



Maritime &
Coastguard
Agency

Consultation Document:

Recasting the Merchant Shipping (Life-Saving Appliances For Ships Other Than Ships Of Classes III to VI(A)) Regulations 1999 to reflect up to date requirements as contained in the International Convention for the Safety of Life at Sea (SOLAS)

October 2019

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Section 1: Overview of this consultation

Aim

1. This consultation seeks your views on a recast of the Merchant Shipping (Life-Saving Appliances For Ships Other Than Ships of Classes III to VI(A)) Regulations 1999, as amended. The recast introduces amendments to Chapter III (on life-saving appliances and arrangements (LSA)) of the International Convention for the Safety of Life at Sea, 1974 (SOLAS) and the International Life-Saving Appliance Code (“the LSA Code”) including associated documents (the Code on Testing for novel life-saving appliances and (mandatory) Recommendation on Testing) into UK law. References to “Chapter III” in this consultation document include references to the LSA Code.
2. Primarily the recast proposes to introduce an ambulatory reference to the requirements for industry contained in SOLAS Chapter III. In the future, this will mean that the requirements of the recast Regulations will automatically reflect those of SOLAS Chapter III as they come into force internationally. Associated benefits of this approach are detailed in this consultation package.
3. The proposed Regulations also carry over the requirements contained in the 1999 Regulations for ships other than Classes III to VI(A) which are engaged on non-international voyages, and also to such classes of ship engaged on international voyages and to which SOLAS does not apply due to their size. These are contained in a proposed Merchant Shipping Notice (Annex B-1).
4. A number of less significant changes to the Regulations and associated guidance is also proposed.

Views sought

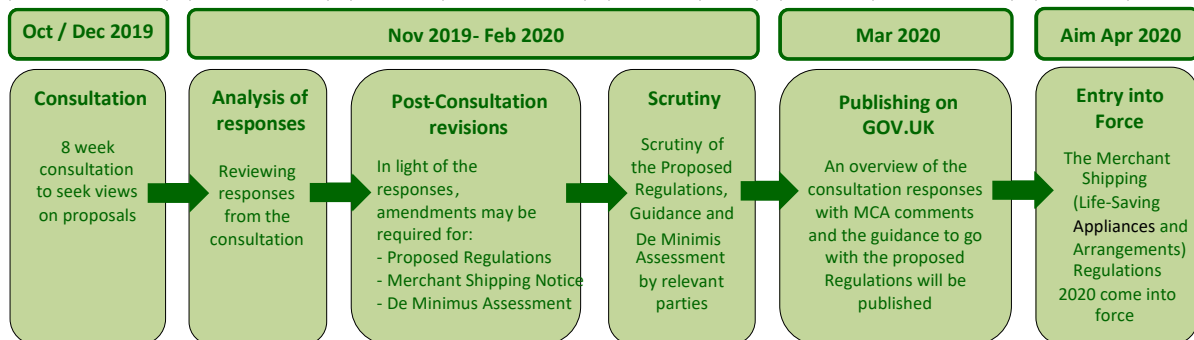
5. Your views are sought in broadly the following areas:
 - whether the use of ambulatory reference to incorporate SOLAS Chapter III requirements into UK legislation as they come into force internationally is appropriate;
 - Where the Administration’s discretion is permitted, for instance where there are references in the text ‘to the satisfaction of the Administration’, section 6 of the Merchant Shipping Notice provides an explanation of what is needed in order to comply with the SOLAS Chapter III requirements;
 - whether the proposed Merchant Shipping Notice to accompany the Regulations is adequate and in the right format;
 - Consultees are requested to provide estimates of cost savings resulting from having to refer only to technical standards in the international text rather than also referring to UK text transposing the standards, and to comment generally on this approach;
 - Do you agree with the costs identified in section 5.12 of the De Minimis Assessment? If not, please provide alternative evaluations of cost, with as much detail of how they were derived as possible;
 - Do you agree with the cost calculations identified in Annex A of the De Minimis Assessment? If not, please provide alternative evaluations;
 - Do you agree with the assumptions in Section 6.1 of the De Minimis Assessment? If not please provide full reasoning and any applicable evidence; and,

- Do you agree with the assumption that the costs mentioned in Options 1 and 2 of the De Minimis Assessment have already been incurred?
6. A full list of consultation questions is contained in section 5 of this consultation document.

Deadline for responses

7. Views are welcomed **from Monday 28 October 2019 until Monday 23 December 2019.**

Overview Timetable



Section 2: Areas for consideration

Introduction

8. The International Convention for the Safety of Life at Sea (SOLAS) is one of a number of Conventions adopted by the International Maritime Organization (IMO) to which the UK is signatory. As a signatory to the SOLAS Convention, the UK has an obligation to implement any amendments to SOLAS in UK law.
9. Chapter III of SOLAS focuses on measures that improve safety of life-saving appliances and arrangements, which is the subject matter of this consultation. LSA includes, for example, lifeboats, liferafts, lifejackets, immersion suits, lifebuoys, flares, mustering, drills 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 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”).
10. It is transposed into UK law through a suite of international and domestic legislation on the subject of LSA:
 - Merchant Shipping (Life-Saving Appliances for Ships Other Than Ships of Classes III to VI(A)) Regulations 1999 (SI 1999/2721) (amended in 2000, 2001 and 2004 to implement further Convention amendments) (“the 1999 Regulations”)
 - Merchant Shipping Notice (MSN) 1676(M), 1677(M) and 1757(M) supplement the above Regulations.
11. SOLAS (including Chapter III) is regularly amended to improve the safety of ships and lives at sea and to reflect technological advances. Each time an amendment is made to SOLAS, UK legislation must be updated if the amendment is to be effective in UK law. The process to update legislation takes a minimum of 12 months and requires significant administrative, legal and parliamentary time and resources.
12. Under a backdrop of competing priorities for limited resources within Government, a new approach to transposing international requirements into UK legislation is vital. On 26 March 2015, the Deregulation Act 2015 received Royal Assent. The Act introduced a new power to make ambulatory references to international instruments through new section 306A of the Merchant Shipping Act 1995 (MSA 95).
13. The recast of the 1999 Regulations will make use of this new power.

2.1 Use of ambulatory reference

14. An ambulatory reference for the purposes of this consultation is a reference in domestic legislation to an international instrument which is to be 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).
15. It is proposed that an ambulatory reference to the requirements for industry contained in SOLAS Chapter III be introduced into the proposed Merchant Shipping (Life-Saving Appliances and Arrangements) Regulations 2020.
16. From a legal perspective, this will mean that any future amendments to Chapter III of SOLAS will automatically become UK law when they enter into force internationally. No new or amending regulations will be required to bring such amendments into force in the UK, as is currently the case.
17. From a practical perspective, this means that ship owners, shipbuilders, and other interested parties can refer directly to the text of SOLAS Chapter III to determine both the UK and international requirements. Where the text of SOLAS is unclear or needs amplification - for instance, where SOLAS states that something is to be carried out "to the satisfaction of the administration", guidance will provide the additional clarity required. At present the above-mentioned parties need to refer both to UK legislation (which is likely to be out of step with international requirements and phrased differently to SOLAS) and the text of SOLAS to be sure they are in compliance with international requirements.
18. The main benefits of using ambulatory reference are:
 - simplification of the regulatory framework for both industry and regulatory users – currently a mixture of primary and secondary legislation is used to implement international maritime conventions;
 - legal clarity for ship owners, shipbuilders and other industry professionals/ interested parties – they will only have to refer to one set of legal text in relation to SOLAS Chapter III, the international text, instead of having to refer also to a UK version of those provisions. Therefore, there will no longer be a disparity between national and international requirements;
 - provision of a level playing field between UK and foreign operators calling at UK ports – the automatic incorporation of amendments in legislation means that the UK will be able to enforce amendments as soon as they come into force internationally. Therefore, foreign ships visiting the UK that are not compliant with the latest international requirements will be subject to appropriate regulatory measures;
 - a reduction in the long-term burden on the Maritime & Coastguard Agency (MCA), Government lawyers and parliamentary time; and
 - maintaining the UK reputation as a leading maritime nation.
19. A number of questions relating to the impact of using ambulatory references are posed to consultees in section 5 of this consultation document.

2.2 Updates to bring UK requirements up to date with international ones

20. The 1999 Regulations were last amended in 2004 to incorporate the SOLAS Chapter III requirements for radar transponders to be fitted on ro-ro passenger ships.
21. Since the last update, a number of amendments to SOLAS Chapter III have been adopted and these will be incorporated into UK law by the recast of the 1999 Regulations.
22. A full list of these amendments may be found at Annex C of the De Minimis Assessment.
23. In calculating the impacts of these amendments, a number of assumptions have been made in the De Minimis Assessment. To challenge the assumptions, a number of questions are posed to consultees within the De Minimis Assessment and replicated in section 5 of this consultation.

2.3 Areas within SOLAS Chapter III where the MCA has discretion in application

24. The requirements for existing ships (that is, ships constructed before 1st July 1998) are set out in Parts 2 and 3 of the draft Regulations. These include the updated SOLAS requirements for existing ships, which are made ambulatory. The requirements for new ships (that is, ships constructed on or after 1st July 1998) are set out in Parts 4 and 5 of the draft Regulations. Regulation 15 (in Part 4) provides that a ship to which a provision of Part B of Chapter III (of SOLAS) applies (that is, a ship on an international voyage and of Convention size), must comply with that provision. As the reference to Part B of Chapter III is ambulatory, the requirement is also to comply with Part B of Chapter III, as modified
25. Consultees are invited to review the application of the proposed Merchant Shipping (Life-Saving Appliances and Arrangements) Regulations 2020 to assess whether the MCA has successfully determined the extent of application for the SOLAS Chapter III requirements.
26. A number of questions in relation to the extent of application for SOLAS Chapter III requirements are posed to consultees in section 5 of this consultation document.

2.4 Penalties and offences

27. Penalties and offences that currently exist in the 1999 Regulations for non-compliance with requirements contained in SOLAS Chapter III and the LSA Code are as follows:

Regulation of SI 1999/2721	Subject matter	Penalty on Summary conviction/ indictment
r86(1)	Not to proceed, or attempt to proceed, to sea or on any voyage, or arrive within United Kingdom waters, without complying with the requirements of the regulations. Aimed at: owner and Master of ship	For each non-compliance: On Summary Conviction: in England and Wales by a fine and in Scotland and Northern Ireland by a fine not exceeding the statutory maximum On indictment: imprisonment not more than 2 years, and/or a fine.

28. The opportunity has been taken to review any offences and penalties in relation to the provision of life-saving appliances for ships other than ships of Classes III to VI(A). However, there is currently only one offence in place (in the 1999 Regulations) so it is not possible to reduce this further. The offence is that of taking or attempting to take a ship to sea (or arriving in United Kingdom waters) that does not comply with the requirements of the 1999 Regulations (each case of non-compliance is an offence).

2.5 Merchant Shipping Notice supplementing the proposed Merchant Shipping (Life-Saving Appliances and Arrangements) Regulations 2020

29. As previously stated, where the text of SOLAS is unclear or needs amplification - for instance, where SOLAS states that something is done “to the satisfaction of the administration”, guidance will provide the additional clarity required.
30. As with the 1999 Regulations, the proposed 2020 Regulations will be supported by a Merchant Shipping Notice which will give the technical requirements to be met by a ship and other information. The proposed Merchant Shipping Notice will list the instances where SOLAS Chapter III gives flexibility to the Administration and what the MCA will accept in these instances as satisfactory.
31. Accordingly, between referring to SOLAS, the LSA Code and the Merchant Shipping Notice a ship operator will be able to determine the requirements applicable to a UK ship in scope of SOLAS Chapter III.
32. The proposed Merchant Shipping Notice also contains the requirements for ships engaged on non-international voyages and also for ships engaged on international voyages but to which SOLAS does not apply because of the size of the ship. These requirements are carried over from the 1999 Regulations and have been updated only

in relation to references to guidance and where cross-referenced legislation has been updated.

33. The MCA currently publishes (on the gov.uk website) a variety of Marine Guidance Notes on UK policy for SOLAS Chapter III and domestic LSA provisions which will be retained as they will continue to be valid, noting the requirements applicable to a ship trading internationally continue, and this measure simply gives legal clarity in UK law regarding those requirements.
34. Annex B to this consultation provides the draft Merchant Shipping Notice described above.
35. A number of questions in relation to the proposed format of the Merchant Shipping Notice are posed to consultees in section 5 of this consultation.

Section 3: Responding to this consultation

36. There are specific questions highlighted in section 5 of this document, which provides a structured way to respond to this consultation document.

Audience

37. Anyone may respond to this consultation and we will give full consideration to all responses. We will be particularly interested to hear from: ship owners, shipping companies, protection and indemnity clubs and other parties with an interest in shipping.

Duration

38. This consultation is open for 8 weeks **from 28 October 2019. The deadline for responses is 23 December 2019.**

Submitting your response

39. The response form is available at section 5 of this document. Completed response forms should be emailed to marinetechology@mcga.gov.uk. Any questions should be sent to this email address.
40. When responding, representative groups are asked to give a summary of the people and organisations they represent, and where relevant who else they have consulted in reaching their conclusions.

Freedom of information and data protection

41. Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004).
42. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

Data Protection

43. The MCA is carrying out this consultation to gather evidence to inform the development of policy.

This consultation and the processing of personal data that it entails is necessary for the exercise of our functions as an executive agency of a government department. If your answers contain any information that allows you to be identified, under data protection law, the MCA as an executive agency of the DfT will be the Controller for this information.

44. The MCA will use your contact details to send you information about the consultation, for example if we need to ask follow-up questions. You do not have to give us this personal information but if you do choose to provide it, it will not be used for any other purpose without your permission.

45. To find out more about how the MCA looks after personal data, your rights, and how to contact our data protection officer, please go to: <https://www.gov.uk/government/organisations/maritime-and-coastguard-agency/about/personal-information-charter>

46. Your information will be kept securely on the MCA's IT system and any written responses will be held in a secure cabinet and destroyed with 1 month after the consultation has been completed.

47. If you do not wish to remain on this list, please reply and let us know.

Section 4: Outline plans beyond this consultation

48. Once this consultation closes, we will review all responses. In considering the responses we will apply appropriate weight to those from organisations and individuals with specialist knowledge of the subject area.
49. We will be analysing the responses during December 2019 and January 2020. Our aim is to publish an overview of the responses and the MCA's comments during January 2020, which will be available from: www.gov.uk/government/publications.
50. Where appropriate the draft Regulations, accompanying guidance and De Minimis Assessment will be revised to take into consideration the consultation responses.
51. Our aim is for the proposed Merchant Shipping (Life-Saving Appliances and Arrangements) Regulations 2020 to come into force during **April 2020**. Once they have been made the Regulations will be published on www.legislation.gov.uk
52. Every effort will be made to publish the revised accompanying Merchant Shipping Notice on GOV.UK in advance of April 2020.
53. An Explanatory Memorandum for the proposed Merchant Shipping (Life-Saving Appliances and Arrangements) Regulations 2020 will be published on www.legislation.gov.uk when the Regulations are laid before Parliament.

Section 5: Response form

What is your name? _____

What is your email address? _____

What is your job title? _____

When responding please state whether you are responding as an individual or representing the views of an organisation:

- I am responding as an individual
- I am responding on behalf of an organisation

(name of organisation) _____

Please check the box that best describes you as a respondent and the size of your organisation:

Respondent Type

- Classification Society
- Government Agency/Department
- Individual
- Legal representative
- Protection & Indemnity
- Seafarer
- Ship Operator
- Ship Owner
- Trade Union
- Other

(please describe) _____

Size of Organisation

- Large business (over 250 staff)
- Medium business (50 to 250 staff)
- Micro business (up to 9 staff)
- Small business (10 to 49 staff)

Section 2.1

- a) Do you agree with the approach of using ambulatory references to implement future amendments to SOLAS Chapter III?
- Yes, I agree
 - No, I don't agree

- b) Can you see any other benefits or drawbacks of using ambulatory referencing in UK legislation, for implementing updates to international conventions?

We particularly welcome the views of ship owners in relation to ambulatory referencing – what benefits/drawbacks would this new approach mean for you?

- c) On average, how many hours each year does your company spend reading and understanding the requirements of SOLAS Chapter III?

Reading international text: _____ hours
Reading related UK legislation: _____ hours
Reading related UK guidance: _____ hours

Section 2.2

- a) Do you agree with the costs identified in the High-Level Costs Table in the De Minimis Assessment? If not please provide alternative evaluations of costs, with as much detail of how they were arrived at as possible.
- (i) Do you agree with the costs and benefits identified at Annex A of the De Minimis Assessment? If not, please provide alternative evaluations.
- b) Do you agree with the assumptions given in Section 6 of the De Minimis Assessment? If not, please provide full reasoning and any applicable evidence.
- c) Do you agree with the assumption given in Options 1 and 2 of the De Minimis Assessment have already been incurred?

Section 2.3

- a) Do you agree with the way the MCA has applied SOLAS Chapter III requirements?
- Yes
 - No

If you do not agree, we welcome further explanation:

- b) Within the parameters set by Regulation 1 of SOLAS Chapter III, are there any further areas where the MCA should apply or disapply the requirements?
- Yes
 - No

If you feel there are, we welcome further explanation:

Section 2.4

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

(i) any ship proceeding or attempting to proceed to sea or on any voyage, or a ship arriving within United Kingdom waters, in breach of any of the requirements of the proposed Regulations

- Yes
 No

We welcome further explanation for your answer.

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

- Yes
 No

We welcome further explanation for your answer.

- c) Do you feel that the proposed penalties are fair?

- Yes
 No

We welcome further explanation for your answer.

- d) Do you feel that the proposed penalties will act as an effective deterrent for non-compliance with the requirements of SOLAS Chapter III?
- Yes
 - No

We welcome further explanation for your answer.

Section 2.5

- a) Does the proposed guidance for the updated Chapter III requirements (section 6 of the draft Merchant Shipping Notice) meet your needs in terms of (i) format (ii) content, and (iii) whether the inclusion of the requirements for non-SOLAS vessels in the MSN is appropriate?
- Yes
 - No

We welcome further explanation for your answer.

- b) Do you feel there is a better way of providing guidance for the SOLAS Chapter III requirements?
- Yes
 - No

We welcome further explanation for your answer.

Please return completed response forms to marinetechnology@mcga.gov.uk

Alternatively, responses may be posted to:

Marine Technology Branch
Maritime & Coastguard Agency
Bay 2/23, Spring Place
105 Commercial Road
Southampton
SO15 1EG

Section 6: Conduct of this consultation

54. This consultation has been conducted in accordance with the Cabinet Office Consultation Principles.

Consultation criteria

55. The Cabinet Office Consultation Principles can be found at:

<https://www.gov.uk/government/publications/consultation-principles-guidance>

Feedback on conduct of consultation

56. If you have any comments regarding the conduct of this consultation, please contact the Consultation Co-ordinator at consultation.coordinator@mcga.gov.uk.
57. We are continually trying to improve the way in which we conduct consultations and appreciate your views. We would be grateful if you could complete and return the attached feedback form. These should be submitted to the Consultation Co-ordinator and are not affected by the deadline for this consultation.

MCA CONSULTATION FEEDBACK FORM

1. Please indicate on which Consultation you are providing feedback:

Recasting the Merchant Shipping (LifeSaving Appliances For Ships Other Than Ships Of Classes III to VI(A)) Regulations 1999 to reflect up to date requirements as contained in the International Convention for the Safety of Life at Sea (SOLAS)

2a. Please indicate whether you are responding on behalf of:

- Yourself as an Individual
- A Trade Association
- A Company
- A Government Organisation
- A Trade Union
- Other
(please specify) _____

2a. Please indicate whether you accessed this consultation package through:

- Post
- Email
- Website

3. Please rate the quality of this consultation regarding accuracy, good English and spelling:

- Very good
- Good
- Average
- Poor
- Very Poor

4. Please rate the format of the consultation presentation (layout, Annexes etc.):

- Very good
- Good
- Average
- Poor
- Very Poor

5. Please rate the consultation in terms of how clear and concise you felt it was:

- Very good
- Good
- Average
- Poor
- Very Poor

6. Did you feel that the consultation was conducted over a sufficient period of time?

- Yes
- No

7. Were any representative groups, organisations or companies not consulted who you felt should have been?

Yes

No

If yes, who? _____

8. Please let us have any suggestions for improvement or other comments you wish to make about this consultation below:

Thank you for your time. Please return this form to:

Consultation Co-ordinator,
Maritime and Coastguard Agency,
Spring Place, Bay 3/26, 105 Commercial Road
Southampton SO15 1EG

Or e-mail it to: consultation.coordinator@mcga.gov.uk

If you are happy to supply your name in case we need to contact you to discuss your views further, please enter it below (this is optional and your feedback will still be taken into account if you wish to remain anonymous):

Name _____

Tel. No. _____

Please note that the deadline for responses to the Consultation itself does not apply to the return of this form.