



Maritime &
Coastguard
Agency

Consultation on recasting the Merchant Shipping (Safety of Navigation) Regulations to reflect up to date requirements as contained in the International Convention for the Safety of Life at Sea 1974 (SOLAS)

Consultation Outcome Report

Summary of consultee comments and government responses to them

January 2019

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Section 1: Introduction

1. The Maritime and Coastguard Agency (MCA), an executive Agency of the Department for Transport (DfT), carried out a public consultation from September to November 2018 on the proposed re-casting of the Merchant Shipping (Safety of Navigation) Regulations 2002 (S.I. 2002/1473) to reflect the up to date version of the requirements in Chapter V of the International Maritime Organization's (IMO) International Convention for the Safety of Life at Sea 1974 (SOLAS). (The IMO is the United Nations competent body on maritime matters.) The Articles of SOLAS have also been amended by the SOLAS Protocol of 1988. The consultation was published on GOV.UK Website, and notifications of the consultation were sent to more than 100 shipping and marine industry companies, plus in excess of 40 government Departments and maritime bodies with professional and specialist functions.
2. At the same time, the proposal introduced an ambulatory reference into the draft regulations to incorporate any future amendments to three annexes to the [Convention/Protocol] (the detail which is of a more technical nature) into UK law by reference on an ongoing basis, instead of transposing it provision by provision.
3. SOLAS is one of a number of Conventions adopted by the IMO to which the UK is signatory. As a signatory, the UK has an obligation to implement any amendments to them in UK law.
4. Chapter V of SOLAS deals with the Safety of Navigation measures to reduce the risk of accidents at sea, including the carriage of navigational equipment, testing of such equipment, routing requirements and safe manning levels. Recent amendments include the introduction of carriage requirements for Bridge Navigation Watch Alarm Systems, the use of Electronic Chart Display and Information Systems instead of paper ones, annual performance checking for Automatic Identification Systems (AIS) and measures to modernise and improve systems for embarking and disembarking maritime pilots.
5. SOLAS is regularly amended to improve the safety of ships and lives at sea and to reflect advances in safety technology and thinking. Each time an amendment is made, UK legislation must be updated. The regulatory change process to update legislation takes a minimum of 12 months, and frequently a lot longer, and requires significant administrative and parliamentary time and resources.
6. Against a backdrop of competing priorities for limited resources within Government, a new approach to transposing international requirements into UK legislation is vital.

Section 2: Ambulatory Reference

7. The Deregulation Act 2015 came into force on 26 March 2015. The Act introduced a new power to make ambulatory references to international instruments under a new section 306A of the Merchant Shipping Act 1995 (MSA 95). The recast of The Merchant Shipping (Safety of Navigation) Regulations 2002 will make use of this new power.
8. An ambulatory reference is a reference in domestic legislation to an international instrument which is interpreted as a reference to the international instrument as modified from time to time (and not simply the version of the instrument that exists at the time the domestic legislation is made).
9. The main benefits of using ambulatory reference are simplification, clarity, cost saving for industry and the taxpayer and prompt compliance by the UK with international obligations. The UK government's negotiating position in the IMO on any potential future amendments, which will eventually be incorporated by ambulatory reference, will be developed in conjunction with interested parties, mainly from industry and the Trades Unions.
10. Parliamentary control will be maintained, as the Secretary of State will always have the power to make an instrument to prevent an unwanted amendment to the Chapter V of SOLAS from becoming UK law. Such an event is thought to be extremely unlikely as the measures are generally related to safety, are agreed internationally (with the UK government and industry involved) and will invariably be international obligations which the UK has to fulfil, and internationally applicable standards with which UK ships will have to comply regardless of whether they pass into domestic law or not. Also, the UK has the option of rejecting amendments under Article VIII of the [Convention and Article VI of the Protocol of 1988], even if agreed by the broader IMO membership, in which case the international obligation to incorporate them into UK law will not arise.
11. The proposed regulations implement international Convention amendments. EU legislation is outside the scope of the ambulatory reference power in the Merchant Shipping Act.

Section 3: Consultation

12. The consultation was carried out between 24 September and 19 November 2018. It can be found at: <https://www.gov.uk/government/consultations/consultation-on-the-merchant-shipping-safety-of-navigation-regulations>
13. A total of five external responses were received, including one from the main representative body for UK shipowners, the UK Chamber of Shipping.

Section 4: Consultation outcome

Questions posed

14. The questions that were posed in the consultation, together with a summary of the consultee comments on them and the government responses to the consultee comments, are set out at Annex A. However, the main points are summarised below.
15. Not all respondents answered all the questions posed. All the comments received have been fully considered, and government responses to them – including whether the government accepted them or not – are detailed at Annex to this Report.

Main subject areas

Application and technical content of SOLAS Chapter V

16. One respondent disagreed with the scope of the application of the draft regulations, believing that UK legislation should apply to government ships.

Government response:

Government policy is for government ships to be regulated within government, and it is not part of the mandatory application of SOLAS Chapter V for it to apply to government ships, therefore if the UK Regulations applied it this would be “Gold Plating” which is against government policy. Also such application would be inappropriate to deal with in this instrument which is strictly limited to the international requirements.

Ambulatory Reference

17. All respondents were supportive of the use of Ambulatory Reference. One respondent pointed out the benefits of prompt implementation of new amendments and negating the need for lengthy consultations on mandatory requirements. Another cited ease of compliance with international regulations as one advantage of its use.

Government response:

The government welcomes respondents’ unanimous support for the use of Ambulatory Reference.

Cost and benefit assessment

18. There were no respondents who commented on the assessment of costs and benefits, or the assumption about costs having already been incurred.

Government response:

Not applicable.

Offences and Penalties

19. Comments on the maximum levels of penalties which could be awarded in the event of convictions for criminal offences in the draft regulations were mixed – two organisations representing seafarers did not agree with the increase in penalties on summary conviction for some offences compared with the existing Regulations,

whereas another organisation representing a group of seafarers, and a seafarer responding on his own behalf, were supportive of the increases.

Government response:

The government emphasises that these are maximum levels of fine, and the courts set the level of penalty of any defendant according to their means. While it is necessary to have the scope for slightly more significant penalties for corporate offenders, the court has the discretion to set a much lower penalty for an individual and/or non-professional offender. However, the government has reviewed the offences and penalties associated with this area and has removed the option of imprisonment for some minor offences.

Regulations

20. Some consultees made drafting suggestions for the draft regulations which sought to clarify them rather than change their effect.

Government response:

The government has reviewed the legal drafting in the light of these comments, and has made adjustments in one place in the draft Regulations as a result of a consultee comment.

Guidance

21. Of those respondents who comments, the consensus was that the guidance met their needs

Government response:

Noted.

22. A more detailed analysis of the consultee comments and the government's responses to them is at Annex to this Report.

Section 5: Next steps

23. The government will finalise the Regulations with a view to bringing them into force during 2019.

Consultation questions and answers

Annex A

PROPOSED MERCHANT SHIPPING (SAFETY OF NAVIGATION) REGULATIONS CONSULTATION QUESTIONS AND SUMMARY OF CONSULTEE COMMENTS

The Response form was Section 5 of the Consultation Document

Section 5, Section 2.1 - Ambulatory Reference

Question

a) Do you agree with the approach of using ambulatory references to implement SOLAS Chapter V?

Summary of
consultee views

All respondents were supportive of the use of Ambulatory Reference.

Government
response

The government welcomes the unambiguous support from respondents about the use of Ambulatory Reference.

Question

b) Can you see any other benefits or drawbacks of using ambulatory referencing in UK legislation, for implementing international conventions? We particularly welcome the views of ship owners in relation to ambulatory referencing – what benefits/drawbacks would this new approach mean for you?

Summary of
consultee views

One respondent pointed out the benefits of prompt implementation of new amendments and negating the need for lengthy consultations on mandatory requirements. Another cited ease of compliance with international regulations as one advantage of its use.

Government
response

Not applicable.

Question	c) On average, how many hours each year does your company spend reading and understanding the requirements of SOLAS Chapter V?
Summary of consultee views	No respondents commented specifically on this question.
Government response	Not applicable.

Section 5, Section 2.2

Question	a) Does your company own any UK flagged ships that meet the criteria below, for which BNWAS has NOT already been installed? Cargo Ships of 150GT and upwards (but less than 3,000GT) constructed before 1 July 2002: _____ ships
Summary of consultee views	No respondents commented specifically on this question.
Government response	Not applicable.

Question	b) Is £3,094 representative of purchasing and installing BNWAS? If not what is a representative cost?
Summary of consultee views	No respondents commented specifically on this question.
Government response	Not applicable.

Question c) Does your company own any UK flagged ships that meet the criteria below, for which ECDIS has NOT already been installed? Cargo ships, other than tankers, of 10,000GT and upwards (but less than 50,000GT) constructed before 1 July 2013: _____ ships

Summary of
consultee views

No respondents commented specifically on this question.

Government
response

Not applicable.

Question d) Is £8,658 representative of purchasing and installing ECDIS? If not what is a representative cost?

Summary of
consultee views

No respondents commented specifically on this question.

Government
response

Not applicable.

Question e) Is £100 a representative cost for the annual performance testing of AIS? If not, what is a representative cost?

Summary of
consultee views

No respondents commented specifically on this question.

Government
response

Not applicable.

Question f) Have the revised pilot transfer arrangements altered your company's expenditure in this area? If so, please detail the specific item and change in cost. Yes, it has resulted in a saving of £ per ship
 Yes, it has increased costs by £ per ship
 No, it has not

Summary of
consultee views

No respondents commented specifically on this question.

Government
response

Not applicable.

Section 5, Section 2.3 - Application

Question

a) Do you agree with the way the MCA has applied SOLAS Chapter V requirements?

Summary of
consultee views

One respondent believed that the SOLAS Chapter V standards should be extended to government ships. Other than this, there were suggestions on the drafting of the Regulations to make the policy effective, but no other respondent had an issue with the implementation of the policy itself. One respondent commented on the MCA's past enforcement of SOLAS V requirements, which have been passed on to operational management but fall outside the remit of this consultation.

Government
response

Wider government policy is not to "Gold Plate" SOLAS Chapter V by applying it to government ships, which are specifically excluded from its scope. However, individual government Departments will enforce compliance on their own vessels. Comments on operational enforcement have been forwarded to Branches of the MCA with responsibility for these matters.

Question

b) Within the parameters set by Regulation 1 of SOLAS Chapter V, are there any further areas where the MCA should apply or dis-apply the requirements?

Summary of
consultee views

Re-iterating their response to question 2.3(a), a respondent added concerns about seafarers transferring between government and non-government ships lacking experience of equipment and procedures relating to SOLAS Chapter V.

Government
response

In addition to the comments on question 2.3(a), the fact that the Regulations do not apply to government ships does not mean that appropriate standards will not be employed on those ships.

Section 5, Section 2.4 - Offences and Penalties

a) Do you agree that the possible penalty of imprisonment for up to 2 years on indictment should be removed for the offences relating to:

(i) ensuring that electronic equipment does not interfere with other navigational systems and equipment, and

(ii) displaying in the navigation bridge and steering compartment change-over procedures remote steering gear control systems steering gear power units?

(Note: The remaining penalties available for these offences would be a fine of the statutory maximum on summary conviction, and a fine on indictment.)

Question

Summary of
consultee views

Two respondents commented specifically on this, and agreed with the government's proposed removal of the option of imprisonment related to this offence. Another agreed with the government's approach on offences and penalties generally.

Government
response

The government appreciates this confirmation.

b) Do you agree that where offences currently have a penalty on summary conviction of a fine between levels 1 and 4 inclusive, these should be rounded to the statutory maximum, thus giving the Magistrates' courts greater discretion as to the level of fine to be awarded?

Question

Summary of
consultee views

One respondent expressed agreement with the elevation of the summary penalties' maxima, but commented they were not aware of any prosecutions having been brought for non-compliance with SOLAS Chapter V, Regulation 23 [about Pilot Transfer Arrangements] even when an incident resulted from the death of a pilot. Another (a ship's Master) agreed without reservation with the increases. Two respondents expressed concerns about the increased exposure of individuals to higher fines, including a comment from one that they disagreed with the rounding to the statutory maximum as they believed such elevation would fall hard on a recreational boater, although they had not heard of such a prosecution being brought against a recreational boater in the past.

Government
response

The government emphasises that these are maximum levels of fine, and the courts set the level of penalty of any defendant according to their means. While it is necessary to have the scope for slightly more significant penalties for corporate offenders, the court has the discretion to set a much lower penalty for an individual and/or non-professional offender.

Question

c) Is there any other way in which the penalties should be streamlined?

Summary of
consultee views

No suggestions were received in response to this question.

Government
response

Not applicable.

Question

d) Do you feel that the proposed penalties are fair?

Summary of
consultee views

Four comments were received on this question. Two respondents agreed the proposed penalties were fair, while two expressed concerns with the increased levels of potential penalties. (One of these two thought that level 5 fine was excessive for recreational boat owners in respect of non-compliances detailed in paragraph 33 of the consultation document.)

Government response

The concern expressed about the level of fine for recreational boaters is noted. However, the award of a heavy fine is not mandatory - it is within the discretion of the court to award a lesser fine, depending on the circumstances of the case and the financial means of an offender. If a lower maximum were set, this would tie the hands of the court, particularly in cases of corporate offenders who might otherwise treat the fine as a business expense. This would invite a cavalier approach to compliance because in such cases a low fine is an insufficient deterrent to non-compliance. Additionally, it is worth noting that the items identified in paragraph 33 of the consultation document are safety-critical. Even in cases of recreational boaters, non-compliance could result in - at worst - loss of life. It could also result in considerable cost to the taxpayer should the non-compliant recreational boater need to be rescued by publicly funded Search and Rescue resources, the individuals of which frequently put their own lives at risk to perform rescues.

Question

e) Do you feel that the proposed penalties will act as an effective deterrent for noncompliance with the requirements of SOLAS Chapter V?

Summary of consultee views

One respondent agreed the penalties would have a deterrent effect, while another thought that it was possible that they would. Two others expressed concerns, one expressed the view that there would be no deterrent effect unless prosecutions are undertaken and publicised, and the other cited effective enforcement of safe manning to ensure adequate resources would be more effective than any increases in fines.

Government response

It is the government's view that offences and penalties do act as a deterrent to non-compliance, thereby enhancing safety, and reducing the number of instances where it becomes necessary for government authorities to bring a prosecution. In cases where a prosecution is necessary, this is made public and, as the respondent pointed out, could indeed enhance the deterrent effect.

Section 5, Section 2.5 - Guidance

Question

a) Does the proposed guidance meet your needs in terms of (i) format: and (ii) content?

Summary of consultee views

Two respondents responded to this question, both agreeing that the guidance met their needs in terms of both form and content. No other responses were received to this question.

Government
response

Not applicable.

Question

b) Do you feel there is a better way of providing guidance for the SOLAS Chapter V requirements?

Summary of
consultee views

One consultee mentioned that there is a Pilot Ladder poster which is illustrative and intentionally does not cover all the Regulations, and that this is often misunderstood by practitioners and regulators. Another made some suggestions relating to guidance and crossover with Chapter III and the LSA Code.

Government
response

This comment is believed to refer to a poster which is not issued by the MCA and does not form part of this consultation. However, the government agrees that guidance posters and leaflets, while helpful to highlight the main points of a topic, are not a substitute for complete familiarity with the obligations set out in law. In respect of the suggestions about guidance, the intention behind Ambulatory Reference is to reduce the number of documents to which a seafarer needs to refer, which in most cases will involve referring the reader directly to the international Convention text rather than domestically produced documents. The government would also like to advise that consideration is being given to implementing SOLAS Chapter III and the associated LSA Code into domestic law by Ambulatory Reference and so it is likely MSN 1676 will be amended or replaced in due course.