

PSCircular 97

17 DECEMBER 2020

TEMPORARY GUIDANCE RELATED TO COVID-19 FOR PORT STATE CONTROL AUTHORITIES (REV.5)

Introduction

- 1 MAB has considered and agreed that, noting the global impact of COVID-19, there was a need to apply flexibility under these special circumstances. In Paris MoU member States, national measures are implemented which are to a large extent affecting the port State control regime. However, as the lock-down is being progressively lifted it is important that a common approach is adopted to resumption of inspection activities, not withstanding any possible national measures, and in view of the continued effects of the COVID-19 crisis, as a general principle the following guidelines should be applied on a case by case basis by the relevant port State control authority.
- 2 This guidance focusses on the effect of the COVID-19 crisis on the Paris MoU in relation to:
 - preventive measure to halt the spread of COVID-19
 - ship certification issues and COVID-19
 - crew related issues and COVID-19
- 3 A summary of relevant publications can be found on a dedicated COVID-19 page of the Paris MoU website: <https://www.parismou.org/publications-category/covid-19>

Preventive measure to halt the spread of COVID-19

- 4 PSCOs should be guided by the preventive measures adopted by their Maritime Administrations, including the use of appropriate personal protective equipment in order to protect themselves as well as the ship's crew. During the COVID-19 crisis MAB has noted that some Paris MoU member States continued with PSC inspections and that others have resumed or are planning to re-commence their inspections. During this period a number of P1 (and P2) ships may not have been inspected. As a result of this some Port States may decide to focus on P1 overriding priority inspections and P1 inspections with outstanding deficiencies.
- 5 Whether an inspection takes place remains the decision of the port State. A vessel can be considered self-isolating only if there are no ship-shore interfaces.

Ship Certification Issues and COVID-19

- 6 In relation to the COVID-19 situation, it may occur that a ship cannot fulfill the requirements from the Relevant Instruments or the follow-up on inspection results as would normally be required. As a basic principle the primary responsibility regarding compliance with the Conventions remains with the owner and flag State. However in the case where the owner and flag State have demonstrated to take that

responsibility, but due to the current situation cannot carry out those duties that normally would be required, the Paris MoU should adopt a pragmatic approach and also be flexible as this is a rapidly developing situation.

- 7 Interval of surveys and audits required by Conventions
In the event that a ship has not complied with the requirements of the surveys, inspections and audits contained in the relevant convention requirements (e.g. SOLAS Chapter I Regulation 7-10 and 14, etc.), the ship must provide evidence to the port State that the flag State has agreed to an exceptional delay specific to COVID-19. Further guidance regarding the extension of the interval of surveys and audits can be found in IMO Circular Letter No.4204/Add.19 – “Guidance for flag States regarding surveys and renewals of certificates during the COVID-19 pandemic”.
- 8 Duration of statutory certificates
Giving consideration that an exceptional extension of validity of certificates specific to COVID-19 would be inevitable for certain ships, the flag State or RO, acting on behalf of the flag State, may extend the validity of certificates to an appropriate and proportional grace period specific to COVID-19. Further guidance regarding the extension of validity of certificates can be found in IMO Circular Letter No.4204/Add.19.
- 9 Installation of Ballast Water Management System
In the event that a ship cannot meet the requirements of Regulation B-3 of the Ballast Water Management Convention (ballast water management instead of ballast water exchange) due to delay of dry-docking caused by disruption from COVID-19, the port State should seek confirmation that the flag State has agreed to an exceptional delay specific to COVID-19. There should also be evidence that the ship has a plan that covers how the ship will comply with the requirements of Regulation B-3 of BWM.
- 10 Where, under par. 7 to 9, the required evidence from the flag State is missing, the ship should be treated in the normal manner as per the Paris MoU procedures. This also applies to any vessel operating beyond any indicated grace period.
- 11 The pragmatic relaxation of requirements, which may include the acceptance of copies of certificates of which the validity can be verified, should be applied by port States on ships which have not exceeded the requirements by the appropriate and proportional grace period specific to COVID-19, unless it is evident that the COVID-19 pandemic is used as an excuse to breach the Convention requirements.

Crew related issues and COVID-19

- 12 MLC 2006
Following the outbreak of the pandemic, MAB considered that there was a need to apply flexibility in the region under the circumstances on the issue of extending periods of service on board ships. As several months have passed since the start of the pandemic, reports indicate almost 400,000 seafarers long overdue for repatriation and stranded on board ships around the world and crew changes are still difficult to carry out in a number of port States. Issues of fatigue and mental health of seafarers may have deteriorated to a point that they may endanger health and safety. Although local lockdowns in port States could still be considered necessary by national authorities in specific cases, with respect to MLC issues, specifically on overdue periods of service on board, the Paris MoU will work towards more stringent adherence to the fundamental requirements of MLC, 2006.
- 13 With respect to the issue of application of flexibility, if appropriate, the port State should be provided by the MLC shipowner of the ship with confirmation that the flag State, the relevant crew members and relevant seafarer organisations (if applicable) have been involved in the process of extending contracts, as well as other issues that have an impact on the rights of seafarers as set out in the MLC. Furthermore, where

there are clear grounds to believe that crew members are suffering from fatigue or otherwise not fit for duty, the port State should require appropriate corrective action and consider to inform the flag State.

Further guidance regarding what the port State should look at in case of non-compliance with MLC due to COVID-19, could be found in ILO's "Information note on maritime labour issues and coronavirus (COVID-19) – revised version 2.0": https://www.ilo.org/global/standards/maritime-labour-convention/WCMS_741024/lang--en/index.htm

The Information Note does not specify a maximum extension of the period of service on board, however highlights that the extension of the period of service on board beyond the default 11 months should be authorized only on a case-by-case basis and when strictly necessary to face the emergency situation created by the pandemic and only with the seafarer's consent. Even though many ship-owners do not notify their flag State of overdue crew, flag States remain responsible for enforcing compliance with the MLC. Port States are therefore urged, in applying the ILO's guidance, to specifically require written evidence of the flag State's authorization for each vessel including (a list of) individual seafarers performing any period of service on board beyond the default 11 months. It is recalled that, in any way, a valid seafarers' employment agreement must remain in force until the seafarer is duly repatriated in accordance with Regulation 2.5 of the MLC, 2006. If repatriation is not possible through scheduled ports of call, the possibility to divert the ship to a port where repatriation is possible should be taken into account. Circumstances rendering repatriation more difficult or burdensome do not constitute a case of force majeure.

- 14 In view of the large number of seafarers long overdue for repatriation, port States are urged to apply an enhanced focus on MLC issues and in particular SEAs, irrelevant of the inspection type. If deviations are found, in particular regarding repatriation and/or crew rotations for any crew who have been on board beyond the default 11 months, the port State should, in line with MLC requirements and guidelines for port State control, request a rectification plan, approved by the flag State, that covers how variations to the Maritime Labour Convention (MLC) requirements are being managed, and includes possibilities of repatriation at next ports of call. In addition, in such cases, the port State should notify the port State control authorities in upcoming ports of call of the agreed plan and consider entering an appropriate ship-related message in THETIS. Any crewmember who has already spent more than the default 11 months on board should be prioritised for repatriation. A vessel should be treated in the normal manner where an SEA is expired.
- 15 STCW Certification
MAB has considered cases where seafarers have faced issues with completing refresher courses for the renewal of personal certification. This could be caused by cancelled courses, quarantine or travel bans. In such cases the maritime administration may have extended the validity of such certificates and this should be accepted as a case of force majeure. For foreign certificates if the flag administration has granted an extension due to force majeure then this should be accepted as similarly extending the endorsement of the flag state of the ship on which the seafarer is serving.
- 16 Medical Certificates
In cases where it has been difficult for seafarers to extend their medical certificate the flag administration may allow seafarers to remain on-board. PSCO should accept documents produced by flag States which acknowledges seafarers extended stay on board due to force majeure associated with COVID-19.
- 17 Rectification and follow-up on inspection reports
In relation to the rectification of recorded or outstanding deficiencies, guidance should be taken from PSCC Instruction 50/2017/11 - Guidance on Detention and Action Taken (including e.g. AT code 48 - as in the agreed flag State condition) and PSCC43-

2010-11 - Flag State exemptions. In case a ship is detained on ISM, but no external audit can be organised, despite best efforts by the company and flag State (which may include temporarily authorization of another RO), the ship may be allowed to proceed to the next port to carry out the external audit. In order to use AT code 48 in combination with ISM deficiency 15150, a ticket with a justification has to be send to thetis@emsa.europa.eu to activate the possibility in THETIS. Consequently, the guidance regarding the use of AT code 48 should then be applied.

Review of the guidance

- 18 This PSCircular will be reviewed, as appropriate, to keep aligned with developments of the COVID-19 virus and future initiatives by relevant stakeholders.

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