

Interim Guidance to UK Flagged Shipping on the Use of Armed Guards to Defend Against the Threat of Piracy in Exceptional Circumstances

Version 1.1

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NOTE - Version 1.1

The "Interim Guidance to UK Flagged Shipping on the Use of Armed Guards to Defend Against the Threat of Piracy in Exceptional Circumstances" was first published on 6 December 2012.

On 5 January, the Foreign Affairs Committee (FAC) published its Tenth Report of Session 2010-12: "Piracy off the coast of Somalia"¹. This included a recommendation to Government to provide further guidance on the use of force.

In its response to the FAC, the Government committed to clarify what the UK law says on the use of force².

In this version (1.1), section 5 (The Master's Authority; and command and control) and section 8 (Defending against a pirate attack) have been updated.

¹ The Tenth Report from the Foreign Affairs Committee of Session 2010-12: Piracy off the coast of Somalia is available online at: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/foreign-affairs-committee/publications/>

² The response of the Secretary of State for Foreign and Commonwealth Affairs, to the FAC report is available online at: <http://www.fco.gov.uk/en/publications-and-documents/publications1/fac-response/session-2012>

Summary

This guidance sets out:

- The Government's policy on the use of armed guards onboard UK ships;
- The exceptional circumstances under which the shipping company may consider the use of armed guards;
- The importance of conducting a full risk assessment before taking a decision to use armed guards, and the factors that should be included in such a risk assessment;
- The process that the shipping company should go through to satisfy themselves as to the reputability and suitability of a private security company (PSC), before contracting them to provide armed security services;
- Factors that should be considered and included in the contract between the shipping company and the PSC;
- Advice on deciding upon the size and composition of the security team, and the firearms and other security related equipment that the security team have available to effectively and lawfully defend the ship from pirate attack;
- Command and control of the security team, including the Master's authority;
- The storage, handling and movement of firearms;
- Producing a counter-piracy plan, and providing DfT with a copy.
- Registration with the appropriate organisations who monitor regional pirate activity in, and vessel transit routes across, the high risk area;
- What to do when under attack, including guidance on developing rules on the use of force;
- What to do following an incident.

Glossary

Acronyms

BMP: Best Management Practices

DfT: The Department for Transport

ECO: Export Control Organisation

HRA: High Risk Area

IMB: International Maritime Bureau

IMO: International Maritime Organisation

MCA: Maritime and Coastguard Agency

MSCHOA: Maritime Security Centre (Horn of Africa)

PSC: Private Security Company

UKMTO: The United Kingdom Maritime Trade Operations office in Dubai

Terms

“High Risk Area” (HRA) means the area at high risk of piracy which is bounded by Suez and the Straights of Hormuz to the North, 10°S and 78°E.

“Military and paramilitary equipment” refers to items included in schedule 2 of The Export Control Order 2008.

“Private security company” (PSC) means a private company who provides armed (and unarmed) onboard security services to the maritime sector, for protection against acts of piracy. The International Maritime Organisation uses the term Private Maritime Security Companies.

“Prohibited firearms” means firearms which are prohibited under section 5 of the Firearms Act 1968 (as amended).

1. Introduction

The piracy threat

- 1.2** Somali piracy continues to threaten ships and their crews. The success of military operations in the Gulf of Aden has pushed the piracy problem out into the wider Indian Ocean. The scale of the pirate operating area can preclude an international military response in sufficient time to prevent a successful seizure.
- 1.3** The advice included in the industry developed “Best Management Practices” (BMP) plays an essential part in a ship’s defence against piracy.³ However, it has been seen that BMP alone is not always enough to effectively protect ships and their crews. The use of armed guards, as an additional layer of protection on top of BMP, has been shown to be a very effective means of defending ships from pirate attack.

The use of armed guards onboard UK flagged ships

- 1.4** The government recognises that the engagement of armed guards is an option to protect human life onboard UK registered ships from the threat of piracy, but only in exceptional circumstances and where it is lawful to do so. The exceptional circumstances for which this policy applies are defined below.
- 1.5** This policy only applies to internationally trading passenger ships and cargo ships of 500 gross tonnage and above.

Exceptional circumstances

- 1.6** The exceptional circumstances under which armed guards may be employed for use onboard UK flagged ships are:

³ BMP is available online at:
[http://www.mschoa.org/bmp3/Documents/BMP4%20low%20resolution%20\(3\).pdf](http://www.mschoa.org/bmp3/Documents/BMP4%20low%20resolution%20(3).pdf)

- when the ship is transiting the high seas throughout the High Risk Area (HRA) (an area bounded by Suez and the Straights of Hormuz to the North, 10°S and 78°E); AND
- the latest BMP is being followed fully but, on its own, is not deemed by the shipping company and the ship's master as sufficient to protect against acts of piracy; AND
- the use of armed guards is assessed to reduce the risk to the lives and well being of those onboard the ship.

1.7 The Government will continuously review these exceptional circumstances and inform the shipping industry if they change.

Private security companies

1.8 The Government does not currently recognise an accreditation process for PSCs operating in the maritime sector. Shipping companies must, therefore, be extra vigilant in selecting an appropriate PSC to provide armed security onboard their ships; and follow the advice included in this guidance.

Other supporting guidance

1.9 This guidance should be read alongside:

- The Department for Transport's Guidance to UK Flagged Shipping on Measures to Counter Piracy, Armed Robbery and other Acts of Violence against Merchant Shipping
<http://www.dft.gov.uk/publications/measures-to-counter-piracy>;
- International Maritime Organisation (IMO) Circular MSC.1/Circ.1405/Rev.1;
- Best Management Practices for Protection against Somali Based Piracy (BMP).

2. Risk assessment

Preliminary voyage risk assessment

- 2.1** Before planning any voyage into the HRA, it is essential for the shipping company to have undertaken a formal risk assessment and to make a judgement as to the necessity of the voyage.
- 2.2** Factors that need to inform the risk assessment include, but are not necessarily limited to:
- The threat of piracy attack based on the latest information from UK Maritime Trade Organisation in Dubai (UKMTO), Maritime Security Centre, Horn of Africa (MSCHOA), and the International Maritime Bureau (IMB);
 - The ship's proposed route;
 - The vulnerability of the ship and those onboard (factors to consider here include; vessel class and size, freeboard, speed, manoeuvrability, sea state, self protection measures including BMP, citadel etc);
 - The ship's cargo.
- 2.3** This is not an exhaustive list, and shipping companies may identify other factors that they need to consider.

Further mitigation measures

- 2.4** If the risk assessment shows there to be a significant risk to the ship and its crew from piracy, the shipping company should consider what other mitigation measures it can implement. Measures may include:
- Avoiding the HRA by choosing an alternative route;
 - Confirming that all BMP ship protection measures are being followed;
 - Engaging additional unarmed security personnel.
- 2.5** Reducing the ship's vulnerability by ensuring all BMP measures are being followed must be included in the risk assessment. Only if the risk

assessment still shows there to be a significant risk to the ship and its crew, should consideration be given to the use of armed guards.

Armed guards risk assessment

- 2.6** Before taking a final decision to engage armed guards, the shipping company must also assess the risks associated with their use. The risk assessment needs to assess whether the perceived benefits of engaging armed guards substantially outweigh the risks associated with their use.
- 2.7** Factors that need to inform this include, but are not necessarily limited to:
- The residual risk of being pirated;
 - The life saving capabilities of the ship and the ship's safety certificate;
 - Facilities for the safe storage of firearms onboard the ship;
 - The potential for, and measures to mitigate, the misuse of firearms resulting in bodily injury or death;
 - The potential for, and measures to mitigate, unforeseen accidents;
 - The potential for, and measures to mitigate, armed guards escalating a piracy incident;
 - Liability issues;
 - Measures to ensure compliance with international and national laws.
- 2.8** This is not an exhaustive list. Shipping companies may identify other factors that they need to consider.
- 2.9** Where the risk assessment identifies the use of armed guards as an appropriate extra layer of self protection, it should also inform the decision on the minimum size of security team required to effectively and safely protect the ship (see section 4).
- 2.10** If the risk assessment identifies armed guards as an appropriate extra layer of self protection (in addition to BMP), this must be set out in a counter-piracy plan. A current copy of this plan should be submitted to DfT.
- 2.11** Details of the information to be included in the counter-piracy plan are included in Annex 1.

3. Selection of a Private Security Company (PSC)

The Government does not currently recognise an accreditation process for PSCs operating in the maritime sector. Shipping companies must, therefore, be extra vigilant in selecting an appropriate PSC to provide armed security onboard their ships.

General checks

- 3.1** As with any other type of contractor, it is important to undertake appropriate due diligence which normally includes investigation and enquiries in relation to:
- Company structure and place of registration;
 - Company ownership;
 - Financial position (e.g. annual accounts/bank references);
 - Extent of insurance cover (in particular covering third-party risks);
 - Senior management experience; and
 - Quality management indicators – e.g. ISO accreditation.

Specific checks

- 3.2** To assess the suitability and capability of the PSC to provide the specialised service of protecting a ship from pirate attack, the shipping company should satisfy itself that that the PSC has:
- Relevant and recent maritime (as opposed to land-based) experience;
 - Testimonials/references from previous clients in the maritime industry;

- An accurate understanding of the local piracy threat and the means to maintain an up-to-date understanding; and an awareness of the international military response to piracy in the area;
- A full understanding of BMP and ship protection measures;
- Written procedures on management including team-leading skills, chain of authority, change in command (in the event, for example, of incapacity of the team leader);
- A system in place to ensure continued suitability of their personnel for employment as armed guards (see paragraph 3.6);
- Access to competent maritime legal advice on a 24/7 basis, given the imprecise position of armed guards under various national jurisdictions and international law;
- Appropriate insurance cover;
- An understanding of port State and coastal State laws and requirements with respect to the possession, carriage, and movement of firearms, ammunition and other security related equipment (such as body armour, night vision/thermal imaging equipment etc);
- An understanding of the UK's laws and requirements with respect to the possession, carriage, and movement of firearms, ammunition and other military and paramilitary equipment⁴, and possession of the relevant licences and authorisations (see below);
- An understanding of post incident procedures to support UK Police and the Crown Prosecution Service, should a formal investigation be required;

3.3 In satisfying itself that the PSC has a full understanding of, and fully complies with, UK laws and requirements with respect to the possession, carriage, and movement of firearms, ammunition and other military and paramilitary equipment, the PSC should provide the shipping company with proof of relevant UK licences and authorisations.

3.4 In the case of firearms which are subject to a general prohibition in the UK under section 5 of the Firearms Act 1968, the owner of the PSC must be able to provide a section 5 authorisation from the Secretary of State, together with either evidence of being a registered firearms dealer; or separate firearms certificates for each of the armed guards.

3.5 If the PSC is a British company, they will require valid UK export and / or UK trade licences authorising the lawful transit of firearms, ammunition,

⁴ Military and paramilitary equipment means items included in schedule 2 of The Export Control Order 2008 (<http://www.legislation.gov.uk/ukxi/2008/3231/schedule/2/made>)

and other military and paramilitary equipment. The shipping company should also consult the Export Control Organisation to determine whether they require export and / or trade licences as well. Further information on UK export and trade controls is contained in section 6.

Individual armed guards

3.6 As set out in paragraph 3.2, the shipping company should be able to satisfy itself that the PSC they select has a system in place to ensure continued suitability of their personnel for employment as armed guards. In particular, the shipping company should be satisfied that the PSC's armed guards undergo:

- police background checks;
- history of employment checks (as evidence of relevant experience, including in the use of firearms);
- relevant and up-to-date training (see paragraph 3.9);
- seafarer medical fitness checks (ENG1 or other national equivalent accepted on the ships on which they will be working);⁵
- additional medical and mental fitness checks to prove their suitability to work as armed guards (including confirmation that they have not been discharged from the armed forces, the police force, or any previous PSC on medical or psychological grounds);

3.7 To satisfy themselves of these checks, the shipping company may request evidence for each of the armed guards that are to make up the security team.

3.8 Before the security team embarks, the shipping company may also request personal details of each of the armed guards (for example, copies of passports etc), and information regarding any prescribed medication which any of the armed guards may take and which may inhibit their ability to undertake particular duties safely and effectively, and/or prescribed medication on which they are dependent.

Training of personnel

⁵ The ENG 1 medical certificate will not confirm fitness for work as a security guard. The certificate will only indicate whether they are able to work at sea - in the case of armed guards, as someone who does not have deck, engineering or catering duties. Employers should obtain confirmation that recruits have the capabilities required to meet the job requirements of a security guard. This will only be provided by an MCA Approved Doctor if they provide information on the required capabilities and contract with the doctor to provide an additional assessment.

- 3.9** The shipping company should expect the armed security personnel to have the following training as a minimum:
- STCW 78, as amended, Reg. VI/1 Section A-VI/1.2.1 - Personal Survival Techniques;
 - STCW 78, as amended, Reg. VI/1 Section A-VI/1.2.4 - Personal Safety and Social Responsibilities;
 - STCW 78, as amended, Reg. VI/6 Section A-VI/6 para 6 to 8 - Designated Security Duties;
 - Training in, and a complete understanding of, the agreed rules of the use of force;
 - Relevant medical training;
 - Training and extensive recent experience of operating the specific firearms and other security-related equipment that will be used on the voyage;
 - Training in BMP and protecting ships from acts of piracy.
- 3.10** Once the security team is embarked, the ship's Master should arrange for the team to undergo onboard familiarisation training. This should include briefing on the ship's cargo and trading route, and the ship protection measures that have already been implemented.

Contractual agreements

- 3.11** In addition to the usual features of a contractual agreement, the contract between the shipping company and PSC should include:
- A clearly defined command and control structure which confirms the Master's authority over the operation of the ship and the safety and security of its passengers, cargoes and crew;
 - An agreement that armed guards are onboard the ship as supernumerary crew under the control of the master;
 - An agreed process for a transparent, timely and cooperative information flow between the ships master and the security team leader on board.
 - A requirement that armed security personnel become fully aware of the physical layout of the vessel that is to travel through the High Risk Area;
 - A requirement for the security team to brief the ships crew on the work and tactics that they employ;

- An agreement to carry out periodic training and drills whilst the vessel is in transit;
- A requirement on the PSC to the release of all firearm identification serial numbers and details of ammunition so that it can be recorded in the firearms log;
- A clearly documented set of vessel and voyage-specific governance procedures, inter alia, covering the rules of use of force, procedures for handling and storing firearms, and procedures for record keeping; and
- A documented list of duties, expected conduct, behaviour, and documentation of private security personnel actions on board;
- A requirement that, for the duration of the voyage, armed guards will not drink alcohol, take drugs, or participate in any other activity which is likely to impact negatively on their ability to carry out their role safely and effectively.

Insurance

Shipping company insurance cover

3.12 Liabilities, losses and expenses arising from the deployment of armed guards may impact on the shipping company's property and liability insurance cover. Shipping companies are strongly recommended to consult with their insurers prior to contracting with and embarking private armed security to assess the potential impact on their insurance cover, particularly as it relates to armed engagements and liability insurance held by the PSC. The ship owner should be confident that the agreed rules of use of force do not prejudice or potentially prejudice the ship owners' insurance cover.

PSC insurance cover

3.13 The ship owner should verify that the PSC holds suitable insurance cover for themselves, their personnel and third-party liability cover. The PSC should provide evidence that they hold and will maintain for the duration of the contract:

- public and employers liability insurance cover to an appropriate level and as required by the ship owner; and
- personal accident, medical expenses, hospitalization and repatriation insurance.

- 3.14** The PSC should insure its personnel to carry and use firearms on the high seas and territorial sea(s), for accident, injury and damage arising from the use of firearms and liability for any claim that might arise from the carriage and the use of firearms.
- 3.15** It is vital that ship owners, charterers and underwriters review all provisions in their charters and policies, and ensure adequate attention is paid to the questions raised.

4. Security Team Size, Composition and Equipment

Where the use of armed security has been deemed necessary as concluded by the risk assessment, and a suitable PSC has been selected, careful consideration must be given to the size and composition of the security team, and the types of firearms, ammunition, and other security related equipment they will require, to effectively and safely protect the ship from pirate attack.

Size and composition of the security team

- 4.1** There is no universal minimum size of security team which is suitable to effectively and safely defend any vessel on any voyage through the HRA. This will vary depending on a number of factors. Indeed, in some cases an armed security team may not be necessary at all (see section 2).
- 4.2** Deciding upon the required minimum size of the security team for a particular vessel and voyage should be a collaborative decision between the shipping company, ship's Master, and the PSC. This decision should be informed by the factors included in, and the outcome of, the risk assessment (see section 2). Consideration should also be given to the need to plan for contingency – for example, the risk of personnel unexpectedly falling ill or being injured.
- 4.3** The security team must include an appropriate mix of experience and skills, and have a clear hierarchy with a security team leader who will be responsible for the operational control, deployment and discipline of the armed guards. The security team leader will report directly to the ship's Master (see section 5). The security team leader must have relevant experience and competency, including in advising on vessel vulnerability, risk assessments and ship protection measures. The team should also include members with appropriate medical qualifications and training.

Firearms, ammunition and security equipment

- 4.4** It is for the PSC to give careful consideration to the types and quantity of firearms, ammunition, and other security related equipment that the security team will have available onboard. This needs to be informed by the latest intelligence regarding the likely threat.
- 4.5** As part of the shipping company's due diligence process, the PSC needs to be able to satisfy the shipping company that the equipment that the security team will have available is suitable to effectively defend against the likely threat, while also allowing for a reasonable and proportionate response (see paragraphs 8.3 - 8.8).
- 4.6** As set out in paragraphs 3.3 - 3.5, the shipping company must satisfy itself that the PSC has a full understanding of, and fully complies with, UK laws and requirements with respect to the possession, carriage, and movement of firearms.

Excess personnel

Ship safety certificate

- 4.7** The size of the security team plus the crew should not exceed that specified in the ship's safety certificate. If the certificate requirements cannot be met due to additional security personnel, the MCA should be consulted through the customer service manager. The shipping company must provide the customer service manager with a risk assessment detailing the risks associated with the extra numbers of personnel onboard, and the life-saving arrangements that will be provided to mitigate these risks.
- 4.8** Noting the exceptional circumstances, and where there is no commercially viable alternative, the MCA will give consideration to allowing the carriage of persons in excess of the safety certificate where necessary for voyages through the HRA
- 4.9** Where appropriate, the MCA will issue a time-limited statement acknowledging the ship's non-compliance and accepting its continued operation in exceptional circumstances. The MCA may require additional safeguards to be put in place.

Accommodation

- 4.10** If the requirements of the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133) or the Maritime Labour

Convention 2006 (when it comes into force) cannot be met due to added security personnel, the MCA should be consulted through the Customer Service Manager. Noting the exceptional circumstances, and where there is no commercially viable alternative, the MCA will give consideration to allowing alternative arrangements in meeting accommodation requirements where necessary for voyages through the HRA. Applications for alternative arrangements should follow the criteria and parameters agreed between MCA, the shipowners and seafarers representatives.

5. The Master's authority; and command and control

NOTE - Version 1.1

This section has been updated.

- 5.1** In accordance with the principles of Maritime Law, the ship's Master has ultimate responsibility for the operation of the ship and the safety and security of its passengers, cargoes and crew.⁶ The ship's Master, therefore, has the authority to ultimately decide whether or not armed guards are used on a particular voyage.
- 5.2** As set out at paragraph 3.11, the contractual agreement between the shipping company and the PSC should include a clearly defined command and control structure which confirms the Master's authority over the operation of the ship and the safety and security of its passengers, cargoes and crew.
- 5.3** The security team should be headed up by a security team leader who reports directly to the ship's Master and is responsible for the operational control, deployment and discipline of the armed guards. The security team leader and the armed guards must operate in accordance with the command and control structure and standard operating procedures. Where the standard operating procedures do not cover specific circumstances, the security team leader and the armed guards should act in accordance with their professional judgement; the agreed command and control structure; and within the applicable law⁷.

⁶ The master's authority is defined in SOLAS XI-2 regulation 8(1) which forms part of annex 1 to European Regulation (EC) No 725/2004. "The master shall not be constrained by the Company, the charterer or any other person from taking or executing any decision which, in the professional judgement of the master, is necessary to maintain the safety and security of the ship. This includes denial of access to persons (except those identified as duly authorised by a Contracting Government) or their effects and refusal to load cargo, including containers or other closed cargo transport units."

⁷ Although it is more likely that any criminal charges arising from the use of force onboard a UK ship would be brought under the law of England and Wales before the courts of that jurisdiction, there may be

- 5.4** In the event of situations which affect the security or safety of the ship, or the lives of the crew, the security team leader should be responsible for advising the ship's Master on the responses available to counter the threats in accordance with the principles of using force. Under the law of England and Wales the level of force used must be proportionate and reasonable in the circumstances as the defendant genuinely believed them to be⁸. The Master will be responsible for determining and exhausting all available options before recommending potential armed intervention to overcome a piracy threat. The Master has the authority to decide when the security team are armed (noting that firearms should be stored while not transiting the HRA).
- 5.5** The Master should provide approval of the course of action to be adopted by the security team leader who must in turn communicate this to the members of the security team. Subject to the terms of the agreed command and control structures and standard operating procedures, and to paragraph 5.6 below, if there is insufficient time for the security team leader to seek approval from the Master before a course of action is taken, they should inform the Master as soon as possible afterwards and explain their reasoning for acting as they did.
- 5.6** Under the law of England and Wales⁹ the use of force must be proportionate and reasonable in the circumstances as the defendant genuinely believed them to be and can only be used in the context of self defence, protection of others, prevention of crime or the protection of property. The decision to use force must lie with the person using force (see section 8 for further advice on legal principles on the use of force). Neither the Master nor the security team leader can command a member of the security team against that person's own judgement to use force or to not use force.

circumstances where Scots or Northern Irish law applies and the Scottish or Northern Irish courts have jurisdiction. Also other countries may have a right to assert jurisdiction over a case. Unless otherwise stated, the guidance in this section relates only to the law of England and Wales.

⁸ If a case were to be tried in Scotland or Northern Ireland there are some differences in the law in relation to self defence and other justifications for the use of force. See footnotes to paragraphs 8.7 to 8.13 below

⁹ There are some differences in the law of Scotland and Northern Ireland. See footnotes to paragraphs 8.7 to 8.13 below.

6. Storage, handling and movement of firearms

Firearms and ammunitions log

- 6.1** The shipping company should request from the PSC a log of all the firearms, ammunition and other security related equipment being embarked onboard the vessel (including details of make, model, calibre, serial number, quantity etc). The shipping company should also request copies of relevant licences for the possession and movement of such articles (see paragraphs 3.3 - 3.5).

Storage

- 6.2** Where firearms, ammunition, and other security related equipment will have to be stored onboard, the shipping company needs to provide appropriate safe and secure storage. Consideration may be given to the strategic location of storage.
- 6.3** In the case of prohibited firearms and ammunition, authorisations from the Home Secretary for the possession of such items may place conditions on how they are to be stored. Any such conditions must be complied with.
- 6.4** Details of storage arrangements should be detailed in the counter-piracy plan together with details of who has access to the firearms storage area.

Handling of firearms

- 6.5** Firearms should only be handled by members of the security team, and when and where the ship's Master has authorised the arming of the security team (see section 5). At no point should the ship's crew be armed. It is an offence for a person to have weapons in their possession that are prohibited under section 5 of the Firearms Act 1968 without authorisation from the Secretary of State.

- 6.6** Agreed procedures should be in place for the handling and state of firearms in different areas of the ship and at different times.

Carriage of firearms outside of the HRA

- 6.7** The exceptional circumstances set out in section 1 stipulate that armed guards should only be used while transiting the HRA. It is recognised though that the security team and their firearms must embark before entering the HRA, and disembark after leaving it. Whilst not in the HRA, firearms should be safely and securely stored onboard the vessel. The embarkation and disembarkation of the firearms should take place at the soonest safe, convenient and lawful opportunity outside of the HRA and in accordance with the legal requirements of the State where this takes place.

Transiting foreign territorial seas with firearms onboard

- 6.8** When transiting foreign territorial seas with firearms onboard, it is essential that the laws of that coastal state are respected and complied with.
- 6.9** Section 3 of Part II of the United Nations Convention on the Law of the Sea (UNCLOS) allows vessels the right to innocent passage through the territorial seas of a coastal state, where passage is not prejudicial to the peace, good order or security of that state. Activities which are classified in UNCLOS as prejudicial to the peace, good order or security of a State include any exercise or practice with weapons. Shipping companies should therefore consider the need to take legal advice on the legal requirements of a state whose territorial seas they are transiting even if firearms onboard are securely stored and comply with any requirements put in place by that state.

Foreign ports

- 6.10** When embarking or disembarking firearms, ammunition and other security related equipment at a foreign port; or calling at a foreign port with such items onboard (but not disembarking them), it is essential that the laws of that port State are respected and complied with.
- 6.11** Prior to the voyage, the PSC must seek clarification from the port State on their laws and requirements regarding the possession, embarkation and disembarkation of firearms, ammunition and other security related

equipment; and the embarkation and disembarkation of security personnel. All laws and requirements of the port state must be respected and complied with fully.

UK ports and territorial seas

- 6.12** Given the limited scope of the exceptional circumstances set out in section 1, and the guidance provided in paragraph 6.7 on travelling outside of the HRA with firearms, UK ships ordinarily should not have any need to bring a security team's firearms, ammunition or other military or paramilitary equipment into UK territorial seas and ports, or to embark / disembark them in UK ports.
- 6.13** If a UK ship does have to embark or disembark such items at a UK port, and / or transit UK territorial seas with such items onboard, they must ensure they do so lawfully.
- 6.14** Officials from the UK Border Agency and / or the Police may request to inspect any such articles onboard the vessel.

UK Export and Trade controls

- 6.15** In addition to the requirements outlined previously, there are controls on the removal from the UK (export) of firearms, ammunition and other military and paramilitary equipment; and on the involvement of UK persons in moving, or arranging the movement, of such items between overseas countries (trade).
- 6.16** The Export Control Organisation (ECO), part of the Department for Business, Innovation and Skills, is responsible for these controls. In most cases export of, or trade in, such items is prohibited unless authorised by a licence issued by the ECO.
- 6.17** Further information, including the complete list of items subject to control, the scope of the controls applying to the activities of UK persons overseas, and details of licences and how to apply, can be found on the ECO website: <http://www.businesslink.gov.uk/exportcontrol>
- 6.18** ECO can also be contacted via email: eco.help@bis.gsi.gov.uk

7. Liaison with MSCHOA and UKMTO

- 7.1** In accordance with BMP, companies should register their ships with MSCHOA before entering the HRA; and the ship should report to UKMTO on entering the voluntary reporting area (VRA) and on a daily basis thereafter while transiting the VRA¹⁰. Final reports are to be sent when the vessel arrives at a port within the VRA or when leaving the VRA.
- 7.2** When registering with / reporting to MSCHOA and UKMTO respectively, all vessels that have armed guards onboard must inform MSCHOA and UKMTO of the fact together with the nationality of the additional persons on board.
- 7.3** If while armed guards are deployed on deck, naval forces are identified in the vicinity, the Master should advise the naval forces via VHF Channel 16 that armed guards are deployed onboard as a defensive measure.
- 7.4** This information allows the military forces carrying out counter-piracy operations in the area to have a clear understanding of their operating environment; helps ensure that armed guards are not mistaken for pirates or vice versa; and, if an armed vessel were taken, assists the military forces in understanding the situation onboard the vessel before attempting a rescue operation.

¹⁰ Note the UKMTO Voluntary Reporting Area (VRA) is slightly larger than the HRA as it also includes the Arabian Gulf.

8. Defending against pirate attack

NOTE - Version 1.1

This section has been updated.

First follow BMP

- 8.1** Where a potential pirate threat is identified, the ship's Master must first follow the advice included in BMP and take appropriate and reasonable steps to reduce the potential for a situation where it may be necessary to use force, for example by maintaining maximum speed to get away from the pirates. The ship's Master must also alert UKMTO immediately by phone.
- 8.2** If, with BMP ship protection measures in place, the threat persists, the use of reasonable force may be considered where this would be a proportionate response to protect the safety of those on board the ship.

Rules on the use of force

- 8.3** The security team's function is to prevent illegal boarding of the vessel in order to protect the lives of those onboard, using the minimum force necessary to do so.
- 8.4** The PSC must have in place, and agree with the shipping company upon, rules on the use of force that the armed security personnel will operate within. These rules must be based upon the applicable laws governing the use of force. All members of the armed security team must fully understand the rules on the use of force and comply with them.
- 8.5** These rules should provide for a graduated response, each stage of which is considered to be a reasonable, proportionate and necessary response to the threat; and which at no point will needlessly escalate a situation. Any measures to display capability to use force (e.g. making firearms visible, verbal warnings, warning shots etc) should be implemented in such a way so as not to be taken as acts of aggression.

8.6 Having and complying with rules on the use of force may serve to reduce the risk of armed guards acting unlawfully. However, in the event that criminal charges (e.g. in respect of offences related to unlawful killing or assault) are brought to court, proving that one acted within the agreed rules on the use of force would not in itself serve as a defence. It would be for the enforcement agencies and then the court to decide whether the force used in the particular case was lawful.

Law on the use of force in the UK

8.7 The criminal law of England and Wales and of Northern Ireland applies onboard UK registered ships on the high seas. There may also be circumstances where Scots criminal law applies. Any force used by armed guards must comply with the relevant domestic law. Whilst any relevant charges are more likely to be brought under the law in England and Wales, shipowners and PSCs should be aware that aspects of criminal law vary as between the three UK jurisdictions of England/Wales, Northern Ireland, and Scotland. The rest of this section 8 describes the legal position in England and Wales¹¹ (unless otherwise stated)

8.8 In addition to the applicable law of the UK, other countries may also have a right to assert jurisdiction over a case and apply their own national laws governing the use of force. This may depend upon the particular circumstances of a case (for example where the offence took place, the nationality of the victim and / or the nationality of the alleged perpetrator). The UK Government cannot offer guidance on other countries' laws on the use of force.

8.9 Under the law in England and Wales, a person may use force which is reasonable in the circumstances as they genuinely believed them to be¹² for the purposes of, for example:

¹¹ The law on the use of reasonable force in self defence, etc. is broadly similar in Northern Ireland and Scotland to the position in England and Wales, but there are some differences – see footnotes below.

¹² In England & Wales (and Northern Ireland) the decision about whether a person used reasonable force will be assessed in the context of the circumstances as the accused genuinely believed them to be (even if he or she was mistaken as to the true circumstances). Under Scots law, a person will only be able to claim self defence (which includes defence of another) if that person believed that he/she (or a third party) was in imminent danger and had reasonable grounds for that belief.

- a. self-defence;
- b. defence of another;
- c. defence of property¹³;
- d. prevention of crime¹⁴.

- 8.10** The law does not preclude the use of lethal force – including through the use of legally held firearms - when acting in self defence¹⁵ or protecting the lives of other people, but a person can only use force that is proportionate and reasonable in the circumstances as they genuinely believed them to be. Care should be taken to minimise injury and to respect and preserve human life.
- 8.11** It is illegal to use force for retaliation or revenge. If the threat ceases, the defences of self defence, defence of another, prevention of crime and defence of property no longer apply.
- 8.12** If a person believes a threat is imminent, it is not necessary for them to wait for the aggressor to strike the first blow before using reasonable and proportionate force to defend themselves and / or others.
- 8.13** Reasonable and proportionate force may be used in the prevention of crime, which includes the prevention of acts of piracy¹⁶. “Prevention of crime” is to be taken to mean the prevention of a particular crime that is in progress. It does not include the general proactive disruption of crime (i.e. vigilantism). If armed guards sighted a pirate skiff (i.e. a skiff obviously equipped to undertake acts of piracy), but there was nothing to indicate that the skiff was actively undertaking an act of piracy, it would be illegal for armed guards to use force against them.
- 8.14** It is for the enforcement agencies and then the court to determine whether the degree of force used by a person was reasonable by reference to the relevant circumstances.
- 8.15** Further legal guidance on self-defence and the prevention of crime in the law of England and Wales is available online at:
http://www.cps.gov.uk/legal/s_to_u/self_defence/

¹³ Under Scots law, defence of property will not justify assault by firearms. It may justify infliction of minor violence.

¹⁴ Under Scots law, a private person will not be justified in using force for the purpose of preventing crime (except when using reasonable force to carry out a private person's limited powers of arrest).

¹⁵ Under Scots law, use of lethal force will only be justified in defence of life (one's own or that of another) or by a victim resisting rape.

¹⁶ As noted above, this does not apply to Scots law.

9. Post-incident

Piracy follow-up report

- 9.1** Following any pirate attack, the ship's master and the security team leader should complete a detailed written report of the incident, and submit it to UKMTO and MSCHOA (and the International Maritime Bureau) in accordance with BMP. UKMTO requires this report to be submitted as soon as possible after the incident but certainly within 6 hours.
- 9.2** When sending the report to UKMTO and MSCHOA, it should also be copied to DfT. This will assist DfT to maintain a complete understanding of the threat that UK flagged ships are under, and the effectiveness of different self-protection measures (including armed guards) in preventing acts of piracy.

Firearms incident report

- 9.3** The master and security team leader should complete a formal written record (firearms incident report) of every incident where firearms are discharged, whether accidentally or deliberately¹⁷. Where a crime is committed, this report may serve as evidence, and must therefore be accurate and complete (see below).
- 9.4** The firearms incident report should record, as a minimum:
- Time and location of the incident;
 - Details of events leading up to the incident;
 - Details of the incident;
 - The identity and details of personnel involved in the incident, and witnesses;
 - Written statements from those involved in the incident and witnesses;

¹⁷ Where firearms are discharged deliberately and in a controlled manner for the purposes of test firing, a full report is not necessary.

- Photographs
 - Video surveillance (for example, from CCTV and / or body mounted cameras);
 - Details of injuries and/or material damage sustained during the incident; and
 - Lessons learned from the incident and, where applicable, recommended procedures to prevent a recurrence of the incident.
- 9.5** All firearms incident reports must be sent to DfT. DfT will forward reports onto the Home Office and the UK Police.
- 9.6** Where firearms are discharged during the course of repelling a piracy attack, the firearms incident report should be sent to DfT at the same time as sending the piracy follow-up report.
- 9.7** Where a serious crime has occurred onboard a UK ship, MRCC Falmouth must be notified immediately inline with current practice.

Post-incident investigation

- 9.8** Post-incident evidence gathering should be in accordance with the guidance contained in the Crime Manual for Ships Security Officers produced by the Association of Chief Police Officers (ACPO). The ship's Master and the security team leader should provide any investigation with all necessary assistance.
- 9.9** The UK Police will advise the ship as to the most appropriate post incident practice and may have call to attend the ship with senior prosecutors from the Crown Prosecution Service. Advice can be sought post incident which may assist with any future investigation. However at all times post incident, the "golden hour principle" should be applied. Additional information is provided at Annex 3.

10. Post-deployment report

- 10.1** Following a voyage, the shipping company should expect the security team to provide a full post-deployment report. This report should include full details of any deployment of armed guards, operational matters, any training and/or ship hardening conducted, and advice as to any further enhancements to security that may be considered.

Annex 1: Counter-Piracy Plan

Following the decision to use armed guards, the shipping company must produce a full counter-piracy plan and inform DfT of the decision to use armed guards. The counter-piracy plan must be specific to the vessel, and should include the following information:

- A signed statement that this guidance has been followed
- Company information
- Vessel name and IMO number
- Ship protection measures being employed (including BMP)¹⁸
- Procedures for registering with MSCHOA and reporting to UKMTO, including a statement of intent to inform them that armed guards are onboard.
- A copy of the full risk assessment
- Arrangements for embarking / disembarking firearms, ammunition, other security related equipment, and security personnel (details of ports, port requirements etc) taking account of MGN432
- Procedures and arrangements for handling and storing of firearms while in / not in the HRA
- Ports where the vessel is likely to call with firearms / armed guards onboard
- Procedures for maintaining a log of all firearms and ammunition
- Procedures for implementing, and agreeing Rules of use of Force
- Procedures for recording and reporting piracy incidents to MSCHOA, UKMTO, and DfT
- Procedures for recording and reporting incidents where firearms are discharged
- Procedures for assisting the relevant authorities in their investigations, should a piracy incident occur and / or should someone be seriously injured or killed.

¹⁸ The Department for Transport's *Guidance to UK Flagged Shipping on Measures to Counter Piracy, Armed Robbery and other Acts of Violence against Merchant Shipping*, includes further information on the ship protection measures that should be included in the piracy plan

The shipping company should provide DfT with a copy of the current counter-piracy plan before deploying armed guards.

Annex 2: Contact details

Department for Transport

- Tel: +44 (0)20 7944 2844
- Fax: +44 (0)20 7944 2175
- Email: maritimesecurity@dft.gsi.gov.uk

Export Control Organisation

- Email: eco.help@bis.gsi.gov.uk
- Web: <http://www.businesslink.gov.uk/exportcontrol>

Home Office

- Email: Firearms@homeoffice.gsi.gov.uk

Maritime and Coastguard Agency

- Tel: +44 (0)23 8032 9197;
- Fax: +44 (0)23 8032 9447;
- Email: ukshipregister@mcga.gov.uk

MSCHOA

- Tel: +44 (0)1923 958545
- Fax: +44 (0)1923 958520
- Email: postmaster@mschoa.org
- Web: www.mschoa.org

UKMTO

- Tel: +971 50 552 3215
- Email: ukmto@eim.ae

Annex 3: Crime scene investigation

The initial actions taken immediately following the report of a crime are crucial, and this is known as 'The Golden Hour Principle'. Effective, early action can result in securing significant material that would otherwise be lost to the investigation.

By failing to respond swiftly, forensic opportunities could otherwise be lost. The testimony of witnesses can also be obtained while the offence is still fresh in their mind, CCTV images and other data can be collected before it is deleted, and action can be taken to secure scenes before they become contaminated. Effective early action can often lead to the recovery of material which enables the investigation to make rapid progress. Important early actions may include:

- Crime scene assessment
- Preservation of crime scene(s)
- Victim / witness enquiries, interviews, and statements
- Photograph scene(s)
- Forensic recovery

To assist Crime Scene Investigators it is critical that issues associated with suspected or actual crimes are managed in a structured and uniformed approach. It is essential that all security staff are aware of their responsibilities in relation to crime scene preservation.

In order to make a correct assessment of the scene, security officers must:

- Assess the scene
- Protect the Scene
- Communicate any actions/observations

At such scenes it is not unusual for a number of persons to attend and become involved in the process, particularly if the matter is a serious crime or large incident. Crime Scenes need to be controlled from the time security first attends the scene, prior to the arrival of the Staff Captain or SECO who will take over the charge of the crime scene and direct staff as necessary.

Post incident the senior guard or ship security officer must ensure the following:

- The boundaries of the scene/incident are identified
- Identify who actually needs to remain at the scene
- A cordon is placed in order to prevent additional access by other staff/witnesses and prevent contamination and destruction of the scene.
- Contain the scene; try to leave only one area of entry.
- A scene log is commenced to document who is already in attendance at the scene, prevent unnecessary access to the scene, and document all personnel entering / leaving the scene.
- Identify areas required for immediate preservation, is a tent required, do you need to cover blood etc.
- Under no circumstances should suspects or alleged offenders be allowed back into or near the crime scene.