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Consultation on the proposed Merchant Shipping (Life-Saving Appliances and Arrangements) Regulations 2020

Dear Mr Coles, Professor Serdy and Dr Hjalmarsson,

Thank you for your response to the above consultation dated 20 December 2019 and for your comments relating to the constitutional position regarding the power in section 306A of the Merchant Shipping Act 1995. I hope that the explanation below will clarify the position. As this response will be published, it contains background matters that will of course be familiar to you.

The UK is obliged, as a matter of international law, to implement into its domestic law all international obligations that it is bound by. In order to achieve the implementation of obligations under the various maritime conventions agreed in the IMO, historically, these obligations have been set out in full in domestic legislation (subject to some exceptions in relation to the implementation of the liability conventions in the Merchant Shipping Act 1995 which, in some cases, directly cross-reference the convention requirements). However, the frequency of amendments to conventions such as SOLAS and MARPOL has made it difficult for the UK to keep up with such changes, as each set of amendments requires amendments to the implementing domestic legislation. This has meant that the UK's maritime legislation is often out of sync with that of other nations. The shipping industry had been looking for a solution to this problem, to ensure that the UK's international obligations remain consistent with its domestic legislation.

The solution was to amend the Merchant Shipping Act 1995 to introduce a power that permitted cross-references in secondary legislation to any international convention or other international instrument to be read as a reference to that instrument as modified

or replaced from time to time. This power, contained in section 306A of the Merchant Shipping Act 1995, was inserted by the Deregulation Act 2015.

The parliamentary debates relating to this clause in the Deregulation Bill considered the need for the UK to maintain pace with other countries by ensuring that the same international rules are always in force. Moreover, during the House of Commons Committee Stage on 18 March 2014 Tom Brake MP stated:

"The level of scrutiny appropriate to the subject matter of such secondary legislation will already have been considered by Parliament, and if an ambulatory reference is to be included in such legislation, the Government see no reason why there should be any change in that. Ultimately, that will mean that Parliament will still in all cases have the ability to consider the instrument containing the ambulatory reference under the affirmative or negative procedures."

The Deregulation Bill followed the normal parliamentary procedure for consideration of Bills. This scrutiny ensured that matters such as the ones you raise were considered during debates. However, Parliament passed the Bill and it received Royal Assent.

As such, there is no question of the proposals in this consultation undermining Parliamentary supremacy. It is clear from the express terms in which section 306A are framed that Parliament intended this provision to enable modifications to, or replacement of, an international instrument (such as SOLAS) to have direct effect in the UK without recourse to the need to legislate further.

The only question then is whether the provisions in the proposed Regulations, which would implement future requirements in Chapter III of SOLAS by way of ambulatory reference, are ultra vires the power in section 306A of the Merchant Shipping Act 1995. The Government's position is that, on the proper construction of that provision, they are not.

Though not directly relevant to this issue of construction, in terms of your comments, it is worth noting for the record that automatic legislative implementation (whether via ambulatory reference or otherwise) is not without constitutional safeguard. In the event that the United Kingdom objects to an amendment to Chapter III (or any other international obligation) that would otherwise automatically come into force in domestic law, the implementing legislation would need to be amended in order to preclude that particular amendment coming into force domestically when it comes into force internationally. Such a situation is expected to be extremely rare as the purpose of negotiation in the IMO is to create a body of rules that apply uniformly to facilitate international shipping and trade.

The power in section 306A has previously been relied upon to make ambulatory references in the Merchant Shipping (International Load Line Convention) (Amendment) Regulations 2018, the Merchant Shipping (Prevention of Pollution by Noxious Liquid Substances in Bulk) Regulations 2018 and the Merchant Shipping (Prevention of Oil Pollution) Regulations 2019.

Finally, it should be noted that amendments to Chapter III, and all other Convention amendments, will be publicised in advance of their in-force date by means of a

Parliamentary Statement to both Houses of Parliament and by way of a Marine Guidance Note, which will be available in copy from the MCA and on https://www.gov.uk. This information is contained in the Explanatory Note to the draft Regulations and will be repeated in the Explanatory Memorandum that will accompany the Regulations in due course.

Yours Sincerely,

Rob Taylor

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