

Title: Merchant Shipping (Radiocommunications) (Amendment) Regulations 2021 Date: 13/11/2018 DMA No: DfTDMA072 Lead department or agency: Maritime and Coastguard Agency (MCA) Other departments or agencies: Department for Transport		De Minimis Assessment (DMA)	
		Stage: Final	
		Source of intervention: Domestic	
		Type of measure: Secondary	
Summary: Rationale and Options		Contact for enquiries: Richard Allan Tel: 0203 81 72107	
Total Net Present Value £0.00m	Business Net Present Value £0.00m	Net cost to business per year (EANDCB in 2016 prices) £0.00m	

Rationale for intervention and intended outcomes

The Regulations implement the latest safety requirements governing maritime radiocommunications, laid down in Chapter IV of the Annex to the International Convention for the Safety of Life at Sea, 1974 (SOLAS) into UK law. This strengthens the UK safety regime and at the same time meets the UK's international obligations to amend domestic law to bring it in line with international requirements. The opportunity is also being taken to incorporate an ambulatory reference provision in the Regulations which will make the process of implementing future amendments to the Convention into UK law a more efficient and cost-effective for the UK government, taxpayer and businesses. Additionally, the Regulations would allow the UK to maintain its reputation at the mandatory IMO audit scheme – a poor performance, due to the lack of transposition, could result in the loss of the UK's "low risk status"; this could increase the frequency of inspections for UK flagged vessels in foreign ports and hence increase cost to UK industry.

Describe the policy options considered

Do nothing: International amendments are not transposed into UK law.

Option 1: To bring UK law up to date with changes to Chapter IV on the subject of radiocommunications which have been introduced internationally over the past few years.

Option 2: To bring UK law up to date with changes to Chapter IV of SOLAS on the subject of radio installations which have been introduced internationally over the past few years, and to introduce ambulatory reference provision to increase the efficiency of implementing future amendments. **This is the preferred option due to 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 it is explained below. Benefits were not monetised.

UK cargo and passenger ships are required to obtain a Cargo Ship Safety Radio Certificate and a Passenger Ship Safety Certificate. Radio surveys are not carried out by the MCA but by third party organisations, such as Authorised Persons or Recognised Organisations (ROs). The UK ROs are Classification Societies, such as Lloyds Register. Certification is issued either by the RO or the MCA on the basis of a declaration from an Authorised Person. Third party organisations are "flag blind", meaning they survey ships for many different national registers, including the UK. They use the latest IMO requirements and then apply any additional national requirement specific to the flag State of the ship they are surveying. They do not issue a certificate unless the ship meets those requirements. Hence, because regulation is already being established effectively upon UK registered ships, if international amendments are not transposed into UK law (i.e. Do Nothing), shipowners will still incur in costs related to safety tests. Nevertheless, total estimated costs borne by businesses in all options range from £463.8 thousand (low estimate) to £837.4 thousand (high estimate) (over a 10-year period), considerably below the threshold for undertaking a DMA. Likewise, the legislation is entirely uncontroversial given the international acceptance of these requirements.

Additionally, costs related to the radio installation to incorporate Global Navigation Satellite System (GNSS) position have been incurred by businesses in the past and are therefore not included in the monetised costs of this assessment.

Will the policy be reviewed? Yes		If applicable, set review date: November/2025		
Are these organisations in scope?	Micro Yes	Small Yes	Medium Yes	Large Yes

Senior Policy Sign-off:

✓

Date:

18/10/2018

Peer Review Sign-off:

✓

Date: 12/11/2018

Better Regulation Unit Sign-off:

✓

Date: 12/11/2018

Supporting evidence

1. Background

This assessment relates to the amendments to Chapter IV of the Annex 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. Chapter IV deals with Radiocommunications.

SOLAS Chapter IV ensures that ships have radio installations so they can make informed decisions based on up-to-date safety information; assist and coordinate with each other in emergencies; call upon trained Search and Rescue coordinators and other services and advice; and, make general communications. It ensures the installations are compatible with other vessels and shore stations; resilient in distress to at least a single failure; and are properly maintained.

SOLAS Chapter IV applies to all passenger ships on international voyages and all cargo ships of over 300 gross tonnage (GT) on international voyages. The proposed Statutory Instrument applies to all UK registered vessels meeting this description, and all non-UK vessels meeting this description when they are in UK territorial waters. It ensures a ship's capability to participate fully in the Global Maritime Distress and Safety System (GMDSS) and thereby enhance the safety of the seafarers on board and provide mutual support.

SOLAS Chapter IV requirements on ships define the functional requirements; GMDSS Sea Areas; the corresponding necessary minimum radio installations when operating in each Sea Areas; the requirements for a competent radio operator, maintenance and records. Sea areas are defined in section 4 of this document.

2. Rationale for Intervention and Intended Objectives

Rationale for intervention

1. SOLAS Chapter IV and associated documents aim to correct market failures in the maritime sector with the intention of increasing personal and vessel safety through minimum requirements for radio communication installations on international vessels.
2. There are a number of amendments to SOLAS Chapter IV which have been produced by the IMO and which have come into force internationally, but which were not transposed into UK law. The SI regulates SOLAS ships and non-SOLAS convention vessels, the regulations applying to SOLAS ships were last updated in 1998¹. This instrument would bring UK legislation into line with the latest version of SOLAS IV and give direct effect in the UK to future amendments to Chapter IV.
3. The first flag state audit of the UK maritime administration is expected to be during 2021 and the fact that the UK is currently in breach of its international obligations is expected to result in a negative reaction from auditors and reputational damage to the UK. Getting radiocommunications 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 enforce compliance in accordance with the up-to-date requirements.
4. Current practice on implementation uses a combination of primary and secondary legislation with technical provisions included either in the statutory instrument, relegated 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

¹ Adoption of amendments to SOLAS: MSC 123(75); MSC 201(81); MSC 256(84), and approved draft amendments to SOLAS Chapter IV MSC 98/99

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, combined with a mix of international and domestic obligations in the same instrument results in a position that is confusing to both industry and regulators alike.

Using current procedures and practice to implement regular changes to international agreements is time consuming and resource intensive. The UK is behind with implementing amendments to international Conventions into domestic law. Without changes to current practice, this backlog is unlikely ever to be eliminated and can be expected to grow. There is a pressing need for Government intervention to provide for an alternative, simplified approach to help speed up implementation and / or reduce the resources required.

Failure to implement UK obligations means that UK authorities can only take enforcement action in relation to non-UK ships visiting UK waters on the basis of the international Convention standards as they were last transposed in domestic law. 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.

5. A number of highly technical changes to Chapter IV are expected to be made by the IMO over the next 10 years. Having ambulatory reference provision in place would therefore result in a significant reduction in the time and other resources which would need to be spent by Ministers, Departmental policy officials, lawyers and economists to bring those changes into domestic law individually.

Additionally, introducing changes by ambulatory reference provision would make things easier for members of industry who would have only one text to which to refer – which would be available considerably earlier than any domestic instrument if it needed to be transposed into domestic law in the “traditional” way. The latter would also result in a proliferation of domestic legal instruments, which goes against the tide of Better Regulation.

6. Finally, there is another important factor which needs to be taken into consideration when prioritising the new radiocommunications legislation: amendments include an international deregulatory measure which opened an important aspect of the communications market to competition from 1 January 2020. Failure on the UK's part to put these changes into domestic law will obstruct free competition which will exist in other countries.

INMARSAT is an entity which was set up by the International Maritime Organization (IMO) in 1979 to facilitate satellite communication for ships globally, although its function is now considerably wider than this. INMARSAT was specified as the provider for GMDSS radio communication services by the IMO in an international treaty, so everyone had to use it. This was an internationally prescribed monopoly, and when implementing the SOLAS Convention, the UK necessarily incorporated it into UK domestic law.

While this approach was deemed necessary at the time it was put in place – because no suitable alternative provider existed at that time - in the last few decades there has been a proliferation of satellite communication providers entering the marketplace while the SOLAS compliant services, and the original INMARSAT role - has now been divided between the International Maritime Satellite Organization (IMSO) and what is now called Inmarsat Global Ltd. An amendment to SOLAS Chapter IV has therefore been agreed in the IMO to allow shipowners to use any satellite service which has been recognised by the IMO for use in the GMDSS. (Such recognised services will be audited on a regular basis by IMSO, to ensure necessary standards are maintained.) Three companies have already applied to IMO to have services recognised to enable them to compete to provide these services to shipowners. This de-regulation could result in cost savings for shipping businesses, as the competition is generally expected to drive down prices.

The abolition of this monopoly came into force internationally on 1 January 2020. It is necessary to revise UK domestic legislation to bring it in line with this – otherwise UK law will obstruct the desired competition. This could stifle opportunities for companies wishing to do business with UK registered vessels, and for UK registered vessels seeking the most cost-effective supplier.

Intended Objectives

1. Transposition of outstanding amendments to SOLAS Chapter IV and associated documents into UK law

The existing regulations will be revised to cover, in addition to those aspects of the Chapter which have already been transposed, the outstanding amendments to the Chapter. These fulfil a variety of functions, including amendments to standards of radio equipment, including (i) removing obsolete equipment (ii) introducing new technology (iii) updating operational and functional requirements, and (iv) updating maintenance requirements.

This objective addresses points 1, 2 and 6 in the rationale.

2. Introduce Ambulatory Referencing and reduce legal uncertainty

It is intended that the new Regulations will require ships to comply with Chapter IV in its up-to-date form. This will ensure that the UK is always up to date with the transposition of Chapter IV.

Ambulatory reference provision transposes international provisions without gold plating or adding any additional obligations. Ambulatory referencing has already been used in a number of recent statutory instruments including the Merchant Shipping (International Load Line Convention) Regulations 2018 and the Merchant Shipping (Safety of Navigation) Regulations 2020 and is being rolled out further. See Annex A for more detail on the background of ambulatory referencing and how it will work in practice.

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 the Chapter states that an obligation must be performed “to the satisfaction of the administration”, the MCA will specify what is required to meet this obligation.

During the Red Tape Challenge industry raised its concern over the lengthy delays between amendments to international Conventions coming into force globally and being transposed into UK law. These delays lead to legal uncertainty and disparity between national and international legislation.

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

Box 1: Specifically the UK Chamber of Shipping’s 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.”

It is worthwhile noting that whilst the UK Chamber of Shipping advocates ‘ambulatory references’ (Box 1), 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 contributes to negotiations on new initiatives to ensure they are appropriate and proportionate measures to improve safety.

This objective addresses points 4 and 5 in the rationale.

3. Ensure a Level Playing Field

UK ships are liable for detention in a non-UK port if they do not comply with the latest requirements of SOLAS Chapter IV - although this is highly unlikely as UK owners and operators already comply with the Chapter requirements. 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 is 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 IV.

This objective addresses 3 and 4 in the rationale.

4. Protect the UK’s reputation and status on the white list

The UK, as a signatory to the Convention, has an obligation to implement any changes to the Chapter and related Code. A poor audit performance increases the possibility of the UK losing its “low risk status”, this could increase the frequency of inspections for UK flagged vessels in foreign ports and hence increase cost to UK industry.

This objective addresses point 3 in the rationale.

Compliance with the Flag State Directive²

Recital 3 of the Flag State Directive, which is theoretically non-binding, requires the implementation of IMO Conventions into Member States’ law. Article 4(1) of the same Directive 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. Reading both recital and article in conjunction, the requirement can be deduced as implementation of IMO Conventions into domestic law.

The European Commission will take a keen interest in the IMO Member State Audit Scheme, a non-compliance for implementing IMO Conventions in their up-to-date form will be indicative of the UK failing to meet obligations under the Directive. The Commission would then be able to commence infraction proceedings against the UK.

3. Options Considered

Do nothing

The “Do nothing” option is that the international amendments are not transposed into UK law. The UK, as a signatory to the Chapter/Code, has an obligation to implement any changes to the Chapter in UK law. Without timely implementation:

- a. There is a lack of legal certainty for operators due to differing international and domestic requirements;
- b. The playing field is not level for UK operators.

Although amendments are not transposed into UK domestic law, UK ship owners and operators already comply with Chapter IV update requirements. Section 4 expands on this.

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

The 'Do Nothing' is the baseline against which Options 1 and 2 are assessed.

Option 1: Bring UK law in line with recent updates to the Chapter IV requirements by transposing them into UK law via traditional statutory instruments and without including an Ambulatory Reference provision for future amendments.

This option would implement outstanding amendments to Chapter IV by transposition into secondary legislation, i.e., without ambulatory reference. It would therefore be very likely to 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 it is implemented, new amendments are likely to have been published 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". This option would therefore lack effectiveness and be resource intensive, continuing the merry-go-round of spending public money on implementing legislation inefficiently.

Option 1 is therefore not considered a viable option.

Option 2: Bring UK law in line with recent updates to Chapter IV requirements and introduce ambulatory referencing to refer UK industry to the most up to date requirements for radio communications in SOLAS. This is the preferred Option.

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.

By introducing ambulatory referencing, this option 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:

- a. Provides the legal certainty sought by industry as domestic legislation will no-longer be out of step with international requirements;
- b. Reduces the administrative burden for industry, as it can focus on the Chapter IV text in technical areas, rather than also having to refer to national implementing legislation;
- c. Meets the industry desire for copy-out text, and reduce debates on whether a provision has been "gold-plated"; and
- d. Provides a level playing field between UK ships calling at foreign ports and foreign flagged ships calling at UK ports.

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

4. Business Impact and DMA Classification

The proposed regulation affects all UK registered passenger vessels on international voyages and all UK registered cargo vessels of over 300GT on international voyages. In October 2017, there were 542 UK ships on the UK Ship Register that would be in scope of SOLAS IV.

The table 1 summarises the main costs taken into consideration.

Table 1: Summary of the costs incurred

Cost	Type	Incurred in	Frequency
1. Updating the radio installation to incorporate GNSS position	Historic Cost	This is not accounted in any of the options as it was incurred in the past	One-off transition cost / initial cost
2. Testing of safety equipment (EPIRB)	Monetised Cost	Do nothing; Option 1; Option 2	Every year, excluding the two years in which cost (3) is incurred

3. Shore based testing of safety equipment (EPIRB)	Monetised Cost	Do nothing; Option 1; Option 2	Every 5 years
4. Reputational damage	Non-monetised Cost	Do nothing	Ongoing

Historic Costs: Updating the radio installation to incorporate GNSS position

The changes being analysed in this assessment were introduced in 2002. Although those changes have not been transposed into UK legislation yet, UK vessels have been complying with them for the reasons stated below.

UK cargo and passenger ships are required to obtain a Cargo Ship Safety Radio Certificate and a Passenger Ship Safety Certificate. For cargo vessels there is an initial survey which provides a radio certificate which is valid for 5 years. Vessels then have to have an annual 'periodic survey' which endorses the radio certificate. Prior to the expiry of the initial certificate a renewal survey is completed which provides a further radio certificate which is valid for the next 5 years again requiring annual 'periodic surveys'. Passenger vessels have an initial survey which is followed by a renewal survey annually. Radio surveys are not carried out by the MCA but by third party organisations, such as Authorised Persons or Recognised Organisations (ROs). The UK ROs are Classification ("Class") Societies, such as Lloyds Register. Certification is issued either by the RO, or the MCA on the basis of a declaration from an Authorised Person.

The above third-party organisations are "flag blind", meaning they survey ships for many different national registers, including the UK. They use the latest IMO requirements and then apply any additional national requirement specific to the flag State of the ship they are surveying.

Consequently, the certification is based on surveys to the most recent SOLAS requirements and no Certificate is issued unless the ship meets those requirements. As a result, we are confident that Chapter IV regulation has been established effectively upon UK registered ships. Therefore, costs related to the radio installation to incorporate GNSS position have been already incurred by businesses and are not included in the monetised costs of this assessment.

Table 2 displays the one-off cost per vessel incurred to update the radio installation. This varies according to the sea area in which international vessels operate.

- Sea area A1 means an area within the radiotelephone coverage of at least one VHF coast station in which continuous DSC alerting is available. In the UK this is considered to be within 30 miles of the coast.
- Sea area A2 means an area, excluding sea area A1, within the radiotelephone coverage of at least one MF coast station in which continuous DSC alerting is available. In the UK this is considered to be within 150 miles of the coast.
- Sea area A3 means an area, excluding sea areas A1 and A2, within the coverage of an INMARSAT geostationary satellite in which continuous alerting is available. This is between 76°S and 76°N.
- Sea area A4 means an area outside sea areas A1, A2 and A3. This is the polar region.

Indicative costs have been sourced from research on online equipment prices.

Table 2: Costs to update the radio installation according to sea area

	<u>Equipment</u>	<u>Low Scenario</u>	<u>High Scenario</u>
<u>Sea Area A2</u>	VHF and MF radio	£810.00	£27,542.93
<u>Sea Area A3</u>	VHF, MF radio and Inmarsat	£2,025.00	£30,260.15
<u>Sea Area A4</u>	VHF, MF and HF radio	£1,620.00	£27,542.93

The low scenario assumes that the radio equipment installed on the vessel can accept a position input from the ship electronic position fixing system (EPFS). The high scenario assumes that the radio equipment on the vessel is not able to accept an EPFS input and must be replaced with new equipment. It is also assumed that duplication of equipment is one of the chosen methods of maintenance as required by SOLAS Chapter IV. It was expected that most vessels would not have to replace equipment to meet this requirement.

If UK ships do not comply with the latest requirements of SOLAS Chapter IV, they are liable for detention in overseas ports. The opportunity cost of detention can be high as; chartering a trading cargo ship can cost around £5,000 to £10,000 per day³; penalties may result for late delivery of cargo; loss of future business due to reputational damage.

Do Nothing

Monetised Costs

If international amendments are not transposed into UK law, and because regulation is already established effectively, the costs borne by the shipowners are the annual and 5 yearly tests. These costs are independent of the area in which the vessel operates. Vessels are required by SOLAS to carry one float free emergency position indicating radio beacon (EPIRB) but may choose to carry more.

Table 3 presents the costs of the tests for one EPIRB. When the shore-based test occurs, the annual test is not required. This means that for a period of 10 years a vessel pays (at least) for a total of eight annual tests and two 5-year tests. Labour costs were supplied by industry and added to EPIRB shipping costs obtained from online research.

Table 3: Costs of testing safety equipment (EPIRB)

	Low Scenario	High Scenario
Annual Test	£105	£200
5-year Test	£75	£90

Table 4 provides a summary of the best estimate and low and high scenario estimates over the next 10-year period. The costs are appraised over a ten-year period and a discount rate of 3.5% per year is used to discount all future costs. Costs are estimated in 2017 prices. The best estimate is the mid-point between the low and high scenario.

Table 4: Summary of cost estimates by year and scenario

Best Estimate Costs (£ in thousands)											
	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10	Total
Annual Test	82.7	79.9	77.2	74.6	-	69.6	67.2	65.0	62.8	-	579
5-Year Test	-	-	-	-	39.0	-	-	-	-	32.8	71.8
Total	82.7	79.9	77.2	74.6	39.0	69.6	67.2	65.0	62.8	32.8	650.8

Low Estimate Costs (£ in thousands)											
	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10	Total
Annual Test	56.9	55.0	53.1	51.3	-	47.9	46.3	44.7	43.2	-	398.4
5-Year Test	-	-	-	-	35.4	-	-	-	-	29.8	65.2
Total	56.9	55.0	53.1	51.3	35.4	47.9	46.3	44.7	43.2	29.8	463.6

High Estimate Costs (£ in thousands)											
	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9	Y10	Total
Annual Test	108.4	104.7	101.2	97.8	-	91.3	88.2	85.2	82.3	-	759.1
5-Year Test	-	-	-	-	42.5	-	-	-	-	35.8	78.3
Total	108.4	104.7	101.2	97.8	42.5	91.3	88.2	85.2	82.3	35.8	837.4

³ UNCTAD, Review of Maritime Transport 2018, http://unctad.org/en/PublicationChapters/rmt2017ch3_en.pdf

Non-monetised Cost

Reputational Damage: The ‘do nothing’ option risk is reputational damage to the UK, which is difficult to quantify with enough precision and reliability. A poor performance, due to the lack of transposition, in the mandatory IMO audit scheme, has the potential for the UK to lose the “low risk status”, causing the frequency of inspection at foreign ports to rise, increasing the cost to UK industry. This could have potential implications for the UK Ship register, adversely affecting the government’s ambitious target to grow the register, as well as the wider UK Maritime Sector which accounts for £14.5 billion of GVA⁴.

Non-monetised Benefits

The main benefits of the amendments to SOLAS Chapter IV is to maintain the GMDSS so as to ensure the capability of vessels to transmit and receive distress, urgent, safety and other communications. As the amendments are often driven by changes to commercially available services that meet the required performance standards and type approval, it is not possible to quantify the reduced risk. Other amendments have been driven by advances in technology that aim to improve the information available during a search and rescue incident. These do not necessarily reduce the likelihood of incidents but aim to improve the chance of recovery.

Improving Safety: All of the measures are aimed at bringing an improvement to the safety of the seafaring environment, the benefits of which are reducing the number of casualties and fatalities occurring at sea.

Reduction in insurance premium for compliance: The measures introduced are aimed at bringing an improvement to the safety of the seafaring environment, the benefits of which are reducing the severity of accidents occurring to and on UK ships. A possible consequence of this reduction is the potential of reduced insurance costs.

Policy Option 1

Monetised Costs

Monetised costs for policy option 1 are the same as to the Do Nothing option. In this case, transposing international amendments into UK law would not change UK shipowners’ and operators’ behaviour as UK vessels already comply with the most up to date requirements.

Non-monetised Benefits

Same as Do Nothing option. Additionally, the UK would maintain its reputation at the mandatory IMO audit scheme.

The difference in costs and benefits between Do Nothing and policy 1 is that with policy 1 the reputation of the UK would not be damaged.

Policy Option 2

Monetised Costs

Same as option 1.

Non-monetised Benefits

In addition to the non-monetised benefits described for Do Nothing, option 2 would provide additional benefits due to the Ambulatory Reference. This option would result in cost savings to industry as shipowners would only have to consult a single piece of legislation. Familiarisation costs resulting from future amendments to the SOLAS Chapter IV will therefore be lower as they will not read separate international and domestic requirements – although the UK government will provide guidance and clarification of the international text where necessary.

It would also result in cost savings to government from implementing future amendments to the SOLAS Chapter IV, which the IMO is already working on and will come into force on 1st January 2024. As these amendments would automatically apply, there would be a resource saving from not having to transpose

⁴ Maritime UK, Economic Contribution of the UK Maritime Sector, 2017 <https://www.maritimeuk.org/value/>

the amendments into UK legislation, with the associated cost savings to government of policy officials', economists', lawyers' and MPs' time, and not having to produce additional legislation.

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

This ambulatory reference option, by efficient implementation of Convention amendments, also supports the UK status not only as host to the IMO, but also as a Category A member of the IMO Council, which is important to the UK's influence as a maritime nation.

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

The introduction of ambulatory reference provision in relation to SOLAS Chapter IV into the new Regulations will:

- Simplify the regulatory framework for both industry and regulatory users – currently a mixture of primary and secondary legislation is used to implement international maritime conventions;
- Give legal clarity to operators – there will no-longer be disparity between national and international requirements;
- Provide 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 could be detained;
- In the long term reduce the burden on the MCA, Government lawyers and parliamentary scheduling;
- Protect the UK's reputation. It could be detrimental to the UK's reputation should the UK be identified during a future IMO audit for failing to meet its obligation to give effect to the latest version of SOLAS, which was a finding of the previous audit; and
- Safeguard the UK's influence at the IMO.

Conclusion

The monetised costs for the Do nothing, policy 1 and policy 2 are the same because regulation is already being established on UK registered ships. Therefore, even if international amendments are not transposed into UK law (i.e. Do Nothing), shipowners will still incur in costs related to safety tests. This means that the total NPV, Business NPV and EANDCB are zero.

Policy 2 is the preferred option because 1) it avoids the reputational damage of the Do Nothing option and 2) provides additional benefits when compared to option 1 due to the ambulatory reference provision.

5. Risks and Assumptions

Risk of doing nothing

The risk of doing nothing is the inability to detain/prosecute UK Flagged vessels to ensure they comply with international legislation, potentially putting the vessel's crew in danger and increasing the risk of pollution to the environment should they try to use obsolete communication equipment that is no longer commercially operational or operational within the international search and rescue facilities.

There is also the risk 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, especially if an incident occurred, as is currently the case.

Risk of Option 1

Whilst this will update all the international amendments into UK law, this option will only provide a temporary reprieve to the backlog of international legislation to be implemented into UK law. Owing to finite policy, legal and analytical resources, any future amendments to SOLAS Chapter IV, including those already under discussion, will add to the backlog described above. Therefore, this option will not address industry's key demand during the RTC for the use of ambulatory reference provision to expedite the implementation of amendments to international conventions.

Assumptions in relation to the monetary analysis:

- All monetised costs are treated as direct (i.e. borne by owners and operators of ships that are registered on the UK Flag to which SOLAS Chapter IV applies).
- Because there is no information available regarding the number of vessels operating in each sea area, it was assumed that the best estimate is the mid-point between the low and high scenario.
- Although it is assumed that the number of ships on the UK Ship Register remained unchanged (542) over the 10 years period, this is unlikely to be true. However, due to the low levels of costs, small differences in the number of registered UK ships would not have a material impact on conclusions.
- It is assumed that UK registered ships are operated by UK businesses
- It is assumed that in the first four years of the analysis all 542 ships performed an annual test and, consequently, in the fifth year, a shore-based safety test. Certainly, this is in reality not entirely accurate and depends, among other things, on when the ship updated the radio installation. However, departures from this assumption do not lead to different conclusions.
- It is assumed that relevant UK ships are already compliant, and therefore will have already incurred any costs associated with historic amendments for the reasons given in section 2 of this DMA.

6. Wider Considerations

Competition assessment

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 SOLAS Chapter IV applies internationally equally to all ships.

Small and Micro Business Assessment (SaMBA)

Based on an analysis of the companies owning UK registered vessels (as at 16 October 2015), it is concluded that the majority of these companies affected by SOLAS Chapter IV amendments are large, multinational or subsidiaries of multinationals and would therefore fall outside of the scope of the small firms' impact test. 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 (who are not in scope of SOLAS IV).

The proposed Regulations are targeted at large, internationally operating ships. It is also anticipated that large ships are operated by large firms.

In any event, the SOLAS Chapter IV amendments are primarily concerned with performance standards, operational/ functional requirements and carriage requirements of communications equipment in order to protect lives and the environment. In the interests of safety, it is not possible to justify different requirements in these areas just because a company has fewer employees.

Environmental & Carbon Impact

None of the options would have any adverse environmental or carbon impact. In fact, the amendments to SOLAS Chapter IV would only have the effect of improving the impact to the environment as they enhance ship safety with a view to reducing unwelcome incidents.

Enforcement

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 SOLAS Chapter IV.

7. Post-Implementation Review Plan

Consider whether the policy be reviewed. Either provide an outline of what a potential PIR will cover or provide explanatory text outlining the reasons one is deemed unnecessary. Further guidance on review clauses is available from the Better Regulation Unit.

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

	Sunset clause	X	Other review clause		Political commitment		Other reason		No plan to review
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2. **Expected review date** (month and year):

0	5	/	2	6	To be completed when coming into force date is known. PIR to take place 5 years from making Regulations and every 5 years thereafter
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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 Chapter IV of the International Convention on the SOLAS, and aspects of a number of EU Directives which relate to the requirements of SOLAS Chapter IV.

- **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-compliance with the requirements of SOLAS Chapter IV established through Port State Control inspections.

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

Evidence will be gathered from survey and inspection as to whether the Regulations have fully implemented Chapter IV. Any costs which are obtainable will be gathered to establish whether estimated costs were correct. Evidence will also be sought from the shipping industry as to whether safety has been enhanced in cases where shipowners were thought not to be already complying with the latest standards. However, this is likely to be anecdotal. Results of the IMO audit, and whether the UK's maritime reputation and status on the white list has been protected will be considered.

- **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

Ambulatory References

Definition of ambulatory reference

An ambulatory reference for the purposes of this Impact Assessment is a reference in domestic legislation to an international instrument which is interpreted as a reference to that 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).

What does an ambulatory reference achieve?

Once an ambulatory reference to an international Convention, or part of an international Convention, is introduced into a Statutory Instrument (SI), new amendments to the Convention (or the referenced part of the Convention, if only part of it is referenced) will automatically become UK law. 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 introduced a new power to make ambulatory references to international instruments under a new section 306A of the Merchant Shipping Act 1995. 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. A new SI must be made to introduce an ambulatory reference provision in relation 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 ambulatory reference being approved.
2. There is the facility for the Secretary of State to block measures coming into force with which the UK does not agree. 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 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).

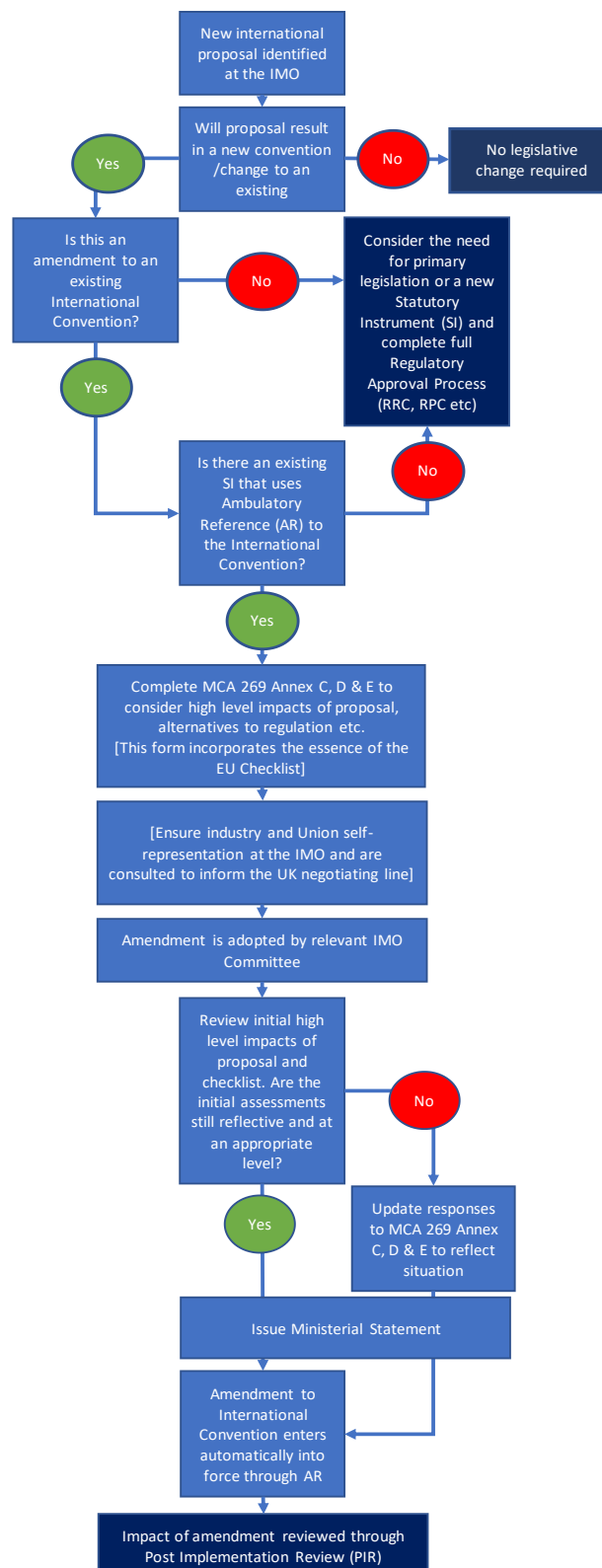
The proposed approach streamlines the traditional regulatory process and directs it where the greatest influence can be achieved, at negotiation stage. The principles of Better Regulation are still captured:

- **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.

Flowchart for introducing an amendment to an International agreement using Ambulatory Reference



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.