new Regulations to implement, in part, Council Directive 89/655/EEC as amended by Council Directive 95/63/EC, it has always been the intention to go no further than is required by the Directive unless it is considered appropriate to do so either to maintain existing levels of health and safety or to introduce new requirements which are fully justified from a health and safety point of view. The following comments set out how this has been undertaken and explain where, in a few isolated cases, it has been considered appropriate to go slightly beyond the Directive provisions on health and safety grounds.

Specific comments on PUWER 2006.

(1) Although these Regulations revoke and replace the Merchant Shipping (Guarding of Machinery and Safety of Electrical Equipment) Regulations 1988 in their entirety, regulation 10 of the Merchant Shipping (Safe Movement on Board Ships) Regulations 1988 and regulation 2 of the Merchant Shipping (Safety at Work) (Non-UK Ships) Regulations 1988 which gave effect in part to provisions of ILO Conventions, the provisions of the Directive are such that they effectively cover fully the provisions arising from the ILO Conventions dealt with in those earlier Regulations. There is therefore no need to introduce additional provisions in order to maintain existing levels of health and safety or to exempt certain sectors from any provisions of these new Regulations.

(2) The principal area where the Regulations go beyond what is provided for by the Directive is in the application of certain provisions of the Directive to the self-employed. These provisions are contained in regulation 4(5) and place upon a self employed person the duties of an employer in respect of work equipment on a ship, which he—

(a) provides for use and uses himself, or

(b) provides for use by another person (whether self-employed or not).

Additionally regulation 4(6) provides that where a self-employed person uses such equipment, whether provided by him or not, he is treated as a worker and is required to ensure that the requirements of these Regulations in relation to a worker are met.

The reasons for extending the provisions to the self-employed in this way are two fold. Firstly, the Marine Accident Investigation Branch have raised concerns about accidents involving work and lifting equipment occurring in the fishing industry where the overwhelming majority of the workforce claim to be self employed. Secondly, the provision and/or use of work/lifting equipment by a self-employed person can result in injury or death to others irrespective of the employment status of that person.

(3) In addition the requirements of Regulations 10(2) and 11(2) also go slightly beyond the provisions of the Directive by requiring that supervisors or managers of workers using work equipment should be provided with adequate

health and safety information and instructions or should be competent in the use of such equipment. These provisions are copied across from HSE's related Regulations for land based workers and are considered necessary from a health and safety point of view to ensure compatibility between both sets of Regulations where land based workers and the crew of a ship are working together, e.g. in loading and unloading operations. It is not acceptable on health and safety grounds that a supervisor or manager be uncertain that equipment is being used correctly and/or safely because they themselves have no idea of how it should be used.

Specific comments on LOLER 2006.

(1) Whilst these Regulations revoke and replace the Merchant Shipping (Hatches and Lifting Plant) Regulations 1988 which gave effect in part to provisions of ILO Conventions, the provisions of the Directive are such that they do not effectively cover in full the provisions arising from the ILO Conventions. It has therefore necessary to include additional provisions in the new Regulations in order to maintain existing levels of health and safety.

(2) However, in the context of the additional provisions needed to cover ILO requirements, it should be noted that the ILO Conventions do not apply to fishing vessels. Whilst EC Directives can be applied to unregistered government owned ships by the use of section 2(2) of the European Communities Act 1972, these powers cannot be used to apply ILO Convention provisions. Neither does the Merchant Shipping Act 1995 apply to such government owned ships. It has therefore been necessary to disapply regulations 6(1), 6(2)(b), 9(1)(c), 9(3), 11, 12(7), 13 and 16 to fishing vessels and unregistered government owned ships.

(3) The principal area where the Regulations go beyond the scope of the Directive is in the application of certain provisions of the Directive to the self-employed. These provisions are contained in regulation 4(4) and place upon a self-employed person the duties of an employer in respect of lifting equipment on a ship, which he—

- (a) provides for use and uses himself, or
- (b) provides for use by another person (whether self-employed or not).

Additionally where a self-employed person uses such lifting equipment, whether provided by him or not, he is treated as a worker and is required to ensure that the requirements of these Regulations in relation to a worker are met.

(4) The reasoning behind extending the provisions to the self-employed in this way is that the provision and/or use of lifting equipment by a self-employed person can result in injury to workers in the same way as if the self-employed person was either an employer or a worker

(5) In addition the requirements of the following Regulations go slightly beyond the provisions of the Directive:-

(a) - **Regulation 9(1)(d)** - Whilst the Directive requires that lifting equipment which is not designed for lifting persons but which may be so used in error is appropriately and clearly marked to the effect that it is not designed for lifting persons, there is no requirement for any marking of equipment which can be so used. This, it is considered, could lead to confusion and it is accordingly considered that equipment that can be used for lifting persons should also be marked. Arguably this is in any event covered by paragraph 2.15 of Schedule I to the Directive which requires that work equipment must bear the warnings and markings essential to ensure the safety of workers.

(b) - **Regulation 10(3)(h)** - The Directive only requires that open air use of lifting equipment be halted where meteorological conditions deteriorate to the point that they could affect the safe use of the lifting equipment or expose persons to danger. It has however to be recognised that meteorological conditions can also affect lifting operations taking place inside a ship as wave movements can cause the ship itself to move, in a way that would not occur on land. In severe cases this could jeopardise the safe use of the lifting equipment or expose persons to danger. For this reason it is considered appropriate to extend the provision relating to meteorological conditions to all lifting operations whether in the open air or inside the ship.

(c) - **Regulations 12(6) and 14(1)-(5)** - Article 4 requires that where the safety of work equipment depends on the installation conditions, it shall be subject to an initial inspection (after installation and before first being put into service). However Article 4(a) (4) then provides that Member States shall determine the conditions under which such inspections are made but without stating when such examinations shall be made. In order to ensure uniformity Regulation 12(6) of these regulations has adopted the same provisions as contained in regulation 8 of the Merchant Shipping (Hatches and Lifting Plant) Regulations 1988. Similarly Regulation 14 has adopted the provisions contained in the HSE's related Regulations for land based workers thus facilitating ready movement of equipment between land and ship.

7.5 Implementation of the Use of Work Equipment Directive (as amended) for land-based industry, including shore-based workers on ships in port, was completed by the Health and Safety Executive in 1998. Final completion of the implementation process to cover ship crews has been delayed because there were particular difficulties in applying the provisions to the maritime sector. The technical complexities were compounded by the need to maintain provisions deriving from the International Labour Organization Occupational Safety and Health (Dock Work) Convention, 1979 (Convention 152) for the merchant shipping sector; these requirements were not applicable to the fishing sector. Because of this complication two full rounds of consultation and extensive discussion with industry were necessary.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum at Annex 2

9. Contact

Michael Lines at the Maritime and Coastguard Agency Tel: 02380 329 246, Fax: 02380 329 251 or e-mail: mike.lines@mca.gov.uk can answer any queries regarding the instruments.

TRANSPOSITION NOTE

Relating to the implementation for the maritime sector of Council Directive 89/655/EEC of 30 November 1989 (the second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), as amended by Directive 95/63/EC of 5 December 1995), which introduces minimum safety and health requirements for the use of work equipment by workers at work.

The Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006 (SI 2006/) (in this note referred to as “the PUWER Regulations”) and the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006 (SI 2006/) (in this note referred to as “the LOLER Regulations”) implement Council Directive 89/655/EEC, as amended by Directive 95/63/EC, for the maritime sector, which includes all commercial sea-going and inland waterway merchant and fishing vessels of whatever size. The Regulations also apply to commercial and private pleasure vessels on which workers are employed. Implementation of those Directives in respect of workers employed in land based industries is the responsibility of the Health and Safety Executive, who have introduced Regulations to cover such workers.

Council Directive 89/655/EEC, as amended by Directive 95/63/EC introduces minimum safety and health requirements for the use of work equipment by workers at work. In line with HSE, who have already introduced Regulations to cover land based workers; we have opted for one set of Regulations (the PUWER Regulations) to implement the general provisions relating to the provision and use of work equipment and another set of Regulations (the LOLER Regulations) to implement requirements relating to the use of work equipment for lifting as well as the carrying out of lifting operations. Both the LOLER and PUWER Regulations apply to the whole of the maritime sector, including all commercial sea-going and inland waterway merchant and (with some exceptions) fishing vessels, of whatever size, as well as to commercial and private pleasure vessels on which workers are employed.

The responsibility for implementation of Council Directive 89/655/EEC, as amended by Directive 95/63/EC for the maritime sector rests with the Secretary of State through the introduction of new Regulations.

Maritime and Coastguard Agency
Department for Transport
July 2006

**TABLE RELATING TO IMPLEMENTATION OF ARTICLES OF
DIRECTIVE 89/655/EEC AS AMENDED BY DIRECTIVE 95/63/EC**

Article	Objective of Article or Paragraph of Article	Implementation
1	Subject	
1.1	Specifies purpose of Directive as laying down minimum safety and health requirements for use of work equipment by workers at work	Transposition not required as this does not lay down any requirements to be complied with.
1.2	Provides that requirements of Directive 89/391/EEC shall continue to apply except where more stringent and/or specific provisions are contained in this Directive.	Transposed in regulation 4(8) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006 and 4(9) of the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006
2	Definitions	
	(a) “work equipment” (b) “use of work equipment” (c) “danger zone” (d) “exposed worker” (e) “operator”	<p>“Work Equipment” and “Use” transposed in regulation 2 of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p> <p>“Work Equipment”, “Use” and “Operator” transposed in regulation 2 of the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006</p> <p>“Danger Zone” transposed in regulation 13(3) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p>

		"Exposed Worker" not specifically transposed however Regulations do require that access to danger zone is prevented - Regulation 13(1) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006
3	General Obligations	
3.1	Requires an employer to ensure work equipment provided to workers is suitable for work to be carried out and may be used without risks to health and safety. In selecting such equipment the employer is required to have regard to specific working conditions and hazards etc which exist in the workplace as well as any additional risks posed by the use of the work equipment concerned.	Transposed in Regulation 6(1) and (2) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006
3.2	Requires an employer to minimise the risk where it is not possible to fully ensure work equipment can be used without risks to health and safety	General provisions relating to the safe use of work equipment are set out in regulations 6 to 34 of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006
4	Rules concerning work equipment	
4.1	Requires that an employer must obtain or use:- (a) work equipment provided after 31 December 1992 which complies with:- (i) the provision of any community	4.1(a)(i) transposed in regulation 12(1) of Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006. See also comments re 4.1(b) and (c) below re periods of grace.

	<p>Directive which applies;</p> <p>(ii) the minimum requirements set down in Annex I to the extent that no other Community Directive applies</p> <p>(b) requires that work equipment provided prior to 31 December 1992 must comply with requirements of Annex 1 no later than 31 December 1996</p> <p>(c) requires that certain specified work equipment provided prior to 5 December 1998 must comply with requirements of Annex 1 no later than 5 December 2002</p>	<p>4.1(a)(ii) transposed as indicated in relation to individual items in Annex 1 below</p> <p>4.1(b) derogation not transposed as period of grace has expired</p> <p>4.1(c) derogation not transposed as period of grace has expired</p>
4.2	Requires an employer to ensure that work equipment is maintained throughout its life at a level that complies with the provisions of 4(1)(a) or (b) as applicable	Transposed in Regulation 7 of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006
4.3	Requires Member States to establish procedures which attain a level of safety corresponding to the objectives of Annex II	Transposed as indicated in relation to individual items in Annex II below
4A	Inspection of Work Equipment	
4A.1	Requires that where safety of work equipment depends upon the installation conditions the employer shall ensure it is initially inspected by a competent person to ensure it has been properly installed and is working correctly. Similar requirements apply after assembly at a new site or in a new location	Transposed in regulation 8(1) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006 and 12(1) of the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006
4A.2	Where work equipment is subject to conditions causing deterioration	Transposed in regulation 8(2) of the Merchant Shipping and Fishing

	likely to result in dangerous situations, the employer is required to have it subjected to periodic inspections by a competent person as well as special inspections where exceptional circumstances such as modifications, accidents, periods of inactivity etc have occurred.	Vessels (Provision and Use of Work Equipment) Regulations 2006 and 12(2) of the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006
4A.3	Requires that results of inspections are to be recorded and be available for inspection by the authorities concerned. Such records are to be kept for an appropriate period of time and must accompany the equipment when it is used outside the undertaking in which it is normally used	Transposed in regulation 8(4) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006 and 14(4)(b) and 15 of the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006
4A.4	Requires Member States to determine the conditions under which inspections are to be made.	Transposition not required as this only provides for Member States to determine the conditions under which inspections are to be made. It does not itself specify those conditions
5	Work Equipment involving specific risks	
	Requires the employer, where there is a risk to health & safety, to restrict use of work equipment to those persons given the task of using it or, in the case of repairs modifications maintenance or servicing ensure the workers concerned, are designated to carry out such work	Transposed in regulation 9 of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006
5A	Ergonomics and Occupational Health	
	Requires the employer to take account of the working posture and position of workers whilst using work equipment and ergonomic principles when applying health	Transposed in regulation 6(5) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006

	and safety requirements.	
6	Informing Workers	
6.1	Requires the employer to ensure that workers have access to adequate information and, where appropriate, written instructions on the work equipment used at work	Transposed in regulation 10(1) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006
6.2	Requires that the information and written instructions must contain at least adequate health and safety information regarding the conditions of use of the work equipment; foreseeable abnormal conditions and conclusions drawn from experience in using work equipment. Also provides that workers must be aware of dangers relevant to them, work equipment present in their work area and any changes affecting them	Transposed in regulation (3) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006 Transposed in regulation 10(4) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006
6.3	Requires that information and written instructions are comprehensible to the workers concerned	Transposed in regulation 10(5) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006
7	Training of Workers	
	Requires employers to ensure that workers required to use work equipment are given adequate training including training on any risks such use may entail and that workers required to carry out repairs, modifications, maintenance or servicing require adequate training specific to those tasks.	Transposed in regulation 11(1) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006

8	Consultation of Workers and Workers Participation	
	Requires consultation and participation of workers and/or their representatives on matters relating to this Directive in accordance with Article 11 of Directive 89/391/EEC	Transposed in regulation 20 of the Merchant Shipping and Fishing (Health and Safety at Work) Regulations 1997 (SI 1997/2962)
9.	Amendment of the Annex	
	Merely provides information on how amendments of the Annexes to the Directive will be adopted	No transposition required as not relevant to implementation of the Directive
10	Final Provisions	
	Sets out timescales for implementation of Directive; provision of texts of Regulations; and, reports on implementation by Member States as well as actions by the Commission.	No transposition required as not relevant to implementation of the Directive
11	Directive Address	
	Merely states that Directive is addressed to Member States	No transposition required

Annex 1	Minimum Requirements Referred to in Article 4(1)(a)(ii) and (b)	
1	General Comment	
	Merely states the obligations laid down in this Annex apply in relation to the Directive and the risks from the work equipment concerned. Also states that application of the provisions to new equipment may not necessarily be the same as for existing equipment.	No transposition required
2	General Minimum Requirements Applicable to Work Equipment	
2.1	Requires that work equipment control devices which affect safety must be clearly visible and identifiable and appropriately marked where necessary. Except where necessary for certain control devices, control devices must be located outside danger zones and in such a way that their operation cannot cause additional hazard. They must not give rise to any hazard as a result of any unintentional operation. If necessary, from the main control position, the operator must be able to ensure that no person is present in the danger zones. If this is impossible, a safe system such as an audible and/or visible warning signal must be given automatically whenever the machinery is about to start. An exposed worker must have the time and/or the means quickly to avoid hazards caused by the starting and/or stopping of the work equipment.	Transposed in regulation 20 of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006 Transposed in regulation 21 of the Merchant Shipping and Fishing Vessels (Provision and Use of Work

	<p>Additionally control systems must be safe and must be chosen making due allowance for the failures, faults and constraints to be expected in the planned circumstances of use.</p>	<p>Equipment) Regulations 2006</p>
2.2	<p>Requires that it must only be possible to start, restart or make a significant change in the operating conditions (e.g. speed, pressure, etc.), of work equipment only by deliberate action on a control provided for the purpose, unless such a restart or change does not subject exposed workers to any hazard.</p> <p>This requirement does not apply to restarting or a change in operating conditions as a result of the normal operating cycle of an automatic device.</p>	<p>Transposed in regulation 17(1) and (2) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p> <p>Transposed in regulation 17(3) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p>
2.3	<p>Requires that all work equipment must be fitted with a control to stop it completely and safely and each work station must be fitted with a control to stop some or all of the work equipment, depending on the type of hazard, so that the equipment is in a safe state. The equipment's stop control must have priority over the start controls. When the work equipment or the dangerous parts of it have stopped, the energy supply of the actuators concerned must be switched off.</p>	<p>Transposed in regulation 18 of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p>
2.4	<p>Requires that, where appropriate, and depending on the hazards the equipment presents and its normal stopping time, work equipment must be fitted with an emergency stop device.</p>	<p>Transposed in regulation 19 of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p>
2.5	<p>Requires that work equipment</p>	<p>Transposed in regulation 15(2)(a) of</p>

	<p>presenting a risk due to falling objects or projections must be fitted with appropriate safety devices corresponding to the risk.</p> <p>Requires that work equipment presenting hazards due to emissions of gas, vapour, liquid or dust must be fitted with appropriate containment and/or extraction devices near the sources of the hazard.</p>	<p>the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p> <p>Transposed in regulation 15(2)(d) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p>
2.6	<p>Requires that work equipment and parts of such equipment must, where necessary for the safety and health of workers, be stabilized by clamping or some other means.</p>	<p>Transposed in regulation 23 of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p>
2.7	<p>Requires that where there is a risk of rupture or disintegration of parts of the work equipment, likely to pose significant danger to the safety and health of workers, appropriate protection measures must be taken.</p>	<p>Transposed in regulation 15(2)(b) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p>
2.8	<p>Requires that where there is a risk of mechanical contact with moving parts of work equipment which could lead to accidents, those parts must be provided with guards or devices to prevent access to danger zones or to halt movements of dangerous parts before the danger zones are reached. Such guards and protection devices are required to:</p> <ul style="list-style-type: none"> — be of robust construction, — not give rise to any additional hazard, — not be easily removed or rendered inoperative, — be situated at sufficient distance 	<p>Transposed in regulation 13 of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p>

	<p>from the danger zone,</p> <p>— not restrict more than necessary the view of the operating cycle of the equipment,</p> <p>— allow operations necessary to fit or replace parts and for maintenance work, restricting access only to the area where the work is to be carried out and, if possible, without removal of the guard or protection device.</p>	
2.9	Requires that areas and points for working on, or maintenance of, work equipment must be suitably lit in line with the operation to be carried out.	Transposed in regulation 24 of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006
2.10	Requires that work equipment parts at high or very low temperature must, where appropriate, be protected to avoid the risk of workers coming into contact or coming too close.	Transposed in regulation 16 of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006
2.11	Requires that warning devices on work equipment must be unambiguous and easily perceived and understood.	Transposed in regulation 27(2) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006
2.12	Requires that work equipment may be used only for operations and under conditions for which it is appropriate.	Transposed in regulation 6(3) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006
2.13	Requires that It must be possible to carry out maintenance operations	Transposed in regulation 25 of the Merchant Shipping and Fishing

	<p>when the equipment is shut down but if this is not possible, it must be possible to take appropriate protection measures for the carrying out of such operations or for such operations to be carried out outside the danger zones.</p> <p>Additionally, if any machine has a maintenance log, it must be kept up to date.</p>	<p>Vessels (Provision and Use of Work Equipment) Regulations 2006</p> <p>Transposed in regulation 7(2) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p>
2.14	<p>Requires that all work equipment is to be fitted with clearly identifiable means to isolate it from all its energy sources and reconnection must be presumed to pose no risk to the workers concerned.</p>	<p>Transposed in regulation 22 of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p>
2.15	<p>Requires that work equipment must bear the warnings and markings essential to ensure the safety of workers.</p>	<p>Transposed in regulation 26 of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p>
2.16	<p>Requires that workers must have safe means of access to, and be able to remain safely in, all the areas necessary for production, adjustment and maintenance operations.</p>	<p>Transposed generally in the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006 and more specifically in regulation 13 of those regulations</p>
2.17	<p>Requires that all work equipment must be appropriate for protecting workers against the risk of the work equipment catching fire or overheating, or of discharges of gas, dust, liquid, vapour or other substances produced, used or stored in the work equipment.</p>	<p>Transposed in regulation 15(2)(c) and (d) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p>
2.18	<p>Requires that all work equipment must be appropriate for preventing the risk of explosion of the work equipment or of substances produced, used or stored in the work equipment.</p>	<p>Transposed in regulation 15(2)(e) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p>

2.19	Requires that all work equipment must be appropriate for protecting exposed workers against the risk of direct or indirect contact with electricity.	Transposed in regulation 14 of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006

<p>3</p>	<p>Additional Minimum Requirements Applicable to Specific Work Equipment as referred to in Article 9(1) of the Directive</p>	
<p>3.1</p>	<p>Minimum requirements for mobile work equipment, whether or not self-propelled</p>	
<p>3.1.1</p>	<p>Requires that work equipment with ride-on workers must be fitted out in such a way as to reduce the risks for workers during the journey. Those risks must include the risks of contact with or trapping by wheels or tracks.</p>	<p>Transposed in regulation 28 of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p>
<p>3.1.2</p>	<p>Requires that where an inadvertent seizure of the drive unit between an item of mobile work equipment and its accessories and/or anything towed might create a specific risk, such work equipment must be equipped or adapted to prevent blockages of the drive units. Where such a seizure cannot be avoided, every possible measure must be taken to avoid any adverse effects on workers.</p>	<p>Transposed in regulation 33(1) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p>
<p>3.1.3</p>	<p>Requires that where drive shafts for the transmission of energy between mobile items of work equipment can become soiled or damaged by trailing on the ground, facilities must be available for fixing them.</p>	<p>Transposed in regulation 33(2) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p>
<p>3.1.4</p>	<p>Requires that mobile work equipment with ride-on workers must be designed to restrict, under actual conditions of use, the risks arising from work equipment rollover:</p>	<p>Transposed in regulation 28(2) and (3) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p>

	<ul style="list-style-type: none"> — either by a protection structure to ensure that the equipment does not tilt by more than a quarter turn, or — a structure giving sufficient clearance around the ride-on workers if the tilting movement can continue beyond a quarter turn, or — by some other device of equivalent effect. <p>These protection structures may be an integral part of the work equipment. These protection structures are not required when the work equipment is stabilized during operation or where the design makes roll over impossible.</p> <p>Where there is a risk of a ride-on worker being crushed between parts of the work equipment and the ground, should the equipment roll over, a restraining system for the ride-on workers must be installed.</p>	<p>Transposed in regulation 28(4) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p>
<p>3.1.5</p>	<p>Requires that fork-lift trucks carrying one or more workers must be adapted or equipped to limit the risk of the fork-lift truck overturning, e.g.:</p> <ul style="list-style-type: none"> — by the installation of an enclosure for the driver, or — by a structure preventing the fork-lift truck from overturning, or — by a structure ensuring that, if the 	<p>Transposed in regulations 28(3) and (4) & 29 of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p>

	<p>fork-lift truck overturns, sufficient clearance remains between the ground and certain parts of the fork-lift truck for the workers carried,</p> <p>or</p> <p>— by a structure restraining the workers on the driving seat so as to prevent them from being crushed by parts of the fork-lift truck which overturns.</p>	
<p>3.1.6</p>	<p>Requires that self-propelled work equipment which may, in motion, engender risks for persons must fulfil the following conditions:</p> <p>(a) the equipment must have facilities for preventing unauthorized startup;</p> <p>(b) it must have appropriate facilities for minimizing the consequences of a collision where there is more than one item of track-mounted work equipment in motion at the same time;</p> <p>(c) there must be a device for braking and stopping equipment. Where safety constraints so require, emergency facilities operated by readily accessible controls or automatic systems must be available for braking and stopping equipment in the event of failure of the main facility;</p> <p>(d) where the driver's direct field of vision is inadequate to ensure safety, adequate auxiliary devices must be installed to</p>	<p>Transposed in regulation 30 of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p>

	<p>improve visibility;</p> <p>(e) work equipment designed for use at night or in dark places must be equipped with lighting appropriate to the work to be carried out and must ensure sufficient safety for workers;</p> <p>(f) work equipment which constitutes a fire hazard, either on its own or in respect of whatever it is towing and/or carrying and which is liable to endanger workers, must be equipped with appropriate fire-fighting appliances where such appliances are not available sufficiently nearby at the place of use;</p> <p>(g) remote-controlled work equipment must stop automatically once it leaves the control range;</p> <p>(h) remote-controlled work equipment which may in normal conditions engender a crushing or impact hazard must have facilities to guard against this risk, unless other appropriate devices are present to control the impact risk.</p>	<p>Transposed in regulation 32(a) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p> <p>Transposed in regulation 32(b) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p>
<p>3.2</p>	<p>Minimum requirements for work equipment for lifting loads</p>	
<p>3.2.1</p>	<p>Requires that when work equipment for lifting loads is installed permanently, its strength and stability during use must be assured, having regard, in particular, to the loads to be lifted and the stress induced at the mounting or fixing point of the structures.</p>	<p>Transposed in regulations 11 & 12 of the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006</p>

3.2.2	<p>Requires that machinery for lifting loads must be clearly marked to indicate its nominal load, and where appropriate a load plate giving the nominal load for each configuration of the machinery. Accessories for lifting must be marked in such a way that it is possible to identify the characteristics essential for safe use. Work equipment which is not designed for lifting persons but which might be so used in error must be appropriately and clearly marked to this effect.</p>	<p>Transposed in regulation 9 of the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006</p>
3.2.3	<p>Requires that permanently installed work equipment must be installed in such a way as to reduce the risk of the load:</p> <ul style="list-style-type: none"> (a) striking workers; (b) drifting dangerously or falling freely; (c) being released unintentionally. 	<p>Transposed in regulation 8 of the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006</p>
3.2.4	<p>Requires that work equipment used for lifting or moving workers must be such as to:</p> <ul style="list-style-type: none"> (a) prevent the risk of the car falling, where one exists, by suitable devices; (b) prevent the risk of the user himself falling from the car, where one exists; (c) prevent the risk of the user being crushed, trapped or struck, in particular through inadvertent contact with 	<p>Transposed in regulation 7 of the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006</p>

	<p>objects;</p> <p>(d) ensure that persons trapped in the car in the event of an incident are not exposed to danger and can be freed. If, for reasons inherent in the site and height differences, the risks referred to in point (a) cannot be avoided by any safety measures, an enhanced safety coefficient suspension rope must be installed and checked every working day.</p>	
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Annex II	Provisions concerning the Use of Work Equipment Referred to in Article 4(3)	
0	General Comment	
	The obligations laid down in this Annex apply having regard to the provisions of this Directive and where the corresponding risk exists for the work equipment in question.	No transposition required
1.	General Provisions for all Work Equipment	
1.1	Requires that work equipment must be installed, located and used in such a way as to reduce risks to users of the work equipment and for other workers, for example by ensuring that there is sufficient space between the moving parts of work equipment and fixed or moving parts in its environment and that all forms of energy and substances used or produced can be supplied and/or removed in a safe manner.	Generally transposed in regulation 6 of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006 and regulation 8 of the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006
1.2	Requires that work equipment must be erected or dismantled under safe conditions, in particular observing any instructions which may have been furnished by the manufacturer.	Transposed in regulation 8(1) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006 and regulations 11 & 12 of the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006
1.3	Requires that work equipment which may be struck by lightning while being used must be protected by devices or appropriate means	Transposed in regulation 15(2)(f) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006 and

	against the effects of lightning.	more generally in regulation 10(3)(g) of the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006
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2.	Provisions concerning the use of Mobile Equipment, whether or not self-propelled	
2.1	Requires that self-propelled work equipment shall be driven only by workers who have been appropriately trained in the safe driving of such equipment.	Transposed in regulation 30(1)(a) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006
2.2	Requires that if work equipment is moving around in a work area, appropriate traffic rules must be drawn up and followed.	Transposed in regulation 30(1)(b) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006
2.3	<p>Requires that organizational measures must be taken to prevent workers on foot coming within the area of operation of self-propelled work equipment.</p> <p>Additionally if work can be done properly only if workers on foot are present, appropriate measures must be taken to prevent them from being injured by the equipment.</p>	<p>Transposed in regulation 30(1)(b) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p> <p>Transposed in regulation 30(1)(c) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p>
2.4	<p>Requires that the transport of workers on mechanically driven mobile work equipment is authorized only where safe facilities are provided to this effect.</p> <p>If work must be carried out during the journey, speeds must be adjusted as necessary.</p>	<p>Transposed in regulation 30(2) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p> <p>Transposed in regulation 30(3) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006</p>

2.5	Requires that mobile work equipment with a combustion engine is not to be used in working areas unless sufficient quantities of air presenting no health or safety risk to workers can be guaranteed.	Transposed in regulation 30(4) of the Merchant Shipping and Fishing Vessels (Provision and Use of Work Equipment) Regulations 2006
3.	Provisions concerning the Use of Work Equipment for Lifting Loads	
3.1	General Considerations	
3.1.1	Requires that work equipment which is mobile or can be dismantled and which is designed for lifting loads must be used in such a way as to ensure the stability of the work equipment during use under all foreseeable conditions, taking into account the nature of the ground.	Transposed in regulations 6 & 10 of the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006
3.1.2	Requires that persons may be lifted only by means of work equipment and accessories provided for this purpose. However, without prejudice to Article 5 of Directive 89/391/EEC, exceptionally, work equipment which is not specifically designed for the purpose of lifting persons may be used to this effect, provided appropriate action has been taken to ensure safety in accordance with national legislation and/or practice laying down appropriate supervision. In addition while workers are on work equipment designed for lifting loads the control position must be manned at all times and persons being lifted must have reliable means of communication. In the event of danger, there must be	Transposed in regulation 7 of the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006

	reliable means of evacuating them.	
3.1.3	<p>Requires that, unless required for the effective operation of the work, measures must be taken to ensure that workers are not present under suspended loads.</p> <p>In addition, loads may not be moved above unprotected workplaces usually occupied by workers. Where that is the case, if work cannot be carried out properly any other way, appropriate procedures must be laid down and applied.</p>	<p>Transposed in regulation 10(3)(d) of the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006</p> <p>Transposed in regulation 10(93)(d) of the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006</p>
3.1.4	<p>Requires that lifting accessories must be selected as a function of the loads to be handled, gripping points, attachment tackle and the atmospheric conditions having regard to the mode and configuration of slinging.</p> <p>Lifting accessory tackle must be clearly marked so that users are aware of its characteristics where such tackle is not dismantled after use.</p>	<p>Transposed in regulation 6(4) of the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006</p> <p>Transposed in regulation 9 of the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006</p>
3.1.5	Requires that lifting accessories must be stored in a way that ensures that they will not be damaged or degraded.	Transposed in regulation 6(5) of the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006
3.2	Work Equipment for lifting non-guided loads	
3.2.1	Requires that when two or more items of work equipment used for lifting non-guided loads are installed or erected on a site in such a way that their working radii overlap, appropriate measures must	Transposed in regulation 10(3)(a) of the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006

	be taken to avoid collision between loads and/or the work equipment parts themselves.	
3.2.2	Requires that when using mobile work equipment for lifting non-guided loads, measures must be taken to prevent the equipment from tilting, overturning or, if necessary, moving or slipping. Checks must be made to ensure that these measures are executed properly.	Transposed in regulation 10(1)(a) and 10(2) of the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006
3.2.3	Requires that if the operator of work equipment designed for lifting non-guided loads cannot observe the full path of the load either directly or by means of auxiliary equipment providing the necessary information, a competent person must be in communication with the operator to guide him and organizational measures must be taken to prevent collisions of the load which could endanger workers.	Transposed in regulation 10(3)(e) and (g) of the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006
3.2.4	Requires that work must be organized in such a way that when a worker is attaching or detaching a load by hand, it can be done safely, in particular through the worker retaining direct or indirect control of the work equipment.	Transposed in regulation 10(3)(f) of the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006
3.2.5	Requires that all lifting operations must be properly planned, appropriately supervised and carried out to protect the safety of workers. In particular, if a load has to be lifted by two or more pieces of work equipment for lifting non-guided loads simultaneously, a procedure must be established and applied to ensure good coordination	Transposed in regulation 10(1) and 10(3)(b) of the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006

	on the part of the operators.	
3.2.6	<p>Requires that if work equipment designed for lifting non-guided loads cannot maintain its hold on the load in the event of a complete or partial power failure, appropriate measures must be taken to avoid exposing workers to any resultant risks.</p> <p>Suspended loads must not be left without surveillance unless access to the danger zone is prevented and the load has been safely suspended and is safely held.</p>	<p>Transposed in regulation 10(3)(c) of the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006</p> <p>Transposed generally in regulation 10(3)(of the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006</p>
3.2.7	<p>Requires that open-air use of work equipment designed for lifting non-guided loads must be halted when meteorological conditions deteriorate to the point of jeopardizing the safe use of the equipment and exposing workers to risks. Additionally adequate protection measures, in particular, to avoid work equipment turning over must be taken to avoid any risks to workers.</p>	<p>Transposed in regulation 10(3)(h) of the Merchant Shipping and Fishing Vessels (Lifting Operations and Lifting Equipment) Regulations 2006. The provision has however been extended to use inside a ship as movement of the ship as a result of meteorological conditions can have an adverse effect on all lifting operations whether inside or in the open air</p>

REGULATORY IMPACT ASSESSMENT

1. TITLE OF PROPOSALS

The Merchant Shipping and Fishing Vessel (Provision and Use of Work Equipment) Regulations 2006 (“PUWER 2006”) and **The Merchant Shipping and Fishing Vessel (Lifting Operations and Lifting Equipment) Regulations 2006** (“LOLER 2006”) complete implementation of Council Directive 89/655/EEC of 30 December 1989 as amended by Directive 95/63/EC of 30 December 1995 concerning the minimum safety and health requirements for the use of work equipment by workers at work. Regulations introduced by the Health and Safety Executive (S.I. 1998/2306 and S.I. 1998/2307) have already implemented the Directives for land based workers.

2. PURPOSE AND INTENDED EFFECT OF MEASURES

Objectives

The Regulations give effect, in respect of the maritime sector, to Directive 89/655/EEC of the European Parliament and of the Council (“the Work Equipment Directive”), as amended by Directive 95/63/EC, concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC). The Work Equipment Directive concerns minimum health and safety requirements for the use of work equipment by workers at work. Regulations to implement the Work Equipment Directive for land-based workers have already been introduced by the Health and Safety Executive and these new maritime Regulations will complete UK implementation by applying the provisions of the Work Equipment Directive to workers in the maritime sector.

Background

PUWER 2006 and LOLER 2006 complete implementation of Council Directive 89/655/EEC as amended by Council Directive 95/63/EC concerning the minimum safety and health requirements for the use of work equipment by workers at work. Corresponding Regulations produced by the HSE have already implemented the Directive for land based workers.

In addition these Regulations give effect, in part, to the Merchant Shipping (Minimum Standards) Convention 1976 (International Labour Organization Convention 147)(Cmnd. 7163), ratified by the United Kingdom in 1980. ILO 147 requires provisions to be made substantially equivalent to those of (amongst other Conventions) the Prevention of Accidents (Seafarers) Convention 1970 (ILO 134 Article 4). They also give effect in part to the Occupational Safety and Health (Dock Work) Convention 1979 (International Labour Organization Convention 152) and the

Occupational Safety and Health (Dock Work) and the Occupational Safety and Health (Dock Work) Recommendation 1979 (Recommendation No. 160) (Cmnd 8118.)

The provisions which give effect to the ILO standards were formerly contained in the Merchant Shipping (Guarding of Machinery and Safety of Electrical Equipment) Regulations 1988 and the Merchant Shipping (Hatches and Lifting Plant) Regulations 1988. These sets of Regulations are revoked respectively by PUWER 2006 and LOLER 2006.

Rationale for government intervention

Directive 89/655/EEC came into force on 31 December 1992 and Directive 95/63/EC came into force on 5 December 1995. The Health and Safety Executive have already introduced implementing regulations for land based industry but their regulations do not apply to the master and crew of a UK ship in respect of normal shipboard activities. New Regulations applying the provisions of the Directive to the maritime sector are therefore required to complete full UK implementation of the Directive.

Accidents to workers on vessels of all types arising from the use of work equipment are not uncommon. Introduction of the new Regulations should help to reduce the number of such accidents by requiring employers to have regard to the safety of both the equipment being used and those using it. This would be achieved in several ways - by requiring employers to ensure that risks to workers are identified and either removed or reduced as far as is reasonably practicable; by requiring equipment to be properly selected, maintained and used; by ensuring lifting equipment is properly installed, safe to use, and is capable of lifting the loads to be lifted; and, by ensuring that lifting operations are safely carried out. In addition workers are required to have regard to their own safety and that of other persons when using work equipment or carrying out lifting operations. Appropriate penalties are provided for in respect of those persons who do not comply with the requirements of the regulations.

3. CONSULTATION

(i) Within Government

Separate Government specific consultation was not undertaken. However those Government Departments and Agencies, including those in the devolved administrations, appearing to have a direct interest in what was proposed were consulted as part of the general consultation process.

(ii) Public Consultation

Two consultation exercises have been carried out on the proposals, the first in 1999 and the second in 2004. The purpose of the 2004 consultation was primarily to consider revised proposals arising from the earlier consultation, however it did not restrict itself to such aspects and comments on the full proposals were invited from consultees.

Some 254 consultees were included in the 2004 consultation exercise of which 138 covered the Merchant Shipping sector including the Chamber of Shipping (the trade association for the majority of UK shipowners) as well as associations representing small vessel owners/operators. The remaining 116 consultees covered the fishing sector, from local associations to those at national level. In addition to the consultees referred to, who were sent hard copies of the consultation documents, electronic copies of the consultation documents were made available for reference on the Maritime and Coastguard Agency's website.

Responses were only received from 15 consultees of whom 2 offered no comment and 1 was not relevant to either the Regulations or the Directive. Comments made by the remaining consultees have been taken into account in the Regulations in so far as is feasible within the constraints imposed by the Directive. A schedule of the comments received and the Maritime and Coastguard response to them is attached.

4. OPTIONS

The alternatives available in respect of implementation of the Directive are to:-

- (a) do nothing;
- (b) rely on the provisions of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (which implemented the Framework Directive) supplemented by guidance to implement the Directives.
- (c) introduce a new single set of Regulations to implement the Framework Directive and all the daughter Directives (including this one), the text of which would be a schedule to the Regulations; or
- (d) introduce two sets of Regulations to implement these Directives.

So far as options (a) and (b) are concerned, only by implementing all of the provisions of the Directive in regulations will the UK adequately implement the Directive.

Option (c) whilst feasible is also not considered to be a realistic option as there are currently several Directives in the pipeline for implementation, each of which would require amendment to what would become a bulky single set of frequently amended Regulations. The result of this would be a set of Regulations which was not user-friendly and would require cross referencing to amending Regulations. This would not accord with the Government's Better Regulation requirement.

Option (d) is therefore considered the most sensible way to proceed as it permits easy identification of provisions relating to use of work equipment for lifting loads. This option also accords with the route adopted by HSE in their Regulations thus permitting easier read across between the land-based Regulations and those applicable to the maritime sector. This is essential where land-based workers, e.g. stevedores covered by HSE's Regulations, might be working on board ships to which the maritime Regulations apply.

5. COSTS AND BENEFITS

(i) Sectors and Groups Affected

Those primarily affected will be operators and managers of ships, fishing vessels, and other marine craft, including yachts, work boats etc which are registered in the UK as well as workers working on them. The Regulations will apply also to any non-UK vessels when operating in UK waters and also to charities and similar organisations which operate vessels. In the case of charities however, they will only apply to workers employed on vessels operated by them.

(ii) Benefits

The proposal is intended to standardise the provisions relating to the use of work equipment, including work equipment for lifting loads, throughout all EC Member States such that a “level playing field” applies to owners/operators of all EC registered vessels and all other vessels when in EC waters.

iii) Costs

a. Compliance costs

Consultees were asked to provide information on any costs that they envisaged would be incurred as a result of the introduction of the Regulations. No information was however received regarding costs that would be incurred. This may reflect the fact that many of the requirements are already considered by employers through implementation of the general requirements relating to the health and safety of workers of Directive 89/391/EEC (the “Framework Directive”). The Use of Work Equipment directives are “daughter” Directives which simply add to these requirements by introducing more specialised requirements relating work equipment.

b. Other costs

Again this aspect was not specifically covered in either the first consultation or second consultation exercises but here also no comments were received indicating that any costs would be incurred.

c. Costs for a typical business

Given that no cost data was received from respondees to the consultation exercise it can only be assumed that no costs will be incurred or that any costs will be minimal.

6. SMALL FIRMS IMPACT TEST

No comment was made on this point. As the regulations implement an EC Directive, there is effectively no scope to minimise further, the effect on small firms. In addition given that these provisions build on the requirements introduced by the Framework Directive, it is likely that many of the requirements will already be under consideration by owners/operators and the overall impact will be low.

7. COMPETITION ASSESSMENT

No comment was made on this point. As the Regulations implement an EC Directive, there is effectively no scope to minimise further, than has already been done, the effect on competition.

8. MONITORING, ENFORCEMENT AND SANCTIONS

Monitoring - Compliance with the Regulations will be considered as part of the overall inspection regime for both UK and non-UK ships. No additional cost for MCA is envisaged as a result of inspection under these Regulations.

Enforcement - The provisions of the Regulations will be enforced by means of the inspections carried out by Surveyors/Inspectors from the Maritime and Coastguard Agency as part of the Agency's normal inspection regime. Where very minor non compliances are noted by Surveyors/Inspectors it may be sufficient for them to deal with the matter either by giving advice; by setting out a time limit for rectification; or, possibly detaining the vessel until the situation is rectified. This is a standard MCA procedure and no additional cost for MCA is envisaged as a result of this.

Sanctions – In the event of non compliance, both PUWER 2006 and LOLER 2006 provide that any contravention of relevant provisions shall be an offence, punishable on summary conviction by penalties on summary conviction of fines ranging from level 4 on the standard scale up to the statutory maximum. For some more serious offences, provision is also made for penalties on conviction on indictment of imprisonment for a term not exceeding two years or a fine or both. Some additional costs for MCA may arise from prosecutions but it is anticipated that such costs will be recovered from the party prosecuted. Until the Regulations are in force, it is however difficult to say what level of costs might arise as a result of prosecution action.

9. IMPLEMENTATION AND DELIVERY PLAN

As the proposals are intended to implement the provisions of an EC Directive, there is very limited scope for flexibility in the method of implementation. It is a requirement that all provisions are fully implemented in UK legislation and this is what we are proposing to do. However in doing so we have, except in relation to the application to the self employed and the extension of the restriction on use of lifting equipment in bad weather to lifting equipment used inside a ship as stated in the Explanatory Memorandum, accorded with government policy and gone no further than the minimum necessary to implement the Use of Work Equipment Directive.

Whilst the Regulations themselves implement the Use of Work Equipment Directive, a supporting Marine Guidance Note has been prepared which will be available free of charge (as well as on the MCA's website) and will provide more detailed guidance on the requirements of the Regulations and how they can be met.

10. POST-IMPLEMENTATION REVIEW

Since these proposals implement an EC Directive the use of "sunset clauses" is not appropriate as the Regulations will need to remain in force until such time as the Directives are either revoked or amended by the EC.

It is not intended to carry out a review after a set period of time as these Regulations simply build on the general provisions contained in the Framework Directive, which was implemented by the Merchant Shipping and Fishing Vessel (Health and Safety at Work) Regulations 1997, so industry should already be considering use of work equipment, including lifting equipment, as part of the general risk assessment required by those Regulations. Instead it is proposed to monitor compliance to see if any problems arise which need to be resolved by amending the Regulations, or issuing revised guidance, to make matters clearer to those covered by the provisions of the Work Equipment Directive.

11. SUMMARY AND RECOMMENDATION

PUWER 2006 and LOLER 2006 are intended to implement in the maritime sector Council Directive 89/655/EEC of 30 December 1989 as amended by Directive 95/63/EC of 30 December 1995 concerning the minimum safety and health requirements for the use of work equipment by workers at work. Regulations introduced by the Health and Safety Executive have already implemented the Directives for land based workers.

Four options for dealing with the Work Equipment Directive are put forward in section 4 above of which three require legislation in some form or other to give effect to the Directive and the fourth proposes no action. However the proposals are intended to complete implementation of an EC Directive which contains no provision for any derogation from the provisions contained in it.

12. DECLARATION

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed

Date

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**RESPONSES TO MCA CONSULTATION ON DRAFT PROVISION AND USE OF WORK EQUIPMENT REGULATIONS
AND DRAFT LIFTING OPERATIONS AND LIFTING EQUIPMENT REGULATIONS AND MCA COMMENTS**

**(NOTE - References to specific regulation numbers relate to the
regulation numbers in the final version of the Regulations)**

<u>Respondee</u>	<u>Respondee Comment</u>	<u>MCA Comment</u>
FREIGHT TRANSPORT ASSOCIATION	No comment on this occasion	
JOHN NICHOLLS LOSS PREVENTION DIRECTOR TT CLUB	<p>The regulations use the terms "lifting equipment" instead of "lifting appliances" which is the normal term used for equipment on ships, but I notice that the term lifting equipment appears to be satisfactorily defined.</p> <p>The thorough examination of all lifting plant at least once every 12 months. I believe that the MCA are stuck with this from the EU but in practice I foresee that the MCA will only be able to enforce and expect that which is specified in ILO 152. I believe that the MCA may find difficulty in enforcing anything other than that detailed in an International Convention on foreign flag ships.</p> <p>Under requirements for inspection I am concerned that the proposed regulations call for inspection by a competent person. ILO 152 calls for a competent and responsible person with both being clearly defined. Applying only a competent person appears to put a higher status on the proposed regulations than there is encapsulated in ILO 152.</p>	<p>No comment required</p> <p>It is possible that this might occur in the case of non-UK ships. Nevertheless we are obliged to fully implement the Directive in our regulations.</p> <p>ILO 152 defines a responsible person as:- <i>“a person appointed by the employer, the master of the ship or the owner of the gear, as the case may be, to be responsible for the performance of a specific duty or duties and who has sufficient knowledge and experience and the requisite authority for the proper performance of the duty or duties”.</i></p> <p>It is considered that our Regulations cover this point adequately.</p>

	<p>The proposed regulations apply to seafarers and those employed by the ship. I believe there is no intention of confusing the issue and trying to make these apply to dockworkers and other shore based workers as they are covered by HASAWA legislation, eg docks regs, PUWER and LOLER (1988) I could find no such statement in the proposed regs as to their application and confusion could reign if not careful as they look to be designed to be made under the European Communities Act as well as the MS Act. It would be beneficial if a statement could be included to clarify that these MS regs do not apply to dockworkers and other shore based employees.</p>	<p>Specific <u>disapplications</u> to <u>workers</u> covered by HSE's LOLER & PUWER Regulations (i.e. shore-based workers) are contained in Regulation 4(8) of MCA's LOLER Regulations and Regulation 4(7) of MCA's PUWER Regulations respectively.</p>
<p>SCOTTISH ENVIRONMENT PROTECTION AGENCY</p>	<p>No Comment</p>	
<p>SEAFISH</p>	<p>The use of the term 'worker' raises concerns. The shore based legislation refers to all persons who use work equipment, as the regulations are there to safeguard all persons.</p>	<p>The "Framework Directive" (89/391/EEC) and subsequent Health & Safety Directives specifically refer to "workers". As a consequence, the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, which implemented the "Framework Directive", and subsequent regulations implementing EC Health &</p>

	<p>By using the term 'worker' the problem of the definition of share fishermen is raised, as claims may be made that share fishermen are not 'workers' in the context of the legislation. We would suggest that the term 'persons' is substituted for 'workers'.</p>	<p>Safety Directives, refer to workers rather than persons.</p> <p>To cover the “share fishermen” aspect MCA’s regulations are drafted to apply to the self employed in respect of their actions. A share fisherman can only be a worker or a self-employed person. There is no other status.</p>
<p>HOME OFFICE</p>	<p>Content with the penalties for the provision and use of work equipment regs look fine, but have reservations about some of the penalties in the lifting operations and lifting equipment regulations.</p>	<p>Agreement now reached with Home Office on penalties.</p>

<p><u>NUMAST</u></p>	<p>With reference to Regulation 2, "competent person", NUMAST is of the opinion that it is not necessarily an officer with a certificate of competency. Such a person as defined in the draft document will need to have specialised training and also have in depth knowledge with respect to the use of work equipment onboard a ship. It cannot be automatically assumed that an officer will have undergone the necessary training in order to obtain a certificate of competency.</p>	<p>MCA agrees that an officer with a certificate of competency may not necessarily be a "competent person" depending upon the task to be undertaken. It is for this reason that the regulations state that a "Competent Person" means a person possessing the knowledge or experience required for the performance of the duties under the regulations. This recognises that some tasks may be relatively easy and can be undertaken by ship’s personnel whereas others may require more specialist knowledge which can only be provided by</p>
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		specialised companies. It is for the employer to decide who is a competent person for each task required under the regulations. However this has been clarified in the related MGNs
	<p>With reference to Regulation 5, NUMAST is of the opinion that although a ship master has responsibility for safety onboard a ship, ship masters must not be automatically assumed to have control of operational aspects, as such duties are imposed by owners and operators to which a master has little control.</p> <p>NUMAST is concerned that advice provided in the attached draft MGN concerning both regulation 2 and 5 is inadequate</p>	<p>MCA notes what is said however the regulations do not specify that it shall be the master, although it may well be, given the comment that the master has responsibility for safety on board a ship.</p> <p>It is recognised that there may well be several employers with workers on board a ship e.g. manning agencies, concessionaires etc who, whilst required to comply with the regulations, may not have control of the matter to which a particular regulation refers, because they have no responsibility for the operation of the ship. In such circumstances the duties imposed on those persons by the regulations will also fall on the person who has control of that matter which may be the master with his overall responsibility for safety on the ship and/or the ship owner, charterer etc whoever has control of the operation of the ship. The MGN has now been amended to clarify this point.</p>

<u>Honourable Company of Master Mariners</u>	Consider SIs are clearly comprehensive and the MGNs are seen as a particularly helpful reference	
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	<p>tool.</p> <p>One concern is reference in Reg 11(1) of LOLER to a “Rope Sling spliced by a competent person” as this phrase is considered to be unacceptable under some companies’ health & safety regimes</p>	<p>This is a valid point and the Regulations have been accordingly been amended by deleting reference to "Rope Sling".</p>
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<p><u>South Devon & Channel Shellfishermen</u></p>	<p>Consider that all that is necessary is a requirement to provide a safe place of work with equipment which is safe and suitable for the work intended</p>	<p>This would not meet EC implementation requirements and is therefore not acceptable.</p>
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<p><u>Posford Haskoning Ltd – Port Services</u></p>	<p>Sought inclusion in the PUWER Regulations of requirements relating the effect of shipboard lighting on the environment with proposals to minimise its environmental impact.</p>	<p>The Regulations implement an EC worker health & safety directive and are not an appropriate place for regulations covering the environmental impact of shipboard lighting given that any reduction in lighting could jeopardise health & safety.</p>
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<p><u>International Maritime Contractors Association</u></p>	<p>Concerned at restrictions on use of basket for transfer between vessels or between rigs and vessels</p>	<p>Following discussions text of guidance on Regulation 6 in LOLER MGN has been amended to read:-</p> <p><i>"Guidance on the transfer of personnel is contained in the Code of Safe Working Practices for Merchant Seamen and in Safety Notice SN 10/80 produced by the Offshore Safety Division of the Health and Safety Executive. A copy of SN 10/80 is at Annex 2"</i></p>
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<p><u>Scottish Fishing Federation</u></p>	<p>Suggested various drafting changes and additionally suggested that rather than try to adequately explain mechanics of the self employed structure of the fishing industry the following should be adopted:-</p> <ol style="list-style-type: none"> 1. the “owner” be made equivalent to the “employer”. 2. the “skipper” be made equivalent to the “master” and 3. “member of the crew” be made equivalent to the “employee”. 	<p>The Regulations were finalised following discussion at the Fishing Industry Safety Group (FISG), with broad fishing industry agreement to the limited application to the self-employed to reflect employment relationships in the industry.</p>
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<p><u>International Association of Drilling Contractors</u></p>	<p>Initially expressed concern at not being consulted at outset. However having subsequently been provided with a copy of the consultation documents they found nothing they could not live with.</p>	
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SPECIFIC COMMENTS ON DRAFT PROVISION AND USE OF WORK EQUIPMENT REGULATIONS

CHAMBER OF SHIPPING

Regulation	Comment	
2(1)	“employer”...in order to make it clear, as it could relate to an offence, is the Master the employer under the Articles of Agreement or is it the primary employer i.e. the person supplying the crew? The MGN should make it clear to the Master what is meant here.	MGN amended to clarify this.
2(1)	Does “work equipment” include the ship’s main engines? Is it the intention that it should do so?	MCA would not consider the main engines to be “work equipment”.
4(1)(b)	Guidance needs to be provided on this, with examples.	MGN amended to clarify this.
4(2)	Could the words “except as provided for under Regulation 4(1)(a) and (b) be added to the end of this sentence.	By the application of Regulation 4(1) to non-UK ships this is already covered.
6	Use of the words “reasonably foreseeable” do leave the legislation open to different interpretation by legislator (inspector) and operator.	If “reasonably foreseeable” is removed it would require the employer to ensure that work equipment was suitable in every respect which would affect health and safety. This would be much more onerous and could be virtually impossible to achieve.
7(2)	This indicates that where there is a maintenance log, it must be kept up to date. Can we assume that if there is no such log there is also no such requirement?	This interpretation is agreed.
9	What is this regulation trying to achieve? It is poorly written and not understood. It could involve the use of a hammer to a winch. Does it mean a high risk or any risk? If the purpose is to prevent unauthorised persons, or persons who are not competent, from	All equipment ranging from a hammer to a winch could be regarded as work equipment and in inexperienced hands could to varying degrees be hazardous to health. It is the purpose of the risk

	using the equipment, this should be made clearer.	assessment to assess the level of any risk and this regulation requires the employer to take appropriate measures where a specific risk is identified.
12(2)	This section does not make sense and its purpose is unclear.	This has now been amended to clarify the position and bring the provision more in line with HSE's regulations.
15(1)	The prevention of <i>any</i> risk is not achievable. This should be qualified by “so far as reasonably practicable.”	The regulation has been amended to incorporate "so far as is reasonably practicable"
35	I assume that e.g. “17 to 21” means inclusive....but it doesn't say so; and there are others	This accords with normal SI drafting practice and does indeed mean “inclusive”.

PUWER draft MGN

Regulation	Comment	Response
4(1)(b)	Guidance needs to be provided on this, with examples.	This has now been covered in guidance and examples of the types of vessels concerned have been given. Examples of use of work equipment in such circumstances have not been given as much will depend on individual circumstances.

12	2nd paragraph is not clear; we assume that if equipment meets the listed regulations, or has a CE mark then regulations 13 to 36 do not apply. Please clarify.	MGN has been amended.
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SEAFISH

	<p>Inspection 8-(1) The term 'a competent person' has been added. HSE legislation simply refers to inspection. Applies also in 8-(2)</p> <p>8-(1) (b) 'and capable of operating safely' seems superfluous as 'safe to operate' is sufficient.</p>	<p>In the HSE Regulation the definition of “Inspection” actually refers to inspection by a competent person. This is in line with the Directive which also refers to a “competent person”. It would clearly be unsafe to have inspections carried out by persons who were not competent.</p> <p>Agreed. The words "and capable of operating safely" have been deleted from Regulation 8(1)(b)</p>
	<p>Conformity with Community requirements</p> <p>12 No date is given from which work equipment must conform. eg Shore based legislation states 'this regulation applies to items of work equipment provided for use in the premises or undertaking of the employer for the first time after 31st December 1992.'</p>	<p>This is because 31 December 1992 was the compliance date specified in the Directive. As this date is passed work equipment will be required to comply by the date the Regulations come into force but through extensive consultation industry has been aware of these impending requirements for a considerable time.</p>
	<p>Dangerous parts of work equipment</p> <p>13-(1) Fails to consider the circumstance in which guards or protection devices are not possible. Shore based legislation has 'the provision of information, instruction, training and supervision.'</p>	<p>We are required to fully transpose the Directive and, in drafting our Regulations our lawyers have followed closely what is in the Directive. As drafted, the wording of this regulation is in line with the requirements of the</p>

		Directive.
	<p>Electrical Equipment</p> <p>14 - refers to ships electrical equipment and installations. Does this include portable power tools?</p>	<p>In MCA's opinion both mains and battery powered tools, as well as any other tools, will be subject to the general provisions of the Regulations.</p>
	<p>Protection against specific hazards</p> <p>15- This section needs to specify that measures other than the provision of PPE and training etc are to be used as far as is reasonable practicable. (See the shore based legislation.) In the list of specific hazards work equipment being struck by lightning has been included - why? Of particular importance, is asbestos covered by other regulations or should it be here under specific hazards?</p>	<p>The provision relating to lightning is contained in the Directive. Cranes and Derricks, for example, are work equipment and if used in storm conditions could be struck by lightning.</p> <p>So far as asbestos is concerned there is a separate Directive (83/477/EEC) which relates to exposure to Asbestos. While that Directive and the subsequent amending Directive (91/382/EEC) contained derogations relating to sea transport, the latest amending Directive (2003/18/EC), removes the disapplication for sea transport and the requirements regarding asbestos will apply to sea transport from the date the implementing regulations come into effect. Draft regulations to implement the asbestos directives are expected to be finalised shortly.</p> <p>Attention is however drawn to Merchant Shipping Notice M.1428 which sets out current safety measures to be followed in the case of asbestos. It also makes clear that, except in very limited circumstances, use of asbestos is prohibited on any vessel being built for the UK registry.</p>

	<p>Workers carried on mobile work equipment</p> <p>28-(3)(b) ‘protection structure so that work equipment cannot tilt by more than a quarter turn’--- why not say ‘fall on its side’ as per shore based legislation?</p> <p>28-(3)(c) – ‘can tilt further than a quarter turn’ ---- similarly, why not say ‘can overturn further than that’.</p>	<p>Wording has now been amended as proposed.</p>
	<p>Self-propelled work equipment</p> <p>This section would be better directly after section 30</p>	<p>Re-ordered as suggested.</p>
	<p>Onus of proving what is reasonable practicable</p> <p>This is placing the requirement on the fisherman to prove that what he did was reasonable. What is the basis for this, as it does not appear to be the case in the shore based legislation?</p>	<p>This is in line with the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997, which implemented the “Framework Directive”, and subsequent “Health & Safety” regulations implementing EC Directives.</p> <p>The Directives move away from a “prescriptive” system of regulation to a “risk based approach. In the past specific requirements were set down which an employer was required to meet and providing he did so he was in accordance with the regulations. The EC Directives have introduced a risk based system whereby an employer is required to assess the risk to workers and then take appropriate measures to remove or reduce any identified risks. The Directives normally require that risks be alleviated “as far as is possible” however in line with HSE our regulations require that risks be alleviated “as</p>

		far as is <i>reasonably</i> possible” hence the proviso that an employer might have to prove he could reasonably have done no more than he actually did.
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HSE

	<p>Reg 4(1) says that the Regs apply to 'the use of work equipment by workers or by the person mentioned in paragraph (4) on United Kingdom ships...'. But reg 3(9) of PUWER 98 says '...these Regulations shall not impose any obligation in relation to a ship's work equipment (whether that equipment is used on or off the ship)'. Thus, there appears to be a gap in coverage as between the two sets of Regulations, in relation to a ship's work equipment used off the ship.</p>	<p>It is correct that Regulation 4(1) of our PUWER Regulations states that they apply to 'the use of work equipment by workers or by the person mentioned in paragraph (4) on United Kingdom ships...' and that Regulation 3(6) not 3(9) of HSE's PUWER Regulations states:- '...these Regulations shall not impose any obligation in relation to a ship's work equipment (whether that equipment is used on or off the ship)'. However Regulation 3(6) does make this disapplication conditional and subject to the provisions of paragraphs (7) to (10) of those regulations. In addition it seems to MCA that our Regulations go as far as they can as we are limited to applying Regulatory measures to ships</p>
	<p>Reg 4(7) refers to PUWER, but the footnote does not refer to its amendment by the Health and Safety (Miscellaneous Provisions) Regulations 2002/2174. One of the amendments was to regulation 10. I see that reg 12(1) and (2) of the draft follows the unamended wording of reg 10. Reg 11(2) of PUWER was also amended, but it is not reproduced in reg 13 of the draft in any form. I don't know</p>	<p>The regulations have now been amended accordingly. So far as the amendments made by the 2002 Regulations to HSE's PUWER Regulations are concerned, we do not consider that our Regulations require similar changes as we believe our Regulations appropriately implement the Directive</p>

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COMMENTS ON DRAFT LIFTING OPERATIONS AND LIFTING EQUIPMENT REGULATIONS

CHAMBER OF SHIPPING

Regulation	Comment	Response
2(1)	“employer”...in order to make it clear, as it could relate to an offence, is the Master the employer under the Articles of Agreement or is it the primary employer i.e. the person supplying the crew? The MGN should make it clear to the Master what is meant here.	Same response as for the Chamber’s comment on PUWER.
2(1)	“Accessory for lifting” and “Loose gear” should have the same definition to avoid confusion. If they are different then this should be stated.	The definitions are considered appropriate as drafted.
4(2)	Could the words “except as provided for under Regulation 4(1)(a) and (b) be added to the end of this sentence.	Same response as for the Chamber’s comment on PUWER.
4(6)	We are not aware that the Directive excludes fishing vessels so why this regulation?	The Directive does not exclude fishing vessels. However ILO 152 from which these provisions are derived is not applied to FVs hence the disapplication. This will be clarified in the MGN.

5	<p>In PUWER this regulation does not apply to non UK flag vessels but LOLER foreign-flag ships are included. The way that both are worded at the moment allows for prosecution of the employer (possibly not based in the UK) and extended to possibly the master. The whole issue of applicability needs to be clarified.</p>	<p>Provision and use of work equipment on a non-UK ship is primarily a matter for the flag state unless dangerous situations are found by inspectors. Lifting operations and the use of lifting equipment can have a more direct impact on workers (including stevedores) using that equipment, or on other persons in the vicinity of such operations.</p> <p>So far as prosecutions are concerned it is indeed the intention that the employer be covered and where appropriate also the master or any other appropriate person.</p>
8	<p>Guidance suggests that this regulation is applicable to new equipment. Please confirm to what extent this regulation applies to existing permanently installed lifting equipment.</p>	<p>MCA would interpret the wording as only applying to newly positioned or installed, but not necessarily new, equipment.</p>
9(1)(d)	<p>Does this regulation apply to lifeboat / life raft winches?</p>	<p>It is not considered that this regulation will apply to lifeboat/liferaft winches as such equipment should not be used for lifting persons as a matter of course. If however they are to be used for such purposes then clearly they will need to comply with appropriate requirements.</p>
9(1)(e)	<p>Suggest reword to confirm that lifting equipment should not be used for lifting persons unless marked, currently a literal translation would mean that all other equipment would need to be marked “not for lifting persons”.</p>	<p>This point will be covered through guidance.</p>
12(2)	<p>It could be argued that equipment within the engine room (lifting beams etc.) are not ‘exposed’. This would mean that they do not require thorough examination. Please clarify.</p>	<p>It is for the employer to decide in the light of the risk assessments that have been carried out.</p>

12(2)(a)(i)	Clarification on who is responsible for the 'lifting scheme'; the employer or the competent person.	In MCA's opinion responsibility rests primarily on the employer.
13(1)	28 days is too short. It is common for contractors to take up to three months to issue the numerous certificates involved.	This requirement is carried forward from the Merchant Shipping (Hatches and Lifting Plant) Regulations 1988, which are replaced by these regulations. As now, it will be for employers to ensure that contractors meet the 28 day requirement. In most cases it should be possible to provide the certificate at the time of the test.
14	Is there a standard reporting procedure or contact for the competent person to report deficiencies to the MCA ?.	The nearest MCA Marine Office is the appropriate MCA point of contact. Details are available on the MCA web site at www.mcga.gov.uk
16(5)	A "responsible ship's officer" could mean the purser: he is responsible and a ship's officer! It could also refer to any ship's officer on leave who is "responsible".	This is a straight transposition from the Merchant Shipping (Hatches and Lifting Plant) Regulations 1988. It is for the employer to decide who is responsible.
<u>LOLER draft MGN</u>		
Regulation	Comment	
Pgh 3.6	"Shackles, links and rings should be renewed when wear or damage is evident" we suggest that a value be inserted (i.e. 10% wear). As it stands, the equipment should be disposed of as soon as any wear is apparent.	This is for the employer/competent person to decide. We do not consider it appropriate to insert a value as individual circumstances may vary
11	1 st Paragraph; suggest that 25% is deleted. Old regulations had a sliding scale and some equipment is not designed for a 25% overload. When overloading, manufactures guidance on testing should ALWAYS be consulted.	This has now been changed to require testing to be carried out in accordance with an appropriate lifting code or manufacturer's instructions. Reference is also made to a relevant British Standard.

11	3 rd Paragraph; delete last sentence “In service proof load testing is not mandatory but is recommended”. It is not required and would prove costly and time consuming to implement.	This has now been changed to require testing to be carried out in accordance with an appropriate lifting code or manufacturer's instructions. Reference is also made to a relevant British Standard.
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SEAFISH

	‘lifting operation’ has the meaning given in regulation 10(4) -- --- there does not appear to be a regulation 10(4)	This was a typographical omission and has now been rectified.
	<p>Positioning and installation</p> <p>Add persons falling down hatchways. (See shore based legislation that refers to: employers shall ensure that there are suitable devices to prevent a person from falling down a shaft or hoistway.)</p>	<p>The provision relating to persons falling down shafts or hoist ways is not contained in the Use of Work Equipment Directive as that relates solely to the use of work equipment. The Use of Work Equipment Directive, which LOLER/PUWER are implementing, is a daughter Directive of the Framework Directive (which was implemented for seafarers by the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997) and as such it builds on the provisions of the Framework Directive by introducing additional requirements in respect of the use of work equipment. The Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 require employers to carry out risk assessments and take appropriate general measures to safeguard workers on the vessels. We would consider this as including the provision of measures to stop persons falling down shafts or hoist ways.</p>

		There is also a new Directive still to be implemented which amends the UWED Directive so that it covers Temporary Work at Height. In implementing this Directive it is our intention to cover situations whereby a person could fall down an open hatch or hoist way whilst working in proximity to it.
	Testing Why is a rope sling exempt?	The rope sling exemption has now been removed.
	Duty of workers Employees do not have duties under LOLER. They have a duty under the Health and Safety at Work Regulations to comply with the safety measures put in place by the employer.	This is not actually the case; Regulation 17 of LOLER imposes a duty on a worker to make full and proper use of any system of work provided for his use by his employer in compliance with these Regulations.
	Onus of proving what is reasonable practicable As with PUWER, this is placing the requirement on the fisherman to prove that what he did was reasonable. Should the onus be on the regulator to prove that the fisherman did not act reasonably?	See comments on PUWER.

HSE

	The 2002 Regulations amended LOLER 1998 also, and the amendment to the definition of 'accessory for lifting' is relevant. It followed comment by the JCSI.	HSE's comment that the 2002 Regulations amended their LOLER Regulations by amending the definition of 'accessory for lifting' to read:- <i>"accessory for lifting" means lifting equipment for</i>
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		<p><i>attaching loads to machinery for lifting'</i></p> <p>We have now made a similar change to our regulations.</p>
	<p>Regulation 4(1) of the draft is similar to reg 4(1) of the draft MSFV (PUWER). But reg 3(6) of LOLER 98 is similar to reg 3(9) of PUWER 98. So there appears to be a similar gap in coverage.</p>	<p>See the comment in relation to PUWER above.</p>
	<p>Is it intended that, under reg 14(3)(c), a copy of the report is sent to both enforcing authorities, in a case which falls within para (6)(a) and (c)?</p>	<p>So far as Regulation 14(3)(c) of our LOLER Regulations is concerned, MCA's understanding is that a copy of the report would be sent to both enforcing authorities, in a case which falls within para (6)(a) and (c) of that Regulation.</p>

ST TRAINING

	<p>Almost all of the workboats fitted with cranes have ones that are of the "knuckleboom" design. This is where the crane jib is fitted with a second hydraulic knuckle mid-length, enabling the crane to be folded into a "4" configuration for stowage. These generally are derived from lorry loaders and, dependent on the cost of the crane and quality of the supplier, are adapted for marine use. Because of this, it is almost impossible to comply with either the regulations anticipated, or indeed, the suppliers own instruction manuals. I frequently see manuals supplied with new machines starting off with ..."before attempting to lift a load, ensure the vehicle is on firm ground and level"...!! Because of this I would like some reference within the rules to state that the operator should have available written instructions on the safe use of the machine that is relevant to its</p>	<p>MCA notes the comments regarding the types of cranes fitted on work boats and the request that the regulations require an operator to have available written instructions on the safe use of the equipment that are relevant to its safe use afloat. In this context it should be noted that the provisions of the PUWER Regulations apply to all work equipment on vessels, including lifting equipment, and the LOLER Regulations cover additional requirements specifically relating to lifting equipment and lifting operations. So far as the provision and operation of cranes on work boats is concerned Regulation 6 of PUWER requires an employer to ensure that work equipment made available to workers on the ship is suitable for the work to be carried out, or is properly adapted for that purpose, and may be used by workers without impairment to their</p>
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	<p>operation afloat.</p>	<p>health or safety. Additionally in selecting work equipment, every employer is required to have regard to the working conditions and characteristics and to the risks to the health and safety of workers which exist in the particular ship where that equipment is to be used and any additional risk posed by the use of that work equipment. The employer must also ensure that work equipment is used only for operations, and under conditions, for which it is suitable which means suitable in any respect which it is reasonably foreseeable will affect the health and safety of any worker. It follows from this that any lifting equipment provided must be suitable for the intended use and be safe to use.</p> <p>So far as instructions on the use of equipment is concerned Regulation 10 of PUWER requires an employer to ensure that workers and supervisors have, where appropriate, written instructions pertaining to the use of work equipment including the conditions in which, and the methods by which, the work equipment may be used; foreseeable abnormal situations and the actions to be taken if such a situation were to occur; and any conclusions to be drawn from experience in using the work equipment. In addition Regulation 10 requires an employer to ensure that all workers and supervisors who use work equipment have received adequate training for the purposes of health and safety, including training in the methods which may be adopted when using the work equipment, any risks which such use may entail and precautions to be taken. These provisions would seem to MCA to address the concerns raised.</p>

	<p>Regulation 9(1)(c) requires the fitting of a radius indicator able to be seen by the operator. Generally, with the knuckleboom configuration, this is impossible to achieve. On shore based single jibbed cranes this is easy, with a pendulum attached to the side of the jib, and an arrow pointing to the relevant load limit at that radius. The articulating nature of the knuckleboom means that radius is not a feature of the first boom angle. Some more sophisticated models do have computerised load indicators, but in a small vessel frequently doused in salt water, such things fail rapidly. More work needs to be done on this section.</p>	<p>The comment on Regulation 9(1)(c) of the draft LOLER regulations, relating to the provision radius indicators, is noted. This is not a new proposal but is a straight transposition of Regulation 9(1) of the Hatches and Lifting Plant Regulations and has therefore been a legal requirement since 1 January 1989. In the circumstances, and given the provisions of Regulation 6 of PUWER and noting that no previous comments have been raised on this provision, there seem no grounds for changing this requirement.</p>
	<p>Regulation 9 (f) states "...where lifting operations are take place in the open air..." I believe this should read "where lifting operations are taking place afloat, they are to be halted where meteorological and sea conditions deteriorate...". The dangers of a lifting operation in bad weather in an engine room can be equal to that experienced on deck.</p>	<p>The point that lifting equipment inside the ship can also be affected by meteorological conditions is a valid one and has now been reflected in the regulations by removal of the reference to "open air".</p>