

Meeting notes: Barriers to cabotage following the end of the transition period

28 October 2020, 12:00 – 13:30 via Microsoft Teams

1. Update on UK-EU negotiations and UK-EFTA negotiations (Policy lead: Jevgeni Koltsov, DfT)

Cabotage services are part of the EU internal market under the EU's cabotage regulations and are not being negotiated in the UK-EU Comprehensive Free Trade Agreement (CFTA).

Negotiations with EEA-EFTA States (Norway, Iceland and Lichtenstein) on maritime transport will continue into 2021. We expect this to have low impact on the cabotage sector as Norway and Iceland confirmed that they do not have any market access restrictions for cabotage.

2. Market access for cabotage post transition period (Policy lead: Jevgeni Koltsov, DfT)

At the end of the transition period, EU law will cease to apply and UK ships will lose guaranteed cabotage rights in EEA countries as they will be treated as ships of a 'third country'.

Based on the information we received from stakeholders and our review of domestic rules for cabotage in EEA States, we understand that the countries that are of particular interest to UK operators (Germany, Netherlands, Denmark, Belgium and France) do not have market access restrictions for non-EEA vessels. However, we have also identified some EEA States that do: Spain, Portugal and Lithuania.

MCA is engaging with flag administrations to reduce technical (as opposed to legal) barriers to cabotage, while we are considering options to seek assurances from those countries that they do not have market access restrictions for cabotage and that they do not have plans to introduce any. We are also considering options for addressing existing market access restrictions; however, to prepare for the end of transition, UK businesses should familiarise themselves with the cabotage rules for non-EEA ships in the States in which they operate.

3. Recognition of UK seafarer qualifications for near coastal operations (Policy lead: Ajit Jacob, MCA)

We are seeking recognition of two Near Coastal certificates: Officer of the Watch (OOW) less than 500 GT, near-coastal area, STCW Convention regulation II/3; and Master less than 500 GT, near-coastal area, STCW Convention regulation II/3 with Germany, Denmark, Netherlands, Belgium and France.

There is already an undertaking with Germany to accept the Near Coastal certificates and the MCA are confirming that this is still valid. France have advised that they will not engage at this stage, but only after the end of the UK-EU CFTA negotiations.

Q1: What are the chances of an agreement being reached so that there is no interruption of recognition of the British certificates of competencies by the EU MS?

A: We have committed to allowing seafarers with EU certificates to work in our waters after the Transition Period (TP). We are reaching out to flag administrations as a preventive measure to seek certainty that the existing arrangements continue.

Q2: Most of our seafarers use Article IX licenses: where does that sit, especially in Poland as we have operations there?

A: It is entirely up to each flag administration whether they recognise Article IX qualifications. Unfortunately, there is nothing in STCW that requires other States to recognise Article IX certificates. Although none of the administrations have informed us that they will not be accepting UK's Article IX certificates, our advice remains that operators should check with the relevant authorities where they are operating.

Q3: Should our members contact the MCA if there is any restriction that may apply to them in any EU country after TP?

A: Yes, and please let us know if any flag administration advises that they will stop recognising UK seafarer certificates, as that will give us a sense of the number of seafarers that are affected and would enable us to act on it and if needed, escalate it through the right channels.

Q4: What could we do if we find ourselves detained because a flag administration may decide to stop recognising Article IX certificates overnight from 1 January?

A: Flag administrations can decide to stop recognising Article IX certificates, if they want to. If they give a detention based on that, the UK would not have legal grounds to challenge that. As a precautionary measure, operators should check with the local authority in a foreign State regarding acceptance of UK's Article IX certificates. Policy leads will raise these concerns with the MCA Port State team – Technical Performance branch to seek additional guidance

4. Recognition of technical standards regarding Workboat and High Speed Offshore Service codes (Policy lead: Gwilym Stone, MCA)

The recognition of workboat codes sits outside of the EU framework, so our departure from the EU does not have any direct impact on the acceptance of these codes for the UK.

We are working to obtain recognition of the UK High Speed Offshore Service code with flag administrations in Germany, Netherlands and Belgium.

Q5: Will there be any change to the Paris MoU? We want to avoid unnecessary Port State Inspections.

A: There are no relevant changes to procedures within the Paris MoU following the end of TP, as that is separate from the EU. If there was any unequal treatment emerging, we would address that with the relevant flag administration.

Q6: Do the same rules apply for UK dependencies? Vessels flagged in Gibraltar or Jersey for example.

A: As for the status of vessels flagged with OT/CDs, except Gibraltar, they did not have an 'EU Status' in any case and they may need to seek recognition of their own codes separately.

5. Update on immigration rules for cabotage in UK waters (Policy lead: John Cousley, DfT)

The Equality Act regulations will continue to apply. They are subject to review in 2021, so there may be some changes around the EU/EEA status and designated status following the end of the TP.

In the UK, work permit requirements after 1 January 2021 will be determined by the nationality of the individual and are unaffected by the flag of the vessel on which they work. From 1 January 2021, all foreign nationals, with the exception of Irish nationals, will require a work permit if they will be working onboard a vessel conducting operations prevalently within UK territorial waters. Irish citizens will continue to be able to work in the UK without requiring any additional documentation.

There will be a specific permit applicable to EU, EEA and Swiss citizens (but not required for Irish citizens) who are employed or self-employed in the UK but live elsewhere by 31 December 2020, called the Frontier Worker Permit. If an individual is not frontier working in the UK by 31 December 2020 but has been in a frontier worker role previously, they may also be eligible however, they would need to meet certain criteria. Operators should check the requirements for the Frontier Worker Permit to understand whether their workforce is eligible.

Further guidance on the Frontier Worker Permit is available at <https://www.gov.uk/guidance/frontier-workers-in-the-uk-rights-and-status>. Information on work permits, including their application to workers not working in the UK on a permanent basis, is available at <https://www.gov.uk/guidance/employing-eu-citizens-in-the-uk>.

A short-work permit may also be made available, if the seafarer will only be working in UK territorial waters for a few weeks, but this is still in progress with Home Office.

There is a guidance published by the Home Office from July 2014, amended last year (https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/918909/seamen-v2.0-ext.pdf), which gives examples of when a work permit is required.

Q7: Is there any requirement for new States who have an agreement with the EU to acquire designated status under the Equality Act after 1 January 2021?

A: Currently, there is no requirement for new States to be added to the designated States status.

Q8: Will any EU national seeking to work in the UK require a work permit?

A: That will depend on how much of the work is in the UK. This should not apply to seafarers on international ferries as they go in and out of UK territorial waters. If they conduct the majority of their work in UK territorial waters, they will require a work permit.

Q9: EU flagged vessels operating in EU waters had to employ EU seafarers. Will UK vessels be able to employ seafarers from outside the EU (e.g. from Ukraine) after TP?

A: This restriction should no longer apply from 1 January, provided the visa requirement is satisfied.

Q10: Can we continue to employ EU seafarers through agencies? We currently have Dutch and Bulgarian seafarers onboard our vessels: some of them work internationally, while others work prevalently in the UK. Will they need a work permit?

A: They will need a work permit if they work prevalently in UK territorial waters, even if you don't employ them directly. It is essential that the agency becomes a sponsoring body. The process for this through the Home Office may take 8 weeks. Agencies should register now to avoid delays.

Q11: How long will it take to obtain a work permit?

A: Process takes between 10 and 15 working days, however, this should be confirmed by the Home Office.

6. AOB

Stakeholders flagged that most repair and maintenance equipment comes from the EU and asked whether this will have to go through customs checks or will be considered as ship stores.

Stakeholders highlighted that, if they cannot get repairs done, they could lose out on work and that this is going to have a big impact on the offshore sector. JK highlighted that we have raised these specific questions with HMRC and will get back to KF as soon as possible.

Stakeholders flagged that the UK does not have a sufficient workforce to service the offshore industry and therefore there should be some special consideration for this sector. JC responded that we understand that the requirements for the offshore sector are different and that discussions with the Home Office are ongoing.

JK asked whether anyone had concerns about market access restrictions for non-EEA countries, particularly in Spain, and no one raised concerns and KF said it was not an issue.

Action	Update
AP1: DfT to share notes from this workshop with KF.	Complete.
AP2: MCA to compile a list of countries that recognise UK workboat codes and share with KF.	
AP3: DfT to escalate the concerns about customs procedures for spare parts to HMRC.	Complete.
AP4: JC to confirm how long the EU crew members can continue to use their passports to undertake work in the UK.	
AP5: MCA to contact the Port State team – Technical Performance branch about the possibility that a vessel is detained from 1 January due to a EU flag administration no longer recognising CoCs.	