



Maritime &
Coastguard
Agency

Consultation Document:
The Merchant Shipping (High Speed Craft)
Regulations 2022

August 2021

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Section 1: Overview of this consultation

Aim

- 1.1 This consultation seeks your views on changes to UK secondary legislation to give effect to the latest amendments to Chapter X of the International Maritime Organization's (IMO) International Convention for the Safety of Life at Sea (SOLAS), including the IMO's High Speed Craft (HSC) Codes 1994 and 2000. Chapter X and the Codes apply directly to UK HSC anywhere, and non-UK HSC while they are in UK waters.
- 1.2 The proposed Regulations ("the new Regulations") will revoke and replace the Merchant Shipping (High Speed Craft) Regulations 2004 (SI 2004/0302) ("the 2004 Regulations"). The 2004 Regulations give effect to the HSC Codes in UK law (as amended up to the time the 2004 Regulations were most recently revised in November 2012).
- 1.3 The UK now intends to give effect in its domestic law to the amendments that have been adopted in the IMO and come into force in international law since updates to Chapter X of SOLAS and the HSC Codes were last implemented domestically (November 2012), although in practice it is expected that UK HSC already comply with the updated versions of the Codes.
- 1.4 The new Regulations also introduce an ambulatory reference provision so future technical amendments which are adopted by the IMO (and which are accepted by the UK) will come into force in UK law at the same time as they come into force internationally. An "ambulatory reference" provision has the effect that a reference to another document includes reference to that document as amended or replaced from time to time – in this case, Chapter X and the HSC Codes. This new approach was requested by industry for merchant shipping legislation generally during the Red Tape Challenge (RTC), and the government has responded by introducing this system in several statutory instruments to date (these include the Merchant Shipping (International Load Line Convention) (Amendment) Regulations 2018, the Merchant Shipping (Prevention of Oil Pollution) Regulations 2019 and the Merchant Shipping (Safety of Navigation) Regulations 2020) and proposes to do so in the new Regulations. This provides additional certainty for industry and will realise savings to the public purse through not having to make secondary legislation each time technical amendments are in future made to SOLAS Chapter X and the HSC Codes. However, if the UK has objected to an amendment in the IMO but that amendment is nevertheless accepted and comes into force internationally, the Secretary of State may make secondary legislation to prevent it coming into force domestically. An amendment that is accepted and to which the UK did not object in the IMO will be publicised before it comes into force in a Written Ministerial Statement (WMS) and by way of a Marine Guidance Note.
- 1.5 The main changes introduced by the new Regulations relate to:
 - a. an increase in safety drills to be carried out by crew on HSC;
 - b. the recording of those safety drills;
 - c. opening up of the GMDSS satellite service provider market.

Views sought

- 1.6 Your views are sought in respect of the following areas:
- the regulatory proposals;
 - the clarity and effectiveness of the draft documents to implement the changes to Chapter X of SOLAS and the HSC Codes.
- 1.7. A full list of consultation questions is contained in Section 5 of this consultation document.

Deadline for responses

- 1.8. Responses are welcomed from Thursday 12 August 2021 until the end of Wednesday 6 October 2021.
- 1.9 Following the conclusion of this consultation and consideration of the feedback, the new Regulations and associated documents in this package will be finalised, including any revisions made as a result of this consultation.

Section 2: Areas for consideration

Background

- 2.1 During the latter part of the last century, the IMO deliberately moved towards risk-based regulation of HSC with the introduction of the 1994 HSC Code. This was followed by the 2000 HSC Code, which provides a similar regime for newer HSC. Similarly, the pre-and post- 2008 versions of the 2000 Code differ to some extent. The Codes co-exist because each Code applies to HSC in accordance with the date on which the HSC in question was built or underwent major modification.
- 2.2 While the risk-based Codes do not follow the traditional, highly prescriptive, style of older legislation, they enable more flexibility for both industry and government in the application of safety standards. This enables the UK safety regime to be more dynamic and responsive to innovative developments and advances in technology than the more traditional approach, and is in keeping with the concept underpinning the Codes. A consequence of this is that there is less certainty, but it is believed that for industry the benefits of flexibility outweigh the benefits of certainty.

Proposed Changes

- 2.3 There have been no changes to SOLAS Chapter X since the last UK implementation in November 2012, but there have been some amendments to the Codes. These changes fall under the following main headings:

a) Drills

The scope of drills has been expanded. While some theoretical cost is attached to this, it is considered minimal, and such costs are considered “sunk”, i.e., they have already started to be incurred, as they came into effect internationally some years ago, so it is believed that all HSC will have already complied with them. However, should an operator not already be carrying out drills, it is estimated that the cost of the additional drills, using High, Central and Low scenarios, would be as follows

Table 1 – Estimated cost of additional drill activity (£2020)

Drill costs per year	Low	Central	High
<i>Drills per year</i>	6	6	6
<i>Time to carry out drill (minutes)</i>	30	38	45
<i>Number of employees</i>	5	6	9
<i>Wage rate</i>	14.20	17.30	19.17
Total cost	£ 230	£ 390	£ 780

Maritime and Coastguard Agency (MCA) Estimates based upon ASHE 2020 – may not sum as total figures have been rounded

b) Record keeping

Record keeping of drills has been expanded in keeping with the additional drills. Again, minimal theoretical costs are attached, but the conclusions are as for Drills above.

c) GMDSS satellite service provider

The International Maritime Organization (IMO) has expanded the options for the provision of Global Maritime Distress and Safety System (GMDSS) services to owners/operators. When originally introduced, INMARSAT was specified as the sole accepted provider of GMDSS satellite services.

Since then, organisational name changes and an increase in the number of such service providers mean that shipowners and operators now have options in respect of the provision of this service. The IMO has made changes which permit shipowners and operators to source their GMDSS satellite service provision from any provider approved by the IMO for this purpose.

This change is expected to increase competition, with the potential for reducing prices.

- 2.4 A draft Marine Guidance Note (MGN) has been prepared to clarify areas in the HSC Codes where regulatory discretion is conferred on the MCA (for example, where the Code requires that something be done “to the satisfaction of the Administration” or “to an approved standard”). However, given the risk-based nature of the Codes, absolute certainty of outcome is not possible in every case, and further prescription would remove the advantages, especially the flexibility which is the underlying policy at both international and domestic levels, and potentially put UK industry at a disadvantage compared with HSC registered in other IMO member states.

2.5 Offences and Penalties

- 2.5.1 The MCA, as the UK’s maritime regulatory and enforcement authority, has responsibility for both delivering and enforcing the Government’s maritime policy relating to ships, seafarers and the seas around the UK. The MCA’s approach to breaches of maritime legislation relies on a range of civil and criminal remedies in which, like many other regulatory regimes in the UK, civil and criminal sanctions sit alongside each other to enable the MCA to take the most proportionate action in relation to a particular breach. The decision on what is the most proportionate approach is determined by matters such as the importance of the requirement being breached, the gravity of the contravention, the effect of the contravention on third parties etc.
- 2.5.2 MCA surveyors have enforcement and sanction powers which can be applied locally to ships calling at UK ports. The MCA’s powers to use civil sanctions are primarily contained in the Merchant Shipping Act 1995 (“MSA”). These powers, including improvement and prohibition orders, are limited in scope and available only for specific purposes. Other than the power to detain a ship, it is not possible to replicate all the civil sanctions in the MSA in secondary legislation implementing international obligations or other policy objectives as there is no power to do so in the MSA. Because these civil sanctions are contained in primary legislation (the MSA), if they are needed, the sanctions will be enforced directly under the MSA. The general policy approach, in line with the MCA’s published enforcement policy, is to use these civil sanctions whenever possible before using criminal offences. The MCA is aware that other legislation provides a means of introducing new civil sanctions, and this is currently the subject of a formal review.

2.5.3 Maritime regulatory requirements govern both safety and pollution prevention. As such, their purpose includes the prevention of loss of life or injury to persons and the protection of the marine environment and adjoining coastlines. These very compelling objectives necessitate the availability of criminal sanctions in the more serious cases, and also provide a vital deterrent.

2.5.4 The offences in the draft Regulations are as shown in the Table below.

Offence	Person liable	Mode of trial	Sentence (summary conviction)	Sentence (conviction on indictment)
A high speed craft proceeds or attempts to proceed to sea or on any voyage, or arrives within United Kingdom waters, in breach of any of the requirements of the new Regulations or Chapter X applicable to that craft ¹	Owner and master (in respect of each case of non-compliance)	Either way	Fine (England and Wales); or Fine not exceeding the statutory maximum (Scotland or Northern Ireland)	Imprisonment for a term not exceeding two years, or a fine, or both
A person on board a high speed passenger craft who— (a) is drunk and disorderly; and (b) has received a full refund, or an offer of a full refund, in respect of any fare paid by, or on behalf of, that person, fails, despite request by the master or crew,	The person in contravention	Summary only	Fine (England and Wales) ² ; or Fine not exceeding the statutory maximum (Scotland or Northern Ireland)	

¹ It is a defence for a person charged with an offence to prove that the person charged took all reasonable steps to avoid the commission of the offence.

² Previously the fine was limited to scale 2.

to leave the ship at any place in the United Kingdom at which that person can conveniently do so				
A person on board a high speed passenger craft, after being warned by the master or crew, who molests or continues to molest any passenger	The person in contravention	Summary only	Fine (England and Wales) ³ ; or Fine not exceeding the statutory maximum (Scotland or Northern Ireland)	
A person on board a high speed passenger craft who intentionally does or causes to be done anything in such a manner as to— (a) obstruct or damage any part of the machinery or equipment of that craft; or (b) obstruct, impede or molest the master or crew, or any of them in the navigation or management of the craft, or otherwise in the execution of their duty on or about the craft	The person in contravention	Summary only	Fine (England and Wales) ⁴ ; or Fine not exceeding the statutory maximum (Scotland or Northern Ireland)	

³ Previously the fine was limited to scale 2.

⁴ Previously the fine was limited to scale 2.

Summary of Options and Recommendations

- 2.6 “Do nothing” is the baseline against which Options 1 and 2 are assessed. As the problem under consideration is the alignment of UK legislation with international standards with which the UK is committed to comply, there is no viable option other than regulation. As such, no non-regulatory measures have been considered.

Option 0 - “Do nothing” – This would leave UK legislation not reflecting the latest updates to the SOLAS Ch X Convention.

Option 1 – Update legislation to give effect in UK law to the latest amendments to SOLAS Chapter X and HSC Codes 1994 and 2000, but not introduce ambulatory referencing.

Option 2 – Update legislation to give effect in UK law to the latest amendments to SOLAS Chapter X and HSC Codes 1994 and 2000, and introduce ambulatory referencing to enable further amendments to come into force at the same time as they take effect internationally.

Our preferred option is Option 2, as it corrects the outlined problems because ambulatory references are an efficient and effective way of keeping UK law in line with international law, so is important for keeping the UK regulatory regime up to date and avoiding future backlogs.

Section 3: Responding to this consultation

- 3.1. There are specific questions highlighted in section 5 of this document and information on how to respond to this consultation document.

Consultees

- 3.2. Anyone may respond to this consultation and consideration will be given to all responses. We will be particularly interested to hear from operators of High Speed Craft.

Duration

- 3.3. This consultation is open for 8 weeks from Thursday 12 August 2021. The deadline for responses is the end of Wednesday 6 October 2021.

Submitting your response

- 3.4. The preference is for consultation responses to be emailed to marinetechnology@mcga.gov.uk. Any questions should also be sent to this email address. You can also send in your response by post. [During the current COVID-19 pandemic we are working away from the office and the collection of post is limited.]
- 3.5. 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

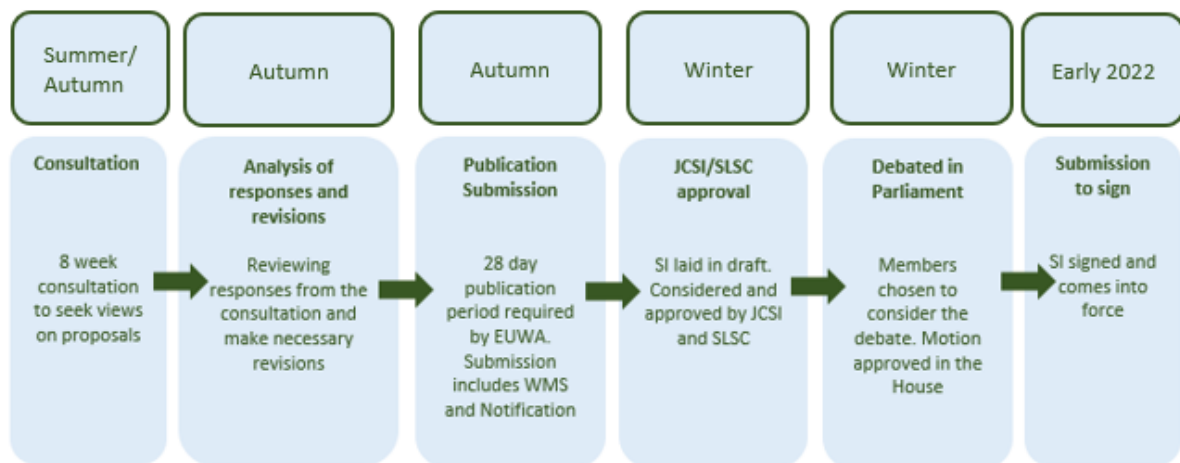
- 3.6. Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.
- 3.7. If you want the information that you provide 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.
- 3.8. 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/MCA.
- 3.9. The MCA will process your personal data in accordance with the data protection framework and, in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Data Protection

- 3.10. The MCA is carrying out this consultation to gather evidence to inform the development and implementation of policy and legislation (in accordance with section 86(4) of the Merchant Shipping Act 1995). This consultation and the processing of personal data that it entails is necessary for the exercise of our functions as a government department. If your answers contain information that allows you to be identified, under data protection law, the MCA, as an Executive Agency of the Department for Transport, will be the Controller for this information.
- 3.11. 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.
- 3.12. Details about how the MCA looks after personal data, your rights, how to complain, and how to contact our Data Protection Manager can be found on gov.uk at:
<https://www.gov.uk/government/organisations/maritime-and-coastguard-agency/about/personal-information-charter>
- 3.13. Your information will be kept securely on the MCA's IT system and any written responses will be held in a secure file and cabinet and kept for [up to five years, until a post-implementation review has been completed – *please complete*].
- 3.14. If you do not wish to remain on this list, please let us know at marinetechology@mcga.gov.uk

Section 4: Outline of plans beyond this consultation

- 4.1. 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.
- 4.2. We will be analysing the responses during Autumn 2021. Our aim is to publish an overview of the responses and the MCA's comments within at most 3 months of the end of the consultation, which will be made available on www.gov.uk along with the consultation.
- 4.3. Where appropriate the draft Regulations/Guidance, accompanying guidance and impact assessment will be revised to take into account the consultation responses.
- 4.4. Our aim is for the new Regulations to come into force in early 2022. The Regulations will be published on www.legislation.gov.uk
- 4.5. Every effort will be made to publish the revised accompanying guidance on gov.uk in advance of the Regulations coming into force.
- 4.6. An overview timetable is below is below for reference:



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 5.1 Consultation Questions

POLICY

1. Do you maintain your vessel in line with the post-2015 version of the international HSC Codes or latest international standards already?

Yes

No (if you tick this, please provide detail in the space below, continuing on a separate sheet if necessary)

2. Is the assumption that industry is already compliant with the latest IMO standards accurate?

Yes

No (if you tick this, please provide detail in the space below, continuing on a separate sheet if necessary)

COSTS (Level)

3. When carrying out the safety drills relating to entry and rescue in enclosed spaces onboard vessels how many crew are involved?

4. Do you agree that any costs of additional drills and record keeping are already being incurred by HSC operators and they are already compliant?

Yes, I agree

No, I disagree (if you tick this, please provide detail in the space below, continuing on a separate sheet if necessary)

5. For operators that are not already compliant, do the estimated cost ranges provided in the Table at paragraph 2.5.4 of the consultation document reflect the cost of the safety drill relating to entry and rescue in enclosed spaces onboard?

Yes

No (if you tick this, please provide detail in the space below, continuing on a separate sheet if necessary)

COSTS (Timing)

6. Is the assumption that most of industry is already familiar with the requirements set out within the IMO convention accurate? (Consultees are asked to provide evidence if familiarisation with the new regulations will take a significant amount of time away from business as usual operations.)

Yes

No (if you tick this, please provide detail in the space below, continuing on a separate sheet if necessary)

AMBULATORY REFERENCE

7. Do you agree with the use of Ambulatory Reference in the context of SOLAS Chapter X and the HSC Codes?

Yes, I agree

No, I disagree (if you tick this, please provide detail in the space below, continuing on a separate sheet if necessary)

GUIDANCE

8. Do you agree that the draft Marine Guidance Note (MGN) is clear?

Yes, I agree

No, I disagree (if you tick this, please provide detail in the space below, continuing on a separate sheet if necessary)

9. Do you have any additional comments to add to the response?

Section 5.2

Post Implementation Review Question

10. Do you have any observations on how the UK implementation of the SOLAS Chapter X and the HSC Codes can be improved upon in the new Regulations?



Return a scanned copy of the completed version of this form to marinetechnology@mcga.gov.uk or post to:

The Maritime and Coastguard Agency (MCA), Bay 2/23, (Attention: Jim House, UK Technical Services, Ship Standards HSC consultation - Ship Safety), 105 Commercial Road, Southampton SO15 1EG

Section 6: Conduct of this consultation

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

Consultation principles

- 6.2. The Cabinet Office Consultation Principles can be found at Consultation Principles 2018

Feedback on conduct of consultation

- 6.3. If you have any comments regarding the conduct of this consultation, please contact the Consultation Co-ordinator at consultation.coordinator@mcga.gov.uk.
- 6.4. 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.
- 6.5. If you require this consultation in an alternative format, please contact either the Consultation Co-ordinator or the named official conducting this consultation.

MCA CONSULTATION FEEDBACK FORM

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

.....

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) _____

2b. If you are representing a company, please indicate the size of your company:

- Micro (1-9 employees)
- Small (10-49 employees)
- Medium (50-249 employees)
- Large (250+ employees)

2c. 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.