

<b>Title:</b> Merchant Shipping (Life-Saving Appliances and Arrangements) Regulations 2020 <b>Date:</b> 06/09/2019 <b>DMA No:</b> DFTDMA098 <b>Lead department or agency:</b> Maritime & Coastguard Agency <b>Other departments or agencies:</b> Department for Transport		<b>De Minimis Assessment (DMA)</b>	
		<b>Stage:</b> Consultation	
		<b>Source of intervention:</b> International	
		<b>Type of measure:</b> Secondary	
<b>Summary: Rationale and Options</b>		<b>Contact for enquiries:</b> Gemma Billany	
<b>Total Net Present Value</b> £0.00m	<b>Business Net Present Value</b> £0.00m	<b>Net cost to business per year</b> (EANDCB in 2016 prices) £0.00m	

**Rationale for intervention and intended outcomes**

UK transposition of the requirements contained in Chapter III of the International Convention on the Safety of Life at Sea (SOLAS) and associated mandatory documents are not up to date. These cover requirements for the carriage, and standards of, lifeboats, lifejackets, flares, etc. Historically, the maritime sector has undervalued safety leading to the loss of human life; SOLAS is designed to correct this market failure by introducing minimum standards of safety with the intention of increasing safety onboard ships. Government intervention is required to (a) ensure the UK meets its signatory obligations under the Convention; (b) provide legal certainty and maintain a level playing field for UK ship-owners/operators by enabling enforcement for non-compliance of non-UK ships in UK waters; (c) implement future technical changes to the Convention promptly, reducing the compliance burden; and, (d) allow the UK to maintain its reputation during its mandatory audit pursuant to the IMO audit scheme. In relation to (d), a poor performance, due to the lack of transposition of the Convention requirements, could result in the loss of the UK's "low risk status"; this could increase the frequency of inspections for UK flagged ships in foreign ports and hence increase cost to UK industry. The Regulations also carry over the requirements contained in the existing Regulations for ships other than Classes III to VI(A) for ships engaged on non-international voyages, and to ships engaged on international voyages to which SOLAS does not apply. There are no regulatory impacts.

**Describe the policy options considered**

Do nothing: International amendments are not transposed into UK law; this is the baseline against which Options 1 and 2 are assessed. However, this is not a realistic option as the UK, as a signatory to SOLAS, has an obligation to implement any changes into UK law.

Option 1: Bring the UK in line with recent updates to international requirements. However, this would fail to recognise industry's concerns raised during the Red Tape Challenge about the delays in transposition of international requirements.

Option 2: Bring the UK in line with recent updates to international requirements by way of direct reference to them and introduce ambulatory referencing, which automatically transposes future amendments to the Convention into UK legislation and ensures the UK industry is kept to the most up to date international legislation in this area, and increase the efficiency of implementing future amendments. **This is the preferred option due to the fact it achieves the objective of updating UK law and also puts in place efficiencies for the implementation of future amendments.**

**Rationale for DMA rating**

**The total NPV, Business NPV and EANDCB are zero because monetised costs for the Do Nothing, Option 1 and Option 2 are the same. As explained below the benefits were not monetised for this DMA.**

Because this is an international convention, UK operators will need to comply with it regardless of whether it is transposed into law if they wish to continue operating internationally without hinderance. Consequently, this implies that even in the 'Do Nothing' scenario the costs will be incurred. Therefore, the costs associated with compliance are considered as neutral given that they are historic and have already been incurred. This is supported by the Port State Control data and the fact that ship operators will comply with international conventions to mitigate the potential delays at Port State Control which can be costly due to logistical implications. Likewise, the legislation is entirely uncontroversial given the international acceptance of these requirements. Option 1 might be considered controversial in delivery rather than content because it ignores the industry's concerns around legislative delays. For completeness, this DMA provides an estimate of the historically incurred costs, which can be reviewed in the Business Impact and DMA Classification section and Annex A of this DMA.

Will the policy be reviewed? Yes		If applicable, set review date: 03/06/2019		
Are these organisations in scope?	<b>Micro</b> Yes	<b>Small</b> Yes	<b>Medium</b> Yes	<b>Large</b> Yes

Senior Policy Sign-off:	✓	Date:	13/06/2019
Peer Review Sign-off:	✓	Date:	14/06/2019
Better Regulation Unit Sign-off:	✓	Date:	14/06/2019

## **Supporting evidence**

### 1 Background

- 1.1 This De Minimis Assessment relates to the amendments to the International Convention for the Safety of Life at Sea 1974 (SOLAS). This Convention was developed at the International Maritime Organization (IMO), which is the United Nations competent body on maritime matters. SOLAS is divided into Articles, Chapters (which are further divided into Regulations) and Annexes. There are fourteen Chapters, each dealing with a different aspect of maritime safety matters. (The slight departure from the latter premise is that Chapter I deals with some general matters such as definitions, exemptions and equivalents, and then goes on to deal with Survey and Certification, both of which overarch a number of other areas of the Convention.) Chapter III deals with life-saving appliances and arrangements (LSA), which is the subject matter of the instrument this DMA assesses. LSA includes, for example, lifeboats, liferafts, lifejackets, immersion suits, lifebuoys, flares, drills, mustering and so on. The IMO regulatory regime comprises the following documents as a package (“SOLAS Chapter III and associated mandatory LSA documents”):
- Chapter III of SOLAS;
  - the Life-Saving Appliances Code (“LSA Code”). The preamble to the LSA Code states that “The purpose of this Code is to provide international standards for life-saving appliances required by Chapter III of the International Convention for the Safety of Life at Sea (SOLAS) 1974”;
  - the Revised Recommendation on Testing of Life-Saving Appliances (“Recommendation on Testing”) which despite its name is mandatory in law due to a subsequent Resolution which incorporated it into the Chapter III obligations (IMO Resolutions A.689(17) and MSC.81(70) refer);
  - the Code of Practice for the Evaluation, Testing and Acceptance of Prototype Novel Life-Saving Appliances (“Code on Testing”).
- 1.2 Chapter III and the associated mandatory documents are amended from time to time in the IMO (by way of Resolutions deriving from the IMO’s Maritime Safety Committee (MSC) and the IMO Assembly).
- 1.3 The structure of SOLAS is such that the administrative aspects of the Convention, such as member State obligations, ratifications and the amendment process, are contained in the Articles of the Convention, and the technical requirements are contained in the Chapters, which are further divided into Regulations.
- 1.4 There are a number of amendments which have been produced by the IMO and which have come into force internationally since UK law was last updated in 2004. Although it is considered that shipowners operating internationally must have already implemented all of these changes, due to the fact that any failure to keep up with them would result in their ships being detained for incurring deficiencies during port State Control inspections in foreign ports, the UK nevertheless has an international obligation to transpose the amendments into domestic law. Transposition of international obligations such as this will be inspected during IMO flag State audits pursuant to the IMO Instruments Implementation (III) Code.
- 1.5 The first flag State audit of the UK maritime administration is expected to be during 2020. The UK is currently behind with implementing amendments to SOLAS Chapter III and associated mandatory documents, and this is expected to attract negative reaction from auditors, and consequential

reputational damage to the UK. Getting LSA transposition up to date – or at least demonstrating the transposition of existing amendments is well underway, and that future amendments will be dealt with more promptly – is crucial to the UK’s reputation and the UK’s ability to fully prosecute non-UK ships for failure to comply with the very latest improvements to international LSA requirements pursuant to SOLAS.

- 1.6 There have been 17 IMO Resolutions amending Chapter III since the last transposition into UK law. (See Annex C).
- 1.7 The United Kingdom has been very active and involved in the IMO process of development of not only the Convention itself but also the LSA Code, and a large number of UK businesses rely on the sale of Code-compliant life-saving appliances of various sorts.
- 1.8 In 2011, the IMO agreed a set of new and stricter safety standards for conventional lifeboats with on-load release hooks, also referred to as on-load ‘release and retrieval systems’ or ‘release mechanism systems’.
- 1.9 The main purpose of the new safety standard was to reduce the likelihood of the hooks being released by accident and by the design criteria.
- 1.10 Therefore, the amendments to the requirements in SOLAS Chapter III and associated mandatory documents (LSA Code) for on-load release mechanisms represent important safety improvements to the equipment and the operator.

## 2 Rationale for Intervention and Intended Objectives

- 2.1 **Rationale for intervention** – SOLAS Chapter III and the associated mandatory documents aim to increase personal and collective safety of all operating vessels. The amendments to the chapter are designed to improve upon the Convention requirements already in place to ensure the maritime sector continues to function safely.
- 2.2 **Carriage of life-Saving Appliances and Arrangements** - existing UK legislation on this subject is as follows:
  - Merchant Shipping (Life-Saving Appliances for Ships Other Than Ships of Classes III to VI(A)) Regulations 1999 (SI 1999/2721), as amended; and,
  - Merchant Shipping Notices (MSN) 1676, 1677 and 1757
- 2.3 However, the amendments contained in the Resolutions referenced in section 1 above, while in force internationally, have not been transposed into UK law. This means the UK is in breach of its international obligations.
- 2.4 **Regulatory approach.** Current practice on implementation is to use a mixture of primary and secondary legislation with technical provisions included either in the instrument, delegated to separate government publications, or occasionally incorporated by direct reference to the international text. The choice between these options has been dictated by the available powers or by what seemed most expedient at the time. Consequently, there is an absence of any coherent regulatory framework to guide users (such as a framework mirroring the international agreements), and this.
- 2.5 Using current procedures and practice to implement regular changes to international agreements is time consuming and resource intensive. Without changes to current resourcing or practice, the UK will always be ‘playing catch-up’, using a system which is inherently reactive, resulting in a delay whenever improvements are made to safety regulation. There is a pressing need for Government intervention to provide for an alternative, simplified, approach to facilitate prompt implementation and reduce the resources consumed in the process.
- 2.6 There is a danger that the UK’s failure to comply with its obligations will be identified through the mandatory IMO Member State Audit Scheme which entered into force at the start of 2016, and under which the UK is expected to be audited during 2020, which could have a detrimental effect on the status of UK ships operating internationally and the status of the UK itself as a maritime nation – something which is expected to become even more important in the UK’s post EU-exit existence.

### 3 Issues Considered

- 3.1 The policy objectives are divided into two distinct areas: (1) transposition of outstanding amendments to the SOLAS Chapter III and associated mandatory documents into UK law, and (2) the introduction of ambulatory referencing.

#### **Transposition of outstanding amendments to SOLAS Chapter III and associated mandatory documents into UK law**

- 3.2 The existing regulations will be recast to cover, in addition to those aspects of Chapter III/LSA Code which have already been transposed, the outstanding varied and detailed amendments to Chapter III/LSA Code as identified in this De Minimis Assessment.
- 3.3 The outstanding elements for transposition fulfil a variety of functions, including failsafe features in lifeboat release mechanisms, enhanced marking of LSA to give greater clarity in emergency situations, increase in the weight (mass) of persons who must be supported by LSA to reflect the changed demographic and conditions of storage to preserve the condition of the LSA.

#### **Marine Accident Investigation Branch (MAIB) a Branch of the Department for Transport Report on the MV HOEGH DUKE**

The MAIB's report of this investigation was produced on behalf of the Flag State Administration. During a routine drill with 12 crew members aboard, the lifeboat was being lowered into the water. The aft hook separated from the falls, allowing the boat to swing and then fall vertically as the forward hook failed. Six of the people aboard were killed and the other six injured. MAIB's report concludes that the aft on-load release hook had not been properly reset because the aft operating cable was seized and the resetting lever was stiff. However, because the hook had not been properly and fully reset, the design of the hook was such that a force was created in the hook which overcame the resistance of the seized cable, allowing the hook to open. The report identifies serious neglect of maintenance and ignorance of safe operation as giving rise to this situation. Again, it will be noted, however, that the accident was not directly a failure of the hook itself, but a failure in the mechanism for releasing the hook.

*Link to the MAIB Report:*

[https://assets.publishing.service.gov.uk/media/54c13dc840f0b6158a000015/MAIBReport\\_HoeghDuke-1992.pdf](https://assets.publishing.service.gov.uk/media/54c13dc840f0b6158a000015/MAIBReport_HoeghDuke-1992.pdf)

#### **MAIB Report on the MV GALATEIA**

MAIB's report describes how the accident happened during a lifeboat drill, immediately after the boat had been reconnected to the falls and raised to the embarkation level. Both hooks simultaneously opened, allowing the boat to drop, striking the deck as it fell and ending up partially capsized in the water. One of the three crew on board suffered serious injury, the other two minor injuries. The reason was essentially the same as in a previous accident involving the vessel 'Ivory Ace', in that a locking pin in the operating mechanism adjacent to the coxswain's position had not been correctly reinserted after hooking-on the boat. Once again it is seen that the accident was not directly a failure of the hook itself, but a failure in the mechanism for releasing the hook.

*The full Report is available here:*

[https://assets.publishing.service.gov.uk/media/547c70ffe5274a42900000f5/galateia\\_.pdf](https://assets.publishing.service.gov.uk/media/547c70ffe5274a42900000f5/galateia_.pdf)

*For further information the MCA commissioned a research project into lifeboat design in 2005. The project is available on the MCA's web site at: [http://www.mcga.gov.uk/c4mca/research\\_report\\_555.pdf](http://www.mcga.gov.uk/c4mca/research_report_555.pdf)*

#### **Introduce ambulatory referencing and reduce legal uncertainty**

- 3.4 It is intended that the new Regulations will require ships' safety equipment to comply with Chapter III/LSA Code in their up to date form. This will ensure that the UK is always up to date with transposition of Chapter III/LSA Code.
- 3.5 Ambulatory referencing transposes international provisions without gold plating or adding any additional obligations (see Annex B).

- 3.6 Supporting documentation will be provided by the Maritime and Coastguard Agency (MCA) to add clarification and additional guidance, especially where the international text is open, as required, e.g.: where Chapter III or the LSA Code state that an obligation must be performed “to the satisfaction of the administration”, the MCA will specify what is required to meet this obligation.
- 3.7 During the Red Tape Challenge industry raised its concern over the lengthy delays between amendments to international Conventions coming into force internationally and being transposed into UK law. These delays lead to legal uncertainty and disparity between national and international legislation.

**Specifically the UK Chamber of Shipping’s<sup>1</sup> response to the Red Tape Challenge was:**

*“The UK shipping industry was very pleased to contribute to the Government’s recent Red Tape Challenge initiative and proposed a number of basic principles which might help ensure ‘better regulation’ into the future.*

*One of these involved the direct read-across through ‘ambulatory references’ of international conventions which have been accepted by Government into UK law without their provisions having to be rewritten in the national context.*

*This would in particular help with keeping the national law up to date when amendments were agreed, of course again subject to their acceptance by Government.*

*The international convention text would clearly remain subject to the same scrutiny as at present and could be supplemented by guidance in the UK as to interpretation as necessary.*

*We believe that such a practice in the UK would substantially reduce the regulatory and legal process surrounding the adoption in this country of international regulations, which are an essential part of international shipping and without which the UK merchant fleet would not be able to operate.”*

- 3.8 In response, DfT sought regulatory reform through the Deregulatory Act 2015. The Act introduced an additional power which allows for ambulatory referencing to be made to international instruments. Ambulatory reference means a reference in legislation to an international instrument as modified from time to time (and not simply to the version of the instrument that exists at the time the secondary legislation is made).
- 3.9 It is worthwhile noting that whilst the UK Chamber of Shipping advocates ‘ambulatory references’, this does not negate the Government’s principle of consultation. Amendments to international Conventions are developed and agreed at the IMO, where in addition to Member States, industry is well represented. Industry is therefore heavily involved with policy development and also in helping to shape the UK’s negotiating position. Working in partnership UK officials and industry actively contribute to negotiations on new initiatives to ensure they are appropriate and proportionate measures to improve safety.

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<sup>1</sup> The UK Chamber of Shipping is a trade association and considered to be voice for the UK shipping industry. It has around 150 members from across the maritime sector. Further information on the Chamber is available from: <https://www.ukchamberofshipping.com/about-us/>

## **Ambulatory Referencing**

During the Red Tape Challenge industry raised its concern over the lengthy delays between amendments to international Conventions coming into force internationally and being transposed into UK law.

In response, DfT sought regulatory reform through the Deregulatory Act 2015. The Act introduced an additional power that allows for ambulatory referencing to be made to international instruments. Ambulatory reference means a reference in legislation to an international instrument as modified from time to time (and not simply to the version of the instrument that exists at the time the secondary legislation is made).

Supporting documentation will be provided by the Maritime and Coastguard Agency (MCA) to add legal prescription and additional guidance, as required e.g.: where the Convention states that a requirement is “to the satisfaction of the administration”, the MCA will specify what is required to meet this obligation.

A full description of ambulatory referencing and its benefits can be found in Annex B.

### **What assurances are in place to prevent undesirable amendments to the LSA regime automatically coming into force?**

It is worthwhile noting that this does not negate the Government’s principle of consultation and that the principles of Better Regulation will still apply. Amendments to international Conventions are developed and agreed at the IMO, where in addition to Member States, industry is well represented. Industry is therefore heavily involved with policy development and also in helping to shape the UK’s negotiating position. Working in partnership UK officials and industry actively contributes to negotiations on new initiatives to ensure they are appropriate and proportionate measures to improve safety.

Any amendments will be reviewed at five yearly intervals through the post-implementation review process. The Post Implementation Reviews (PIR) undertaken will evaluate whether the policy has achieved its goal and is still valid, and also evaluate the costs and benefits of all the technical amendments enacted since the previous review (or Impact Assessment). This will be validated by the Regulatory Policy Committee (RPC).

### **How will the principles of Better Regulation still apply:**

Alternatives to Regulation – prior to work commencing on any proposal at the IMO, a case for action must be demonstrated against the following criteria: practicality, feasibility and proportionality; costs and benefits to industry, including legislative and administrative burdens; and alternatives to regulation.

Consultation – industry is represented at the IMO through non-governmental organisations, which are heavily involved in early stage policy development, contributing to working and drafting groups where policy is designed, as well as participating in plenary where policy is examined. Industry representatives are invited to meetings hosted by the MCA prior to IMO sessions to assist with the development of the UK’s negotiating position.

Assessment of Impact – a high level consideration of impact is undertaken at proposal stage to inform the UK’s negotiation position. Post Implementation Reviews will be used to assess the robustness of the original assessment and will be timed to ensure they can feed into negotiations for future rounds of amendments.

### **SOLAS Chapter III (LSA) and associated mandatory documents**

As a result of including ambulatory reference provisions in secondary legislation, future amendments to SOLAS Chapter III and associated mandatory documents, such as the LSA Code, which are agreed internationally, will automatically come into force in UK law. This DMA explores published changes which have come into force internationally since the UK domestic legislation on the subject was last amended.

All the subject matter contained in the LSA regime that is made ambulatory is technical in nature. Subsequent technical amendments, during the international negotiation process, will continue to be subject to:

- a) consideration of high level impacts against a checklist; and
- b) stakeholder engagement involving representatives of the UK shipping industry.

All amendments to SOLAS Chapter III, the LSA Code and associated mandatory instruments are negotiated in the IMO, and the UK will make any proposals it thinks fit during those negotiations. Although no undesirable outcomes are expected at the negotiation stage, if the agreed text of an amendment is deemed unacceptable, the UK can object to it in accordance with Article VIII of SOLAS. The amendment will then not come into force in relation to the UK and will not require implementation. However, the likelihood of this is thought to be remote because the amendments will have been negotiated between IMO Member States, including the UK, and industry and union representatives, before coming into force.

SOLAS Chapter III is long established and deals with a vital aspect of maritime safety, LSA, which comprise a large number of different pieces of equipment (see Background section of this DMA). Some of the changes in recent years have been clarifications of text, and others have been changes to safety equipment to increase its effectiveness.

There have been 17 amending Resolutions, one with a Corrigendum (correction), an Erratum and a Supplement since last transposition into UK law in 2004. Some of these just provide additional clarity, some make marginal technical changes, and a few larger changes.

### **Level Playing Field**

- 3.10 UK ships are liable for detention in a non-UK port if their safety equipment is not in compliance with the latest requirements of Chapter III/the LSA Code at the time - although this is considered unlikely as most UK owners and operators comply as a matter of course with the Chapter III/LSA Code requirements in order to continue their global operations. Whilst the cost of rectifying a detention to enable the ship to sail may be low, the opportunity cost can be high. If the Chapter III/LSA Code requirements are not fully transposed into UK law, the UK will be unable to take enforcement action against ships which are non-compliant with the outstanding aspects of Chapter III/LSA Code.

### **UK Reputation and status on the Paris MoU white list**

- 3.11 The UK, as a signatory to the Convention, has an obligation to implement any changes to Chapter III/LSA Code. Any failure to implement amendments are noted as part of the mandatory IMO audit scheme. A poor audit performance could even result in the possibility of the UK losing its “low risk status”; this would increase the frequency of inspections for UK flagged vessels in foreign ports and hence increase cost to UK industry. An increased frequency of inspections implies that UK flagged ships could spend longer in foreign ports before continuing their journey, hence, slowing the speed of trade channels, which could cost the industry. It is important to mitigate this risk to ensure UK flagged ships can continue to operate with minimal hinderance, therefore contributing their maximum value to the UK economy. Furthermore, there would be a reputational risk to the UK’s standing in the Paris Memorandum of Understanding on port State control if UK ship deficiencies and detentions increased in ports of the MoU signatories, leading to the UK leaving the ‘white list’ within the MoU’s reporting functions and being regarded as a higher risk to safety of life.

### **Compliance with the Flag State Directive<sup>2</sup>**

- 3.12 Although it is non-binding, it should be noted that recital 3 of the flag State Directive notes that member States are responsible for implementing IMO Conventions into their domestic law (which is the international requirement). Article 4(1) of the Directive (which is binding) requires Member States to take all the measures it deems appropriate to ensure that the ship in question complies with the applicable international rules and regulations.
- 3.13 Although SOLAS is an international Convention, for as long as the UK is in the European Union, the European Commission will take a keen interest in any IMO Member State Audit which the UK undergoes; any failure to implement IMO Conventions in their up to date form will be indicative of the UK failing to meet its obligations under the Directive. The Commission would then be able to commence infraction proceedings against the UK. Failure to achieve transposition could potentially attract unwelcome scrutiny from both the IMO and the EU. However, it is possible that the UK will be outside the EU when the UK’s Audit is carried out.

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<sup>2</sup> Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements.

## 4 Description of Options to be Considered

### 4.1 Do nothing

4.2 The “Do nothing” option is that the international amendments to the SOLAS LSA regime are not transposed into UK law. The UK, as a signatory to the Convention, has an obligation to implement any changes into UK law. Without timely implementation:

- there is a lack of legal certainty for operators due to differing international and domestic requirements;
- the playing field is not level for UK operators; and
- the UK’s reputation is at risk.

4.3 Further details on each of these rationale for intervention are contained under section 3 of this DMA. The ‘Do Nothing’ is the baseline against which Options 1 and 2 are assessed.

### 4.4 **Option 1: Bring UK law in line with recent updates to the Chapter/LSA Code requirements by specifically transposing all the requirements into UK law and without including an Ambulatory Reference provision for future amendments.**

4.5 This Option would implement outstanding amendments to Chapter III/LSA Code by an iterative transposition of each requirement into secondary legislation, i.e. without making cross-references to the requirements of Chapter III/LSA Code or including an ambulatory reference provision. Further amendments to the legislation would be necessary if future amendments to Chapter III/LSA Code were agreed in the IMO. The transposition would therefore very likely take longer than Option 2, and would fail to address industry’s concerns expressed at the time of the Red Tape Challenge. This would only be a temporary fix, and by the time the outstanding amendments are implemented, new amendments are likely to have entered force, so the UK will still be behind and it will be necessary to go through the whole process again. In other words, the UK would always be playing ‘catch-up’, and most probably falling further and further behind. This Option would therefore lack effectiveness and be resource intensive, continuing the ‘merry-go-round’ of spending public money on implementing legislation inefficiently.

4.6 Option 1 is therefore not considered a viable Option in the medium and long term.

### 4.7 **Option 2: Bring UK law in line with recent updates to Chapter III/LSA Code requirements by way of reference to them and introduce ambulatory referencing to ensure UK industry always has the most up to date international LSA legislation.**

4.8 This option would incorporate the outstanding international amendments into UK law and introduce ambulatory referencing by which future amendments would be introduced more efficiently, and at lower cost to the taxpayer than in the Option 1 scenario. The outstanding amendments, among other things, include failsafe features in lifeboat release mechanisms, enhanced marking of LSA to give greater clarity in emergency situations, increase in the weight (mass) of persons who must be supported by LSA to reflect the changed demographic, and conditions of storage to preserve the condition of the LSA.

4.9 This option will make the technical requirements of Chapter III/LSA Code ambulatory, which will directly fulfil the main request of industry from the Red Tape Challenge, which was to address the delay in transposition of international requirements. This option also:

- provides the legal certainty sought by industry as domestic legislation will no longer be out of step with international requirements;
- reduces the administrative burden for industry, as it can focus on the Chapter III/LSA Code text in technical areas, rather than also having to refer to national implementing legislation;
- meets the industry desire for copy-out text, and reduces debates on whether a provision has been “gold-plated”; and
- provides a level playing field between UK ships calling at foreign ports and foreign flagged ships calling at UK ports

4.10 This option has the support of the UK shipping industry and is therefore **the preferred option.**



## 5 Business Impact and DMA Classification

- 5.1 For the purposes of this consultation DMA, the costs and benefits for each Option during the appraisal are monetised below where possible.
- 5.2 SOLAS Chapter III and associated documents impose changes which are relatively minor at a highly technical level. The full implications of these changes require expert technical knowledge. It is intended to use this consultation process to gain a greater understanding of the costs and benefits for the final assessment.
- 5.3 It is expected that the proposals in Option 2 will lead to a benefit from a reduction in time spent becoming familiar with both international and national legislation. At present, ship operators need to be sure that where provisions of international conventions have been framed differently in UK law, it is given the same interpretation that it has internationally (in the Convention). The introduction of cross-references to convention text (which are ambulatory) means that ship operators can focus on the convention text in technical areas rather than also having to refer to national implementing legislation; which presents a benefit to industry. The benefit from reduced time costs of familiarisation will be explored during consultation with industry on the scale of the savings. Relying on the international text will also mean that shipowners and other interested parties will be in possession of the text with which they will have to comply much sooner – normally 3 to 5 years sooner (as the text will be publicised ahead of the in-force date) – than they would be able to have the official UK transposition.

***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.***

- 5.4 The costs of Option 1 and Option 2 are the same as the “Do Nothing” option. This is because it is assumed that because this is an international convention, UK ships will have the equipment installed whether or not the UK passes the convention into domestic law. Data referenced in this DMA from port State control suggests this assumption is correct. However, the benefits of Do Nothing and Option 1 and 2 are not equal. The benefits of Option 2 (the convention reference and ambulatory reference Option) is greater for both industry and government than Option 1 and Do Nothing.
- 5.5 ***Do Nothing: international amendments to the SOLAS LSA regime are not transposed into UK law.***

The UK ships in scope of the SOLAS LSA regime would be expected to comply with the requirements in order to be able to continue to operate internationally. Port State control reports show that when making international voyages, vessels will expect to have their compliance with the latest international standards checked, and are aware that they may face detention in the relevant port if they are not compliant, at significant cost to their business. In light of this, costs associated with compliance with the SOLAS LSA regime are expected to be incurred under the do-nothing scenario.

### **Overview of costs**

- 5.6 Many of the costs involved are minor and are due to incremental advances in safety, brought about by experience gained from real-life events – some of which resulted in tragic loss of life.
- 5.7 For example, in 2011 the IMO agreed a set of new and stricter safety standards for conventional lifeboats with on-load release hooks, also referred to as on-load ‘release and retrieval systems’ or ‘release mechanism systems’ (MSC.317(89)). The main purpose of the new safety standard was to reduce the likelihood of the hooks/mechanisms being released by accident, as had happened on occasion in the past, due to poor design.
- 5.8 Therefore, the amendments to the SOLAS requirements for on-load release mechanism systems represent important safety improvements to the equipment and mitigate operator error. These changes make up the most significant part of the costs identified in the Table below (which, for completeness, includes amendments to the testing requirements covered by the Merchant Shipping (Marine Equipment) Regulations 2016. Further detail of the calculations which support these figures are shown at Annex A.
- 5.9 Of the remainder of the amendments, most of the costs fall on the manufacturers. These costs are not expected to be passed on to shipowners because they are not manufacturing costs as such, but are costs associated with the development of new products to replace the existing ones on the market and enable the manufacturer to remain in the market. This encompasses research and

development costs, including design, testing and intellectual property rights associated with the new products.

- 5.10 Because, unlike the release mechanism systems mentioned above, the effect of the changes on these other items is not retrospective; the new products are simply placed on the market at a similar price to the old products, and shipowners and shipbuilders purchase them as required, e.g., when an older product is damaged or its normal lifespan comes to an end, or when a new ship is built and needs to be equipped.
- 5.11 Most of the major manufacturers have a UK presence. But some aspects of their operations – typically the manufacturing and assembly type functions, which tend to be lower skilled work - are outsourced, or located in other countries. It is therefore not possible to get an accurate picture of the extent of the costs that may fall on the UK elements of their business, and the figures they have provided are for combined aspects of a product. These figures are therefore “worst case scenarios”, and the real costs on UK business are likely to be lower than the figures given.
- 5.12 The number of UK manufacturers for particular components of pieces of LSA, are not known and are disproportionate to establish. It is also worth noting that one amending Resolution can involve elements affecting several types of manufacturer, others only one. It is therefore not possible to say with any certainty that there are a certain number of manufacturers affected by any one Resolution.

### High level costs table - these are the same for all options discussed<sup>3</sup>

Item	Amending IMO Resolution	Initial compliance cost - low	Initial compliance cost - high	Initial compliance cost - medium	Remarks
Adjustment to lifejackets and revised testing requirements	MSC.200(80) and MSC.207(81)	£0.2m	£0.2m	£0.2m	Because lifejacket features changed, testing requirements had to be changed accordingly. <i>Costs fall on manufacturer.</i>
Clarification of existing standards and incremental changes to LSA	MSC.218(82)	£0.015m	£0.015m	£0.015m	Incremental changes applied to various LSA, e.g., lifejackets, immersion suits, survival craft, liferafts, rescue boats. <i>Costs fall on manufacturer.</i>
Revised lifejacket testing requirements	MSC.226(82)	£0.3m	£0.3m	£0.3m	Lifejacket changes resulted in revised testing requirements. <i>Costs fall on manufacturer.</i>
Weight of persons lifejackets must support changed to reflect increase in weight of population generally.	MSC.293(87)	£0.25m	£0.25m	£0.25m	<i>Costs fall on manufacturer.</i>
Release mechanism replacement	MSC.317(89)	£31m	£80m	£55m	See separate calculation in Annex A

<sup>3</sup> Figures in table have been provided in line with an informal consultation by the Maritime & Coastguard Agency with manufacturers and internal expert technical advice

					<i>Costs fall on shipowner.</i>
Improvement to survival craft and revised testing requirements	MSC.320(89) MSC.321(89)	£0.35m	£0.35m	£0.35m	Survival craft changes resulted in revised testing requirements.  <i>Costs fall on manufacturer.</i>
Revised testing requirements on various pieces of LSA	MSC.323(89)	£0.05m	£0.05m	£0.05m	<i>Costs fall on manufacturer.</i>
Revised lifejacket testing requirements	MSC.368(93) and MSC.378(93)	£0.08m	£0.08m	£0.08m	Lifejacket changes resulted in revised testing requirements.  <i>Costs fall on manufacturer.</i>
<b>Total</b>		<b>£32.24m</b>	<b>£81.24m</b>	<b>£56.24m</b>	

***Do you agree with the costs identified in the Table above? If not, please provide alternative evaluations of cost, with as much detail of how they were arrived at as possible.***

***Do you agree with the costs and benefits identified at Annex A? If not, please provide alternative evaluations.***

### 5.13 **Benefits**

The main benefit of the amendments to Chapter III/LSA Code is to enhance the chances of human life being preserved in a maritime incident. As the amendments involve a large number of technical amendments and in some cases are a regulatory 'stamp of approval' of existing best practice, it is not possible to quantify the consequential reduced risk.

- 5.14 A major benefit of the change to update release mechanisms for lifeboats is the reduced risk of death and serious injury to occupants of the lifeboat which has been discussed in the historic case studies covered in this assessment. The launching of lifeboats is dangerous due to the risk of the lifeboat falling from height should the launching mechanisms fail, or if the operators make an error. While the main purpose of lifeboats is to provide a means of escape from the ship they serve in an emergency, it is important to note that more commonly lifeboats are deployed for the purpose of drills required by SOLAS, or maintenance. This means that they are deployed fairly regularly as required by the International Convention.
- 5.15 Although there may be room for yet further improvements to safety in this area in the future, much work has been done to mitigate both these risks over a number of years, and the fitting of fall prevention devices (FPDs) to release mechanisms are expected to reduce the number of deaths and injuries which result from this type of incident.
- 5.16 While frequently there is not a single cause for an incident – often it is a combination of several things – the examples given in this assessment involve release mechanisms in some way, often where a better designed mechanism could have mitigated the effect of other factors, not least human failures. A lot of training has been focussed on the maintenance and lowering of lifeboats, but incidents like this continue to happen. Improved designs therefore help to mitigate human error, which it is difficult to eliminate entirely.
- 5.17 ***Option 1: Bring UK law in line with recent updates to Chapter III/LSA Code requirements by specifically transposing all the requirements into UK law and without including an ambulatory reference provision for future amendments.***

Although the amendments to Chapter III/the Code have already been implemented by shipowners, and any associated costs have already been incurred in order to continue operating internationally, this section seeks to identify the changes which have international force. Consequently, this DMA assumes all costs have already been incurred, however, for completeness it provides an assessment

of costs to the UK shipping industry of the Convention which have been assessed against a no convention baseline.

#### 5.18 **Costs**

The cost implications for Option 1 are the same as those described for the do nothing option for this assessment. The requirements would be directly transposed with no additional requirements in the UK regulations compared with the international regulations.

#### **Benefits**

Option 1 has all the safety benefits of the do nothing option as well as non-monetised benefits from bringing UK regulations closer to international standards, which include avoiding reputational damage to the UK from not fulfilling the requirements of the SOLAS Convention relating to transposing relevant requirements into UK law, and providing legal clarity for operators by avoiding contradictory standards in UK and international regulations. Nevertheless, the regulations would need to be continually updated and without an ambulatory reference provision, UK and international standards are expected to diverge before UK regulations are next updated.

#### 5.19 ***Option 2: Bring UK law in line with recent updates to the Chapter III/LSA Code requirements by way of reference to them and introduce ambulatory referencing to ensure UK industry always has the most up to date international LSA legislation. This is the preferred option.***

#### 5.20 **Costs**

The cost implications for Option 2 are the same as those described for the do nothing and option 1 for this assessment.

#### 5.21 **Benefits**

Option 2 has all the safety benefits of Option 1, plus a saving of familiarisation costs for shipowners and, due to the incorporation/ambulatory reference element, and would result in cost savings to government from implementing future amendments to Chapter III/LSA Code.

5.22 This option would result in cost savings to industry as shipowners would only have to consult a single piece of international legislation to understand the technical requirements relevant to their operation. Familiarisation costs resulting from future amendments to Chapter III/LSA Code will therefore be lower as they will not read separate international and domestic requirements, except to understand how the exemptions, equivalence and approvals regimes work, as well as enforcement of the legislation (contained in the domestic legislation). The UK government will provide guidance and clarification of the international text where necessary.

5.23 As future amendments would automatically apply, there would be a resource saving from not having to transpose the amendments into UK legislation, with the associated cost savings to government of policy officials', economists', lawyers' and MPs' collective time, in not having to produce additional legislation.

5.24 The risk of "gold plating" the original text would also be minimised, as it would be the international text which would be incorporated into UK law.

5.25 This incorporation/ambulatory reference Option, by efficient implementation of Convention amendments, also supports the UK status not only as host to the International Maritime Organization (IMO), which brings in revenue for the City of London and the UK generally, but also as a Category A member of the IMO Council, which is important to the UK's influence as a maritime nation.

5.26 Furthermore, this Option fulfils the specific request by the UK Chamber of Shipping, the UK's industry body, for the use of ambulatory reference.

5.27 It is not possible to quantify the benefits of ambulatory reference as it is uncertain how many amendments will emanate from the IMO on this subject over the coming years.

#### 5.28 **Conclusion**

5.29 The monetised costs for the Do nothing, policy 1 and policy 2 are the same because regulation is already being established on UK ships. Therefore, even if international amendments are not transposed into UK law (i.e. Do Nothing), shipowners will still have incurred the costs of meeting the requirements of the Convention. This means that the total NPV, Business NPV and EANDCB are zero.

5.30 Policy 2 is the preferred option because it avoids the reputational damage of the Do Nothing option and provides additional benefits when compared to option 1, due to the incorporation approach and the use of ambulatory reference.

## 6 Risks and Assumptions

### 6.1 Assumptions in relation to the monetary analysis

- 6.2 Operators have already complied with the latest revisions of Chapter III/LSA Code, therefore the cost is considered neutral as it has already been incurred. This assumption is supported by port State control (PSC) data and the fact that ships' operators will comply to mitigate the potential for delays at PSC which can be very costly due to the logistical implications.
- 6.3 The trend for ships joining and leaving the UK flag continue as per the last 24 months.
- 6.4 That only the costs associated with the release mechanism replacement fall upon the vessel operators. The other costs are assumed to be primarily research and development costs falling upon the manufacturer, which is an exhaustive list of potential costs.
- 6.5 It is assumed that the costs of compliance with the Convention are equal across all the options discussed; Do Nothing, Option 1 and Option 2. Because this is an international convention UK ships are expected to comply with it regardless of its transposal into UK law.

***Do you agree with the above assumptions? If not, please provide full reasoning and any applicable evidence.***

***Do you agree with the assumption in Options 1 and 2 that costs have already been incurred?***

### 6.6 Risk of Do Nothing

The risk of doing nothing is low in terms of protecting human life as it is assumed that operators will have already have implemented the requirements introduced by the changes made to SOLAS to ensure they are operating in line with international conventions to avoid potential port delays. The greater risk is of damage to the UK's reputation as a world leader in the maritime industry. This would have a negative effect on the UK's influence at the IMO and the EU forum on maritime issues. Furthermore, the UK would not be able to detain and/or prosecute any substandard non-UK ships operating in UK waters in relation to requirements introduced by amendments to Chapter III/LSA Code since the last amendments to the existing regulations in 2004.

### 6.7 Risks of implementing option 1

There are no risks involved in implementing the Chapter III/LSA Code measures; it is assumed that industry are fully aware of the changes and are in compliance in order to continue trading internationally without hindrance. This is with exception to the risk that the Government would be ignoring the maritime industry's desire for the removal of unnecessary red tape and bureaucracy, which the ambulatory reference option (Option 2) addresses.

### 6.8 Risks of implementing Option 2

There is a low risk of adverse publicity in connection with introducing ambulatory reference, in that there may be suggestions that this is by-passing the parliamentary and public scrutiny process for new legislation. However, this should be easily refuted by referral to the new scrutiny process, which not only incorporates public scrutiny, but does so at an earlier stage, with the involvement of industry. The reason the risk is assessed as "low" is that industry as a whole have requested the use of ambulatory reference to provide them legal certainty – so few of their members are likely to challenge it - and members of the public are unlikely to challenge it as the new process incorporates a public element of consultation for those relatively few members of the public who have an interest in the highly technical detail involved.

## 7 Wider Considerations

- 7.1 The wider social, environmental and economic impacts of the proposed policy options have been considered, together with possible unintended consequences. Where we have identified potential impacts, they are described in the following paragraphs.
- 7.2 **Competition assessment**

- 7.3 The new measures apply equally to all ships of the appropriate size calling at UK ports. Issues would not arise in respect of competition as Chapter III/LSA Code apply equally to all ships within its scope.
- 7.4 The new measures also apply equally to the manufacturers of the equipment, given that all the equipment is required to be of the same standard, as required by the Convention. Anything beyond the Convention is an additional commercial decision not considered in this assessment.
- 7.5 **Small and Micro Business Assessment (SaMBA)**
- 7.6 Based on an analysis of the companies owning UK registered ships (as at 16 October 2015), it is concluded that the majority of these companies affected by the Chapter/Code amendments are large, multinational or subsidiaries of multinationals and would therefore fall outside of the scope of the small firms' impact test<sup>4</sup>. It is estimated that around 3% of ships (approximately 25 ships) on the UKSR are owned by companies which may employ less than 50 people. These smaller companies include the operators of tugs and local passenger ferries.
- 7.7 The proposed Regulations are targeted towards large ships, which in most cases will be operated internationally. It is also anticipated that large ships are operated by large firms.
- 7.8 In any event, Chapter III/LSA Code amendments are primarily concerned with lifeboats, liferafts, lifejackets, immersion suits, lifebuoys, flares, and so on. In the interests of safety, it is not possible to justify different requirements in these areas just because a company has fewer employees.
- 7.9 **Environmental & Carbon Impact**
- 7.10 None of the options would have any beneficial or adverse environmental or carbon impact.
- 7.11 **Enforcement**
- 7.12 There are no new penalties being introduced by these new measures as the existing offences and penalties are sufficiently broad to cover all requirements which fall under Chapter III/LSA Code. In fact, it may be possible to reduce the number of offences as offences which can be linked to the possession of a valid certificate may be incorporated with the offence of sailing without such a certificate. Upon introduction of the recast Regulations, the MCA enforcement team could then prosecute those ships that do not comply.

## 8 Post-implementation Review Plan

1. **Review status:** Please classify with an 'x' and provide any explanations below.

<input type="checkbox"/>	Sunset clause	<input checked="" type="checkbox"/>	Other review clause	<input type="checkbox"/>	Political commitment	<input type="checkbox"/>	<input type="checkbox"/>	Other reason	<input type="checkbox"/>	No plan to review
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2. **Expected review date** (month and year):

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	/	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
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<sup>4</sup> The following assumptions have been made when analysing companies owning UK registered ships:

- i. Multinational / Multidisciplinary companies are unlikely to be smaller than a medium sized firm – otherwise they will not be able to conduct their operations
- ii. Companies operating 6 small cargo/ 5 small passenger ships or more are unlikely to be smaller than a medium sized firm – otherwise it would not be able to comply with safe manning requirements and provide the shore based personnel infrastructure to deliver business needs. For example, based on a sample of the minimum number of crew required to comply with safe manning requirements for ships less than 50,000GT, it was found that on average:

Ship Type and Size	Min. no. of crew
Cargo Ship 150GT - 499GT	5
Cargo Ship 500GT - 2,999GT	10
Cargo Ship 3,000GT - 19,999GT	14
Cargo Ship 20,000GT - 49,999GT	17

Ship Type and Size	Min. no. of crew
Passenger Ship 150GT - 499GT	6
Passenger Ship 500GT - 2,999GT	10
Passenger Ship 3,000GT - 19,999GT	16
Passenger Ship 20,000GT - 49,999GT	31

### **Rationale for PIR approach:**

Describe the rationale for the evidence that will be sought and the level of resources that will be used to collect it.

- **Will the level of evidence and resourcing be low, medium or high? (See Guidance for Conducting PIRs)**

The level of evidence and resourcing for this review will be low. The Regulations implement SOLAS Chapter III and associated documents.

- **What forms of monitoring data will be collected?**

The review will include analysing data contained on the Ship Inspection and Surveys (SIAS) and THETIS databases to identify non-compliances with the requirements of Chapter III/LSA Code established through port State control inspections.

- **What evaluation approaches will be used? (e.g. impact, process, economic)**

The Maritime & Coastguard Agency (MCA) will check whether the shipping industry is complying with the new Regulations and, where possible, also whether they are having the desired effect on improving safety.

- **How will stakeholder views be collected? (e.g. feedback mechanisms, consultations, research)**

Officials from the MCA regularly host and/or attend meetings with stakeholders – their feedback on whether measures have had the desired effect or problems encountered is sought as part of ongoing stakeholder engagement.

## **Annex A – Cost calculations for Resolution MSC.317(89) on Release Mechanism Systems**

### **Examining the costs for fitting new design Release Mechanism Systems on Lifeboats onboard SOLAS ships in order to meet the new requirement of Chapter III, Regulation I/5**

The requirement for existing systems to be replaced by the new design release mechanism systems onboard ships was approved by IMO Member States, and entered into force on 1 January 2013; shipowners needed to replace their release mechanism systems on lifeboats not later than 1 July 2019.

This means that the costs will have already been incurred. However, for completeness this DMA has provided an estimate of the costs of the Convention to the UK maritime industry on a historic basis. In practice, these costs all fall between 2014 and 2019 (they will cease after 2019) and they are being treated as one-off initial compliance costs rather than ongoing annual costs.

#### **Costs per system**

Release mechanisms typically cost between £11,000 and £15,000<sup>5</sup> depending on their safe working load (SWL).

Transportation of the release mechanism system can take place by sea or air. Sea is generally cheaper than air, but is not always practical, depending on the level of urgency (due to a dry dock schedule) and the location of the ship. A typical cost of transporting a system by sea is about £200-£300<sup>6</sup> – £200 is therefore taken as the minimum transportation cost. However, the cost of air transportation will depend on the weight of the system. A typical cost of transporting a heavier System by air is £2,000<sup>7</sup> – this is taken as the maximum cost.

Together these give the parameters of the cost band for fitting a new release mechanism system.

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<sup>5</sup> Estimates of costs provided by informal consultation of manufacturers

<sup>6</sup> Estimates provided by technical advice from the MCA

<sup>7</sup> Estimate provided by technical advice from the MCA

Labour costs typically £80-£120 per hour<sup>8</sup>, and replacement of the release mechanisms generally takes around 10 hours per system, so the replacement of one release mechanism system costs between £800 and £1200.

### Total costs of fitting one Release Mechanism System

Expense	Minimum	Maximum
Release Mechanism System	£11,000	£15,000
Transportation	£200	£2,000
Labour	£800	£1,200
<b>Total</b>	<b>£12,000</b>	<b>£18,200</b>

### Number of systems

Next it is necessary to determine how many systems were/are required. Tankers generally have free-fall lifeboats which have a different type of launching arrangement, due to the free-fall nature of descent. Therefore, these will not be affected by this change.

For all other types of existing SOLAS vessels (e.g. passenger or cargo) which have standard lifeboats, these will be required to meet the new requirements.

Generally, passenger ships have 12-24 lifeboats, depending on the size of the ship and the passenger capacity. Cargo ships generally have one lifeboat.

Of the ships in the UK merchant fleet which operate internationally, at the present time, as far as can be ascertained, about 90% of them are non-tankers. The number of ships on the UK Shipping Register changes constantly, but it is assumed that at any one time, between 85% and 95% are non-tankers, and therefore affected by this change. Within this 95% the split between passenger and other ships is estimated to be 15% passenger ships and 80% others.

At the time of writing there are around 882 larger merchant ships and 386 smaller ones in the UK fleet. It has been assumed that all the larger ones operate internationally and somewhere in the region of 100-150 of the smaller ones also operate internationally, although exact data is not held on this. For the purposes of this calculation, it is therefore assumed that at any one time 1000 ships on the UK register operate internationally (i.e., all 882 of the larger ones and 118 of the smaller ones to make a round 1000).

On the basis that 150 (15%) of these are passenger ships and 800 (80%) are other non-tankers, Low and High scenarios are calculated below.

### Total number of systems required

Scenario	Ship type	No. ships	of	No. Release systems required per ship (fitted)	of	Total number of systems by ship type	Grand total number of systems required
Low Scenario	Passenger	150		12		1,800	
	Other non-tanker	800		1		800	
<b>Total Low</b>							<b>2,600</b>
	Passenger	150		24		3,600	

<sup>8</sup> Estimates provided by technical advice from the MCA



High Scenario	Other non-tanker	800	1	800	
<b>Total High</b>					<b>4,400</b>

To calculate the number of systems required, the minima and maxima number of systems are multiplied by the minima and maxima costs of fitting such systems.

**Cost of total Units required**

	<b>Cost of Systems</b>	<b>No. of systems required</b>	<b>Total</b>
Minimum	£12,000	2,600	<b>£31,200,000</b>
Maximum	£18,200	4,400	<b>£80,080,000</b>

The total cost of this Convention is therefore estimated to fall in a band between **£31m and £80m**.

## **Annex B – Ambulatory Reference**

### **Definition of ambulatory reference**

An ambulatory reference for the purposes of this De Minimis Assessment is a reference in domestic legislation to specific provision in an international instrument which is interpreted as a reference to the specific provision as modified from time to time (and not simply the version of that provision which exists at the time the domestic legislation is made).

### **What does an ambulatory reference provision achieve?**

The effect of the ambulatory reference provision is that amendments to any parts of the International Convention which are specifically referred to in the Statutory Instrument (SI) will automatically be transposed into UK law at the same time as they come into force internationally. No additional SIs/ amendments to existing SIs will be required to bring such amendments into force.

### **Enabling Power to make Ambulatory Reference**

On 26 March 2015, the Deregulation Act 2015 received Royal Assent. The Act inserted new section 306A of the Merchant Shipping Act 1995 (MSA 95), which contains a power to make ambulatory references to international instruments in secondary legislation. This power will only be used for “technical”, and therefore non-controversial, aspects of the Convention.

### **What assurances are in place to prevent undesirable amendments to international Conventions automatically coming into force?**

1. An ambulatory reference provision will be incorporated into secondary legislation and the instrument will make appropriate references to an international convention. The suitability of the international convention will be assessed (taking into consideration the nature of amendments and the likelihood of whether they will be controversial) prior to the use of the power being approved.
2. Where the UK does not agree with a proposed amendment to an international convention, the UK may object to it in the IMO; if the amendment still comes into force internationally, it will not come into force with respect to the UK. This facility will be available for exceptional circumstances; however, this “opt-out” it is not expected to be used frequently, if at all, because:
  - a. any UK arguments deemed necessary to shape the amendments will have been applied argued in the international negotiation stage;
  - b. the amendments, being of a technical nature, are not expected to be politically controversial;
  - c. the amendments, once agreed, will in any case be binding on the international community and therefore it will be necessary for UK ships wishing to operate internationally without hindrance to comply anyway.

### **Regulatory process supported by the Better Regulation Executive for Ambulatory Reference measures**

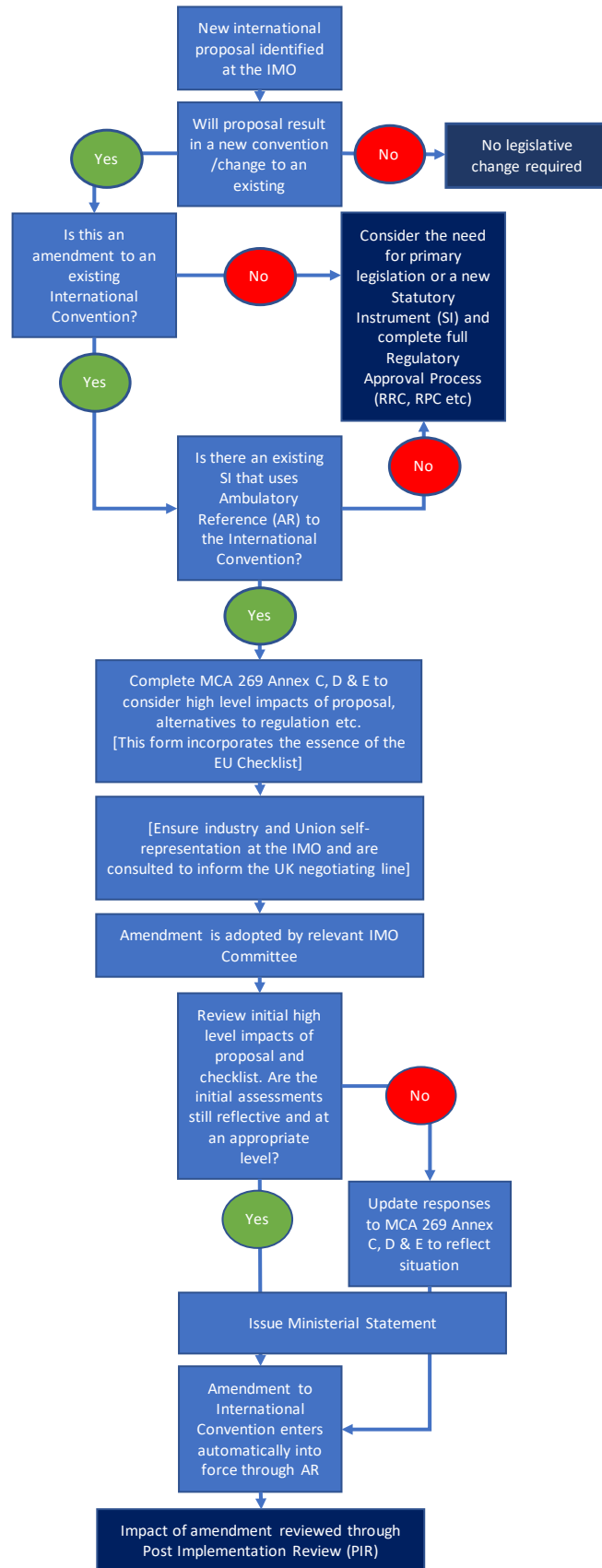
A flow diagram of the agreed scrutiny process is depicted overleaf. In essence the process will require:

- an ambulatory reference provision to be included in secondary legislation which will follow the full parliamentary and regulatory processes;
- subsequent technical amendments during the international negotiation process, will continue to be subject to:
  - consideration of high level impacts
  - stakeholder engagement;

- full post implementation review to be undertaken to evaluate whether the policy has achieved its goal and is still valid, and also evaluate the costs and benefits of all the technical amendments enacted since the previous review (or impact assessment).

The proposed approach streamlines the traditional regulatory process and directs it where the greatest influence can be achieved, at negotiation stage. The principles of Better Regulation are still captured:

- Alternatives to regulation – prior to work commencing on any proposal at the IMO, a case for action must be demonstrated against the following criteria: practicality, feasibility and proportionality; costs and benefits to industry, including legislative and administrative burdens; and alternatives to regulation.
- Consultation – industry is represented at the IMO through non-governmental organisations, which are heavily involved in early stage policy development, contributing to working and drafting groups where policy is designed, as well as participating in plenary where policy is examined. Industry representatives are invited to meetings hosted by the MCA prior to IMO sessions to assist with the development of the UK's negotiating position.
- Assessment of impact – a high level consideration of impact is undertaken at proposal stage to inform the UK's negotiation position. Post implementation reviews will be used to assess the robustness of the original assessment and will be timed to ensure they can feed into negotiations for future rounds of amendments.



## How does Ambulatory Reference support Economic Growth?

The UK's ability to implement international agreements efficiently and effectively is important to the commercial shipping sector for a number of reasons:

- timely implementation means that UK ships plying internationally can properly be issued with certificates that confirm compliance with relevant international rules. Recent experience with the Maritime Labour Convention has highlighted a risk that current implementation practice could result in the UK delaying ratification of major agreements, potentially restricting the participation of UK shipping in international trade;
- the uniform implementation of international rules in all contracting states is vital in order to achieve a level playing field for UK ships that trade internationally. The UK must be capable of certifying its own ships to the relevant standards; failure to do so makes it much more likely that a UK ship will be detained in a non-UK port for non-compliance. We must also be able to enforce those same standards against non-UK ships in UK ports, to ensure that compliant UK ships are not disadvantaged;
- current implementation practice has created a complicated and disjointed regulatory regime that diverges significantly from the international structure. This creates administrative burden for industry, because of the needless duplication of effort needed to ascertain the domestic legal position, and because of the unnecessary complexity of the domestic regime;
- a transparent, accessible and up-to-date legal regime is a vital component of a quality flag. Improving the way we implement international law will reflect the UK's ambition to make its flag a more attractive place to do business, as well as protecting our reputation as a world-class maritime administration, both with industry and the international institutions (such as the EU and the IMO) with responsibility for maritime policy;
- when discussing technical matters with overseas clients or shipyards and designers, it helps to have a common source of reference. Those working within the UK regime will be familiar with the UK's implementation, but those in other states will have no knowledge of it;
- when an owner wishes to change flag to the UK, the ship will have been constructed to the international requirements. Differences in UK law (occasionally deliberate gold-plating, but mostly differences in legislative drafting styles and delays in implementing amendments) make assessing a ship's compliance unnecessarily complicated, and may create additional hurdles capable of discouraging owners from transferring to the UK.

**RESOLUTIONS SINCE LAST TRANSPOSITION INTO UK LAW****a) Relevant IMO amending Resolutions and other documents (including non-amending Resolutions):**

MSC.91(72) - Adoption of amendments relating to helicopter landing and pick up areas.

MSC.152(78) – Adoption of amendments relating to Emergency Training Drills, Operational Readiness, Personal Life-Saving appliances. *Adoption of amendments to personnel capability and appliance maintenance to mitigate risks involved with launching of lifeboats, and enhancements of other LSA.*

MSC.170(79) – Adoption of amendment to Survival craft and Rescue Boat requirements for Bulk Carriers. *Adoption of amendments to requirements for Survival Craft and Rescue Boats for Bulk Carriers built on or after 1 July 2006.*

MSC.200(80) – Adoption of amendments to Revised Recommendation on the Testing of Life-Saving Appliance – (Adopted on 13 May 2005) *Because lifejacket features had been changed, testing procedure had to be changed to accommodate this.*

MSC.201(81) Adoption of amendment to Regulation 7 – Personal life-saving appliances

MSC.207(81) – Adoption of Amendments to the International Life-Saving Appliance (LSA) Code – (Adopted on 18 May 2006) *Because lifejacket features had been changed, testing procedure had to be changed to accommodate this.*

MSC.216(82) Amendments to the International Convention for the Safety of Life at Sea, 1974, as Amended - *Communications for emergency alarm systems; Survival craft muster and embarkation arrangements; Stowage of rescue boats; and Emergency training and drills.*

MSC.218(82) – Adoption of Amendments to the International Life-Saving Appliance (LSA) Code – (Adopted on 8 December 2006) *This introduced incremental changes to various types of LSA, including lifejackets, immersion suits, survival craft, liferafts and rescue boats.*

MSC.226(82) (2006) (in force 2008) – Adoption of Amendments to the Revised Recommendation on Testing of Life-Saving Appliances, as Amended (Adopted on 8 December 2006) *Changes to testing requirements resulting from changes to lifejacket specifications.*

MSC 256(84) Amendments to the International Convention for the Safety of Life at Sea, 1974, as Amended - *additional requirements for ro-ro passenger ships*

MSC.272(85) – Adoption of Amendments to the International Life-Saving Appliance (LSA) Code – (Adopted on 4 December 2008) *Reflects new carrying capacity of survival craft and weight per person to be sustained.*

MSC.274(85) - Adoption of Amendments to the Revised Recommendation on Testing of Life-Saving Appliances (Resolution MSC.81(70)) – (Adopted on 4 December 2008) *Amends prototype testing for lifeboat and liferafts and some associated equipment.*

MSC.293(87) – Adoption of Amendments to the International Life-Saving Appliances (LSA) Code – (Adopted on 21 May 2010) *Weight of persons to be supported by lifejackets changed to reflect the increase in the average weight of population generally.*

MSC.295(87) – Adoption of Amendments to the Revised Recommendation on Testing of Life-Saving Appliances (Resolution MSC.81 (70)) – (Adopted on 21 May 2010) *Adjustment of testing criteria of liferafts/ rescue boats to reflect cumulative effect of increase weight change of persons to be sustained.*

MSC.317(89) - Adoption of Amendments to the International Life-Saving Appliance (LSA) Application for all ships to have lifeboat on-load release mechanisms complying with the LSA Code.

MSC.320(89) – Adoption of Amendments to the International Life-Saving Appliances (LSA) Code – (Adopted on 20 May 2011) *New testing requirements resulting from Survival craft changes.*

MSC.321(89)– Adoption of Amendments to the Revised Recommendation on Testing of Life-Saving Appliances (Resolution MSC.81 (70)), as Amended – (Adopted on 20 May 2011) *New testing requirements resulting from Survival craft changes.*

MSC.323(89) – Adoption of Amendments to the Revised Recommendation on Testing of Life-Saving Appliances (Resolution MSC.81 (70)) – (Adopted on 20 May 2011) *Revision of testing standards of various equipment, including lifejackets, immersion suits, pyrotechnics, lifeboats, etc.. Some of these changes are simply updates of ISO standards to reflect the new or revised standard.*

MSC 325(90) Amendments to the International Convention for the Safety of Life at Sea, 1974, as Amended *Part B Requirements for ships and life-saving appliances Regulation 20 – Operational readiness, maintenance and inspections*

MSC 338(91) Amendments to the International Convention for the Safety of Life at Sea, 1974, as Amended - *Requirements for ships and life-saving appliances; Recovery of persons from the water*

Corrigendum May 2012 – Table SRSS acceleration limits for lifeboats – Amendment of the LSA Code *Correction to Table*.

Erratum December 2012 – Amendment to Paragraph 5.1.1.1 of the LSA Code *Correction to text*.

MSC.368(93) – Amendment to the International Life-Saving Appliance (LSA) Code – (Adopted On 22 May 2014) *Changes to testing requirements resulting from changes to lifejacket specifications*.

Supplement January 2016 – Amendment to the Chapter II of the LSA Code *New Resolutions which were agreed after last edition was published and will not be included in the publication until the next edition*.

MSC.378(93) (2014) – Amendments to the Revised Recommendation on Testing of Life-Saving Appliances (Resolution MSC.81 (70), as Amended) – (Adopted on 22 May 2014) *Changes to testing requirements resulting from changes to lifejacket specifications*.

MSC.317(89) - Adoption of Amendments to the International Convention for the Safety of Life at Sea, 1974, as Amended – (Adopted on 20 May 2011) *Application of time bracket in which to implement new Release Mechanism requirements*.

MSC.404(96) (adopted 19 May 2016) (coming into force 1 January 2020) – Amendments to the International Convention for the Safety of Life at Sea, 1974, as Amended – (Adopted on 19 May 2016) *Amendments in relation to definitions, means of escape, helicopter facilities, operational readiness, maintenance and inspections*.

MSC.421(98) (adopted on 15 June 2017) (coming into force 1 January 2020) – Amendments to the International Convention for the Safety of Life at Sea, 1974, as Amended – (adopted on 15 June 2017) *Amendments in relation to drills, muster lists and emergency instructions*.

MSC.425(98) (adopted on 15 June 2017) (coming into force 1 January 2020) – Amendments to the International Convention for the Safety of Life at Sea, 1974, as Amended – (adopted on 15 June 2017) *Amendments in relation to launching and embarkation appliances*

## ANNEX D

### **GLOSSARY OF TERMS/ MEANING OF ACRONYMS**

Davit – A type of crane which is commonly used to hang and lower certain types of lifeboat

EU – European Union

Hooking mechanism – operates in conjunction with davits to hang lifeboat

IMO – International Maritime Organization

LSA – Life Saving Appliances

MCA – Maritime and Coastguard Agency

MSC – Maritime Safety Committee (of the IMO)

Release Mechanism System – same as “Hooking Mechanism”

SOLAS - International Convention for the Safety of Life at Sea, 1974

SWL – Safe Working Load