



Maritime &  
Coastguard  
Agency

Consultation on recasting the Merchant Shipping (Load Line) Regulations to reflect up to date requirements as contained in the International Load Line Convention 1966 (ILLC) and Protocol 1988 (ILLP)

## **Consultation Outcome Report**

Summary of consultee comments and government responses to them

September 2017

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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 June to August 2017 on the proposed re-casting of the Merchant Shipping (Load Line) Regulations to reflect the up to date version of the requirements in the International Maritime Organization's (IMO) International Load Line Convention 1966 (ILLC) and its Protocol 1988 (ILLP). (The IMO is the United Nations competent body on maritime matters.) The consultation was published on .GOV.UK, 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 within the 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. The International Load Line Convention (ILLC) / Protocol (ILLP) is one of a number of Conventions adopted by the International Maritime Organization (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. Load Line standards cover the position of the load ("plimsoll") line painted on the side of ship to indicate the maximum loading point, as well as other measures, such as hull strength, buoyancy reserve, protection of crew, design of external doors and hatches, sub-division, drainage and other matters relating to the stability and water-tight integrity, which are vital for the safety of a ship.
5. The ILLC/ILLP are 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 to the ILLC/ILLP, 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 (Load Line) Regulations 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 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 ILLC/ILLP 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 29(2)(c), (3)(c) or (4)(c) of the Convention and Protocol, even if agreed by the broader IMO membership, in which case the international obligation to incorporate them into UK law will not arise.
12. There is currently no EU legislation covering the subject matter of the ILLC/ILLP, and in any case EU legislation is outside the scope of the ambulatory reference power in the Merchant Shipping Act.

## Section 3: Consultation

13. The consultation was carried out between 22 June and 24 August 2017. It can be found at: <https://www.gov.uk/government/consultations/consultation-on-recasting-the-merchant-shipping-load-line>
14. A total of three responses were received, one from the main representative body for UK shipowners, the UK Chamber of Shipping, one from a Trades Union which represents some seafarer personnel, and one from an interested student group called Pupils 2 Parliament (P2P). Not all respondents answered all the questions posed. Some additional comments have been received. These have been fully considered.

## Section 4: Consultation outcome

### **Questions posed**

15. Questions were posed in the consultation, and these, together with the consultee comments on them and the government responses to the consultee comments, are shown in detail at Annex A. However, the main points are summarised below.

### **Main subject areas**

#### Application and technical content of the Convention and Protocol

16. No consultees disagreed with the MCA's interpretation of the application or the MCA's interpretation of the post-1988 Protocol amendments to the Convention/ Protocol.

#### *Government response:*

*Noted.*

#### Ambulatory Reference

17. Two of the three consultees, including the main representative body for shipowners, felt that ambulatory reference would make familiarisation with the legal obligations easier. One consultee did not. This consultee indicated that no time was spent on familiarisation in their organisation.

#### *Government response:*

*The majority opinion appears to agree with the government view that ambulatory reference will assist with familiarisation.*

18. The main shipowner representative body agreed that ambulatory referencing would introduce amendments to Conventions promptly and with less bureaucracy. The Trades Union was concerned that ambulatory referencing was too fluid and vague.

#### *Government response:*

*The government acknowledges that not all future amendments are known at the present time. However, they will be clear when they are negotiated (industry and unions will have the opportunity to be involved in forming the government's negotiating position on them) and the impact of them will be assessed during the negotiations, before entering into law, and reviewed after 5 years in operation. It will also be possible under Article 29(2)(c), (3)(c) or (4)(c) of the Convention and Protocol for the UK government to reject the amendments in the IMO.*

### Cost and benefit assessment

19. When asked, one consultee felt that the estimated costs and benefits contained in the Impact Assessment were not sufficiently accurate, suggesting they were “guesswork”, but did not give any alternative costs or method of calculating them. No specific challenge to the order of cost and benefit categories were received.

#### *Government response:*

*All Impact Assessments (IA), at best, estimate future costs. It was not possible to source precise past cost and benefit values for this IA, not least because they were relatively small changes, and dedicated records for UK ships were not identified (separated out) or retained by the organisations responsible for the work. So a general order of cost/ benefit was estimated instead for each item, and none were considered significant. The Impact Assessment was prepared in conjunction with expert economist input and challenge.*

20. No consultee disagreed with the assumption made in the Impact Assessment that any associated costs had already been incurred by affected shipowners due to the need to comply when operating internationally.

#### *Government response:*

*The government has noted the responses.*

### Offences and Penalties

21. The proposal included the abolition of two criminal offences, retaining the remainder from the earlier (1998) Regulations. Consultees were asked for their views on the offences and penalties, in particular whether they were necessary, fair and proportionate, and whether they were an effective deterrent for non-compliance. Only one consultee, the Trades Union, commented on the offences and penalties, calling for the fines and prison sentences specified in the draft Regulations to be more severe.

#### *Government response:*

*Broader government policy is that offences and penalties should be no greater than necessary to achieve effective deterrent and enforcement. That said, all fines cited in the proposed Regulations are at the statutory maxima. On summary conviction, this is unlimited in England and Wales, although there are still caps on fines in summary courts in Scotland and Northern Ireland. On conviction on indictment, fine levels are unlimited wherever in the UK the case is brought. It is considered that the 6 month prison sentence in the proposed Regulations is set at a sufficient level to be an effective deterrent.*

22. No respondents offered suggestions as to how offences and penalties could be further streamlined. However, when asked if was there a way in which offences could be "future proofed" to allow enforcement action to be taken without changing legislation, it was suggested the Sentencing Council Guidelines were used for this purpose.

*Government response:*

*Sentencing Council Guidelines are aimed at the courts rather than lawmakers, and relate to the calculation by the court to determine an appropriate level of fine to award within the maximum permitted by the law. There is nothing in the proposed legislation to prevent the courts taking these or any other published Guidelines into account when determining the amount of a fine. The fine levels for offences in the proposed Regulations are already set at the statutory maxima, i.e., unlimited in all offences on summary conviction, except in Scotland and Northern Ireland where fine ceilings on summary conviction still exist, and unlimited for all convictions brought on indictment, wherever in the UK they may be brought. In relation to the offence which could attract a prison sentence, it is acknowledged that in this instance the maximum sentence is specified as 6 months, but a link to growth, turnover and profit is not relevant to custodial sentences.*

Guidance

23. Consultees did not disagree with the format or content of the guidance, although one consultee made some drafting amendment suggestions which have been partially implemented. One consultee queried the need for both a Marine Guidance Note (MGN) and a Marine Information Note (MIN).

*Government response:*

*The reason for a separate MGN and MIN is as follows: (a) the MGN and MIN perform different functions. The MGN provides guidance on the Regulations and Convention text. The MIN simply provides information, in that it just contains the Convention/ Protocol amendments since last transposition in one place, to make it easier for the reader, and for the sake of transparency, as they are difficult to source online. (b) The MGN is intended to be valid for some years, whereas the MIN is provided in the short term until such time the amendments are more easily accessible online. (c) An added benefit is that putting the content of the MGN and MIN in separate documents avoids having a large, unwieldy document which serves different purposes which may not both be required by a particular reader.*



## **Section 5: Next steps**

24. The government will finalise the Regulations with a view to bringing them into force during later 2017/ early 2018.

## Consultation questions and answers

Annex A

### CONSULTATION QUESTIONS, CONSULTEE ANSWERS AND GOVERNMENT RESPONSES TO THE ANSWERS

#### The Response form was Section 5 of the Consultation Document

##### Section 5, Question 1 - Questionnaire

**Question** a) Do you agree that using ambulatory reference will make familiarisation easier?

Summary of  
consultee views The view was generally expressed that familiarisation would be easier. One consultee did not think that it would make familiarisation easier. This consultee also indicated that no time was spent on familiarisation in their organisation.

Government  
response

The government has noted the comments.

**Question** b) Can you see any other benefits or drawbacks of using ambulatory referencing in UK legislation, for implementing international Conventions?

Summary of  
consultee views The main shipowner representative body agreed that ambulatory referencing would introduce amendments to Conventions promptly and with less bureaucracy. A Trades Union was concerned that ambulatory referencing was too fluid and vague.

Government response

The government acknowledges that not all future amendments are known at the present time. However, they will be clear when they are negotiated (industry and unions will have the opportunity to be involved in forming the government's negotiating position on them) and the impact of them will be assessed during the negotiations, before entering into law, and reviewed before the end of 5 years. It will also be possible under Article 29(2)(c), (3)(c) or (4)(c) of the Convention and Protocol for the UK government to reject the amendments.

**Question**

**c) On average, how many hours each year does your company spend reading and understanding the requirements of the Convention/ Protocol.**

Summary of consultee views

No consultee responded to this question, except that one indicated that it was not applicable, which was taken to mean that their organisation did not spend/ need to spend any time on familiarisation.

Government response

Not applicable.

#### **Section 5, Question 2 - Impact**

**Question**

**a) Do you agree with the government's interpretation of the post-1988 Protocol amendments to the ILLP?**

Summary of consultee views

No consultee disagreed with the government's interpretation on this.

Government response

Not applicable.

**Question**

**b) Do you feel that the costs and benefits assessment outlined in the Impact Assessment is a reasonable reflection of the costs and benefits?**

Summary of consultee views	Only one consultee did not consider the costs and benefits in the Impact Assessment were sufficiently accurate, but did not offer an alternative calculation of costs and benefits, or an alternative method of calculating them.
Government response	All Impact Assessments (IA), at best, estimate future costs. It was not possible to source precise past cost and benefit values for this IA, not least because they were relatively small changes, and dedicated records for UK ships were not identified (separated out) or retained by the organisations responsible for the work. So a general order of costs was estimated instead for each item, and none were considered significant. Costs and benefits of future amendments will be assessed when they are negotiated, but estimating on the basis of the past trend over the last 3 decades, are expected not to be significant.
<b>Question</b>	<b>c) Consultees are requested to provide estimates of cost savings resulting from having to refer only to the technical standards in the international text rather than also referring to UK text transposing the standards, and to comment generally on this approach.</b>
Summary of consultee views	No estimates were received from consultees. However, the general remark about a reduction in bureaucracy could be interpreted to include a reduction in familiarisation in shipping companies.
Government response	The government considers that having to refer to one set of standards is easier than having to refer to two.
<b>Question</b>	<b>d) Do you agree with the cost categories identified in the Table in Annex A of the Impact Assessment? If not, please provide alternative evaluations (section 6.8 of IA refers)?</b>
Summary of consultee views	No consultee suggested alternative categories.
Government response	Not applicable.

**Question** e) Do you agree with the [above] assumptions (which are contained in section 8.5 of the Impact Assessment and relate to the monetary analysis) (section 8.6 of IA refers)

Summary of  
consultee views One consultee asserted the assumptions were guesswork.

Government  
response The government considers that assumption (a) is robust as it is based on solid logic, that the affected ships would not be able to operate if they were not already compliant as they will have been inspected by port State Control regimes in contracting countries and forced to comply. The government considers that assumption (b), assuming ship numbers using the UK shipping register trends over the previous 24 months, was the most reasonable approach to estimate such activity in the future, although it acknowledges this sort of trend is hard to predict. The consultee did not offer any alternative way to estimate the future trend, so the government intends to continue with this assumption.

**Question** f) Do you agree with the assumptions in Options 1 and 2 that costs have already been incurred (section 8.7 of the IA refers)?

Summary of  
consultee views No consultee challenged this assumption.

Government  
response Not applicable.

### **Section 5, Question 3 - Application**

**Question** a) Do you feel that the MCA has successfully determined the extent of application for the ILLC/ILLP requirements?

Summary of  
consultee views

No consultees felt that the MCA had not determined this successfully. Respondents either agreed with the MCA or did not comment.

Government  
response

The government has noted the responses.

#### **Section 5, Question 4 - Offences and Penalties**

**Question**

**a) Do you feel that the re-made offences and penalties are necessary, fair and proportionate?**

Summary of  
consultee views

One consultee felt that fines and prison sentences permitted by the draft Regulations should be more severe.

Government  
response

Broader government policy is that offences and penalties should be no greater than necessary to achieve effective deterrent and enforcement. That said, all fines cited in the proposed Regulations are at the statutory maxima. On summary conviction, this is unlimited in England and Wales. On conviction on indictment, this is unlimited wherever in the UK the case is brought. It is considered that the 6 month prison sentence in the proposed Regulations is set at a sufficient level to be an effective deterrent.

**Question**

**b) Is there a way in which penalties can be further streamlined?**

Summary of  
consultee views

No responses were received to this question.

Government  
response

Not applicable.

**Question**                    **c) Is there a way in which offences could be "future proofed" to allow enforcement action to be taken without changing legislation**

Summary of  
consultee views

One consultee suggested using the Sentencing Council Guidelines.

Government  
response

Sentencing Council Guidelines are aimed at the courts rather than lawmakers, and relate to the calculation by the court to determine an appropriate level of fine to award within the maximum permitted by the law. There is nothing in the proposed legislation to prevent the courts taking these or any other published Guidelines into account when determining the amount of a fine. The fine levels for offences in the proposed Regulations are already set at the statutory maxima, i.e., unlimited in all offences on summary conviction, except in Scotland and Northern Ireland where fine ceilings on summary conviction still exist, and unlimited for all convictions brought on indictment, wherever in the UK they may be brought. In relation to the offence which could attract a prison sentence, it is acknowledged that in this instance the maximum sentence is specified as 6 months, but a link to growth, turnover and profit is not relevant to custodial sentences.

**Question**

**d) Do you feel that the proposed penalties will act as an effective deterrent for non-compliance?**

Summary of  
consultee views

One consultee replied in the negative to this question, saying they thought that the fine levels were insufficient.

Government  
response

The fine levels for offences in the proposed Regulations are already set at the statutory maxima, i.e., unlimited in all offences on summary conviction, except in Scotland and Northern Ireland where fine ceilings still exist on summary conviction, and unlimited for all convictions brought on indictment, wherever in the UK they may be brought. So the level of fines permitted in the proposed Regulations cannot be increased any further.

#### **Section 5, Question 5 - Format**

**Question**

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

Summary of  
consultee views

In general, no consultee disagreed with the format or content of the guidance. At a more detailed level, one consultee made some suggestions for improvement relating to the drafting of the MGN in four places for clarification purposes.

Government  
response

The suggested drafting changes have been taken into account and some adjustments have been made.

**Question**

**b) Do you think there is a better way of providing guidance for the ILLC/ILLP requirements? Please provide reasoning for your answer.**

Summary of  
consultee views

One consultee queried why there was both an MGN and MIN, and suggested they might be combined.

Government  
response

The reason for a separate MGN and MIN is as follows: (a) the MGN and MIN perform different functions. The MGN provides guidance on the Regulations and Convention text. The MIN simply provides information, in that it just contains the Convention/ Protocol amendments since last transposition in one place, to make it easier for the reader, and for the sake of transparency, as they are difficult to source online. (b) The MGN is intended to be valid for some years, whereas the MIN is provided in the short term until such time the amendments are more easily accessible online. (c) An added benefit is that putting the content of the MGN and MIN in separate documents avoids having a large, unwieldy document which serves different purposes which may not both be required by a particular reader.