



Maritime &
Coastguard
Agency

Consultation Responses: Implementation of The Merchant Shipping (Polar Code) (Safety) Regulations 2021

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Foreword

The International Code for Ships Operating in Polar Waters (Polar Code) was agreed at the International Maritime Organization (IMO) and is mandatory under both the International Convention for the Safety of Life at Sea, 1974 (SOLAS) (Chapter XIV) and the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL). In accordance with its international obligations, the UK is now in the process of implementing the provisions of Chapter XIV of SOLAS and the safety provisions in the Polar Code (which is incorporated into SOLAS by reference to it in Chapter XIV) into domestic law.

The Polar Code covers the full range of design, construction, equipment, operational, training, search and rescue and environmental protection matters relevant to ships operating in the inhospitable waters surrounding the two poles. The environmental requirements of the Polar Code have already been successfully implemented in merchant shipping legislation.

The UK wishes to thank all of those organisations, agencies and individuals who took the time to read the consultation documents which were placed on GOV.UK related to implementation of Polar Code Regulations.



1 Overview of the consultation

1.1 Introduction

- 1.1.1 The Maritime and Coastguard Agency (MCA), an executive Agency of the Department for Transport (DfT), carried out a public consultation from 17 March to 12 May 2021 regarding the proposed implementation of the safety related requirements in Chapter XIV of the International Convention for the Safety of Life at Sea, 1974, and the International Code for Ships Operating in Polar Waters ('the Polar Code'), which is made mandatory by Chapter XIV. These provisions were proposed to be implemented by the (draft) Merchant Shipping (Polar Code) (Safety) Regulations 2021 ('the proposed Regulations'). The consultation was published on GOV.UK, and notifications of the consultation were sent to more than 120 shipping and marine industry companies, plus in excess of 40 government Departments and maritime bodies with professional and specialist functions.
- 1.1.2 The Polar Code applies to ships operating in polar waters. The various chapters in part I-A of the Code (safety measures) each set out goals and functional requirements and include: ship structure; stability and subdivision; watertight and weathertight integrity; machinery installations; operational safety; fire safety/protection; life-saving appliances and arrangements; safety of navigation; communications; voyage planning; manning and training.
- 1.1.3 The proposed Regulations apply to United Kingdom ships, and also to non-United Kingdom ships commencing or ending a voyage in the United Kingdom and, as part of that voyage, operating in polar waters.
- 1.1.4 Chapter 12 of part 1-A of the Polar Code (manning and training) requires companies to ensure that masters, chief mates and officers in charge of a navigational watch on board ships operating in polar waters have completed appropriate training, taking into account the provisions of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) and its related STCW Code. Chapter 12 of the Code (manning and training) is being implemented by way of an amendment to the Merchant Shipping (Standards of Certification, Training and Watchkeeping) Regulations 2015 (S.I. 2015/782) and is the subject of a separate consultation.
- 1.1.5 The Code requires ships intending to operate in the defined waters of the Antarctic and Arctic to have a Polar Ship Certificate. Before a certificate can be issued, the ship must be assessed in respect of the anticipated range of operating conditions and hazards the vessel might encounter in polar waters.



- 1.1.6 A Polar Water Operational Manual (PWOM) must be carried on board a ship to provide the owner, manager, operator, master and crew with sufficient information regarding the ship's operational capabilities and limitations in order to support their decision-making process.

1.2 Ambulatory Reference

- 1.2.1 For the purposes of the proposed Regulations, an ambulatory reference 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).
- 1.2.2 It is proposed that an ambulatory reference provision be included in the proposed Regulations. The majority of the provisions in Chapter XIV and the Polar Code are cross-referenced in the proposed Regulations.
- 1.2.3 From a legal perspective, this means that future amendments to the referenced provisions of Chapter XIV of SOLAS and the Polar Code in the proposed Regulations will automatically become part of UK law when they enter into force internationally. No further legislation will be required to bring amendments into force in the UK unless the change is outside the scope of the matters referenced in the Regulations; this is expected to be rare.
- 1.2.4 From a practical perspective, this means that ship owners, shipbuilders, and other interested parties can refer directly to the text of SOLAS Chapter XIV and the Polar Code to determine both the UK and international requirements. Where the text of Chapter XIV or the Polar Code is unclear or needs amplification - for instance, where it is stated that something is to be carried out "to the satisfaction of the administration" - guidance will provide the additional clarity required. This approach avoids the need to refer both to UK legislation (which may be phrased differently to SOLAS and be organised differently) and the text of SOLAS to check compliance with international requirements.
- 1.2.5 This will simplify the regulatory framework for both industry and regulatory users. It will also provide legal clarity for ship owners, shipbuilders and other industry professionals/interested parties as they will only have to refer to the internationally agreed text in relation to SOLAS Chapter XIV and the Polar Code, instead of having to refer to a UK version of those provisions.



1.3 Consultation

- 1.3.1 The consultation was carried out between 17 March and 12 May 2021. It can be found at: <https://www.gov.uk/government/consultations/implementation-of-the-international-code-for-ships-operating-in-polar-waters-polar-code>.
- 1.3.2 A total of one response was received from the Law Society of Scotland. Not all questions posed were answered. The answers given have been fully and carefully considered.



Consultation Outcome



2 Consultation Outcomes

2.1 Introduction

2.1.1 A total of 16 questions were posed in the consultation and these, together with the consultee comments, as well as the government's response, are shown in detail at Annex A. However, the main points are summarised below.

2.2 Ambulatory Reference

2.2.1 There were no negative responses regarding the use of ambulatory reference. An important point was made, namely, that the use of ambulatory reference should not prevent suitable opportunities for consultation and scrutiny from stakeholders who will be affected by future changes.

2.2.2 **Government response:** The UK agrees, and is committed to ensuring that, there are suitable opportunities for consultation and scrutiny in relation to possible changes to Chapter XIV of SOLAS and the Polar Code. The United Kingdom government and the Maritime and Coastguard Agency, as an Executive Agency of the Department for Transport, are committed to ensuring that high quality legislation and regulation is produced through open discussions with stakeholders.

2.2.3 In relation to any proposed amendment in the IMO, the government will actively participate in discussions and working groups at IMO and will seek the views of those parts of the shipping industry likely to be affected at an early stage. It should be noted that UK industry stakeholders are represented at the IMO through affiliation to the non-governmental international organisations, which are granted consultative status¹ to add their technical expertise to the discussions. These organisations include international representatives of the seafarers' unions, shipowners and shipbuilders.

2.2.4 In the event that the UK does not agree with an amendment to SOLAS, the UK can object to the amendment in line with the convention amendment procedure (this means that the UK would not be bound by international law to implement it), and will make provision in the implementing Regulations to exclude it, should the ambulatory reference provision pick it up as a change.

2.2.5 However, although objections are legally possible, it is extremely unlikely in practice that the UK would need to lodge an objection owing to the fact that the UK strives within the negotiation process to reach a point where a proposed amendment to SOLAS can be accepted.

¹ <https://www.imo.org/en/About/Membership/Pages/Default.aspx>



2.3 Application

- 2.3.1 There was a question raised as to whether there is merit in aligning the wording of regulation 3(3) (application – force majeure) with the more generally used port State control language regarding vessels being in a UK port, or at an anchorage within the jurisdiction of a UK port, and engaging in “ship/port interface”.
- 2.3.2 **Government response:** The proposed wording implements the force majeure provision in SOLAS and is applied in the same way in a number of other instruments, for example, for life-saving appliances and navigation. The only difference is that the reference to ‘United Kingdom waters’ has been replaced with ‘port’ (neither of which appears in the Convention in any event). Therefore, the UK wants to be consistent with the wording and follow the Convention as closely as possible.



3 The implementing Regulations

3.1 Next Steps

- 3.1.1 The government will finalise the proposed Regulations with a view to bringing them into force during late 2021/early 2022.



Question 3

An indication from potential operators if these costs are realistic to what they believe they would face.

Is it reasonable to omit the itemised list of associated costings below, owing to the assumption of best practice and Life Saving Appliances Code requirements?

For example, cost associated with:

- machinery
- windows on bridges
- ice removal equipment
- suitable clothing
- cost of life-saving appliances and firefighting equipment
- cost of enclosed or partly enclosed lifeboats

Summary of consultee views

No comments were received.

Government response

The government notes that no comments were received and will therefore progress with making the Regulations as planned.

Question 4

Potential operators - please could you indicate which costs are believed to be additional as a result of implementing the safety requirements of Chapter XIV and the Polar Code into domestic legislation? If you disagree with the items listed above, please state the reasons why.

Summary of consultee views

No comments were received.

Government response

The government notes that no comments were received and will therefore progress with making the Regulations as planned.

Question 5

Industry have been aware of the IMO's intention to implement rules for operating in polar waters since 2010. Would it therefore be right to assume that in expectation of the implementation of Chapter XIV and the Polar Code, industry is generally compliant with the new international provisions?

Summary of consultee views

No comments were received.



Government response

The government notes that no comments were received and will therefore progress with making the Regulations as planned.

Question 6

Do you agree with the assumption it would be uneconomical to retrofit a vessel to the Polar Code specifications and therefore it would be appropriate to assume every vessel operating with these regions would be a new vessel designed for this purpose, or a currently compliant vessel from another IMO white flagged country?

Summary of consultee views

No comments were received.

Government response

The government notes that no comments were received and will therefore progress with making the Regulations as planned.

Question 7

Do you believe the costings which have been monetised (visible in table 1) provide an accurate representation of the cost incurred for those vessels operating under the UK flag operating within polar regions, as a direct result of the UK's implementation of the Polar Code domestically? If not, how would you expect the estimated costs to vary?

Cost scenario	Per vessel (average) cost
Group survival equipment ³	£5,800
Polar Water Operational Manual PWOM ³	£14,500
Polar Certificate and survey	£3,500
Summary of cost (Nominal costs)	£23,800

Table 1: Costs imposed on business due to the implementation of the Polar Code.

Summary of consultee views

No comments were received.

Government response

The government notes that no comments were received and will therefore progress with making the Regulations as planned.



Question 8 **Potential operators - would you be able to provide any additional costs or benefits that have yet to be mentioned in this document?**

Summary of consultee views No comments were received.

Government response The government notes that no comments were received and will therefore progress with making the Regulations as planned.

Question 9 **Do you foresee any unintended consequences of the proposed Regulations, that have not previously been mentioned?**

Summary of consultee views No comments were received.

Government response The government notes that no comments were received and will therefore progress with making the Regulations as planned.

Question 10 **Do you consider the proposed offences and penalties to be appropriate in light of the requirements imposed by the draft Regulations?**

Summary of consultee views No comments were received.

Government response The government notes that no comments were received and will therefore progress with making the Regulations as planned.

Question 11 **Will the proposed offences and penalties provide an effective deterrent to counteract non-compliance?**

Summary of consultee views No comments were received.

Government response The government notes that no comments were received and will therefore progress with making the Regulations as planned.



Question 12

Can you see any other benefits or drawbacks of using ambulatory referencing to implement updates to Chapter XIV and the Polar Code?

Summary of consultee views

No comments were received.

Government response

The government notes that no comments were received and will therefore progress with making the Regulations as planned.

Question 13

Do you agree with the decision to implement Chapter 12 of the Code (manning and training) by way of an amendment to the Merchant Shipping (Standards of Certification, Training and Watchkeeping) Regulations 2015? If not, why?

Summary of consultee views

No comments were received.

Government response

The government notes that no comments were received and will therefore progress with making the Regulations as planned.

Question 14

Is the proposed guidance to accompany the Regulations adequate and in the right format?

Summary of consultee views

No comments were received.

Government response

The government notes that no comments were received and will therefore progress with producing the guidance as planned.

Question 15

Do you believe that there is a better way of providing guidance for the Polar Code requirements?

Summary of consultee views

No comments were received.

Government response

The government notes that no comments were received and will therefore progress with producing the guidance as planned.



Question 16

Given that the Polar Code is 'goal' based, are the associated requirements transparent enough?

Summary of consultee views

No comments were received.

Government response

The government notes that no comments were received and will therefore progress with making the Regulations as planned.





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