



Maritime &  
Coastguard  
Agency

Consultation Report:  
MERCHANT SHIPPING (ENTRY INTO  
ENCLOSED SPACES) REGULATIONS 2022

October 2021

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## Section 1: Introduction

1. The UK is a signatory to the International Maritime Organisation (IMO) Safety of Life at Sea Convention 1974 (SOLAS) and the UK is obligated to reflect all updates within UK legislation.
- 1.1 In 2013, the IMO adopted amendments to SOLAS to strengthen the regulations intended to ensure that seafarers are not put at risk by entry into enclosed spaces. These amendments are:
  - **SOLAS Chapter III regulation 19 (requirement for enclosed space drills) (came into force on 1 July 2015)**
  - **SOLAS Chapter XI/1 regulation 7 (requirement to carry atmosphere testing equipment) (came into force 1 January 2016)**
- 1.2 The implementation of the SOLAS amendments provided an opportunity to address the concerns of industry and the Marine Accident Investigation Branch (MAIB), on the number and frequency of incidents involving enclosed space entry on board ships and the unfortunate fatalities. By reviewing the regulations and assessing potential impacts on industry, widening the scope of the 2022 regulations application was deemed appropriate and balanced.

The Merchant Shipping and Fishing Vessels (Entry into Enclosed Spaces) Regulations 2021 ("The Regulations") will revoke and replace the Merchant Shipping (Entry into Dangerous Spaces) Regulations 1988.

- 1.3 Three options were initially proposed on the application of the proposed Regulations;
  - **Option 1:** Implementation of SOLAS amendments to Chapter III and XI/1 as above (see MSC 350(92) and MSC 380(94)), other than to vessels to which the Merchant Shipping (Life Saving Appliances) Regulations 2020 apply.
  - **Option 2:** Implementation of Option 1 and also apply the regulations to non-SOLAS Merchant Ships under 500GT.
  - **Option 3: (preferred option)** Implementation of Options 1 & 2, with the extension of the requirements to also include Fishing Vessels (which are not currently regulated in respect to enclosed space entry).

Consultees were invited to comment on any aspect of this consultation; but more specifically to respond to the questions as outlined in the table at section 3 of this report.

- 1.4. **Consultation on the review of enclosed spaces regulations on board ships**
- 1.4.1 The consultation sought to establish the potential impact of Options 1-3 on industry by outlining specific questions to ensure all aspects had been addressed and all parts of industry given full opportunity to comment. In total there were 27 responses, and though the majority were from the merchant shipping industry we did receive significant and valued responses from the fishing industry. This ensured a balanced review and true reflection of current industry concerns and working practices.

Not all respondents answered every question posed and additional comments were received. These are contained within the table at section 3.
- 1.4.2 Due to the nature of the shipping and fishing industries, establishing accurate vessel numbers is not always possible (not all vessels are registered and where their mode of operation is not always given). We took the prudent approach and overestimated on some impacts on industry, utilising the consultation to understand if our estimations

were accurate. The majority of consultation questions aimed to establish whether our estimates were accurate.

- 1.4.3 This report outlines the feedback received from the public consultation and from engagement across the marine industry in formulating a review of the enclosed spaces regulations, addressing the concerns raised but also to take the necessary steps to improve the safety of seafarers and fishermen with regards to enclosed spaces on board ships and fishing vessels.
- 1.4.4 We are grateful for all the comments received and we acknowledge the time and effort put into the information provided to us.

## Section 2: Key Findings

### 2. Findings from the consultation

Analysis of the consultation responses outlined a number of key points:

- Application of all of the Regulations to Fishing Vessels was not deemed appropriate by the respondents from the fishing industry.
- The updated definition of enclosed spaces increased clarity and understanding, ensuring consistency with the international definition used, and ensuring distinction from the land-based regulations (The Confined Spaces Regulations 1997).
- Many responses suggested staggered coming into force dates to allow sufficient time for raising awareness of the new regulations and to allow industry to compliance.
- It was identified that there is a need for increased awareness of the risks of enclosed space entry and improvements in the training being offered to seafarers and fishermen as part of the certificate of competency process.
- Additional guidance is needed to provide clear information on the areas where further detail could not be outlined within the Regulations covering:
  - clarity on enclosed space definition and examples of spaces that would be included
  - application of the Regulations, especially in cases where there are no accessible enclosed spaces, or procedures exist prevent seafarers from entering the spaces. Details of general exemptions will also be published prior to coming into force.
  - enclosed space entry risk assessment
  - clarification where cross over of Regulation exists between MCA and the Health and Safety Executive (HSE)
  - details on the requirement and best practice for safety drills with guidance on relevant equipment and Personal Protective Equipment (PPE).
  - definition of appropriate testing equipment, its use and clarification on the types of equipment

#### 2.1 Findings from post-consultation engagement

Key findings from post-consultation engagement includes:

- Fishing industry would not support application of all enclosed space regulations to
- Safety drills on a two-monthly schedule would not be feasible on many fishing vessels due to the seasonality of work

- Many fishing vessels do not have accessible enclosed spaces, or enclosed spaces that it would be necessary for the crew to enter whilst at sea
- Larger vessels, for the most part, already have procedures in place for entry in to enclosed spaces, and where appropriate carry out safety drills and carry atmosphere testing equipment.

## Section 3: Summary of Responses

3. A number of questions were asked as part of the consultation and the responses have been summarised in the following table, along with MCA comment.

3.1 Where consultees identified a lack of clarity or further guidance was suggested, this will be addressed in a new Marine Guidance Note (MGN), which will be issued at the time of laying the regulations.

Question Number	Public Consultation Questions	Summary of Responses	MCA Comment
1	Which of the three options do you feel should be implemented and why?	<p>The majority agreed that the risks to seafarers and the frequency of incidents and fatalities requires the regulations to reflect the serious danger posed by enclosed spaces on the majority of vessels. The majority felt that option 3 was most appropriate.</p> <p>However, there were concerns from the fishing industry that option 3 would be unnecessarily prescriptive for fishing vessels.</p>	To reduce the impact on fishing vessels, only regulation 7 will apply. This will ensure that risk assessments are done and relevant procedures are set out. In some cases voluntary compliance with the other regulations will be the most appropriate way of ensuring safety, however this option gives more flexibility for fishing vessels.
2	Do you feel that a coming into force date of the November 2021, gives ship owners, managers, skippers sufficient time to set in place the necessary procedures to meet the change in regulation?	The majority of responses felt that the coming into force date of 'November 2021' was too soon for smaller operators and certainly for fishing vessels and suggested a phased in implementation period should be considered. The COVID-19 pandemic has also affected the resilience of some sectors of industry at this time.	In response to these concerns we have given all non-SOLAS ships 12 months from the laying date to comply. SOLAS ships should already be compliant and therefore the coming into force date will be 3 months after the laying date.
3	Under Option 2, we estimate only a percentage of under 500GT merchant ships will be impacted. Outlined as 30% currently meeting SOLAS requirements through PSC, 20% voluntarily applying SOLAS requirements through industry best practice, 20% who are operating domestic routes and which would access enclosed spaces only as part of an 'onshore' maintenance programme and the remaining 30% as unknown operation. Which gives an estimate of 70% of merchant ships under 500GT as potentially impacted. Do you agree with the 70% estimation?	The majority agreed with our estimation, that 70% of merchant vessels under 500GT would be impacted with Option 2.	This response confirmed the assumptions of the impact assessment for the merchant shipping industry.

4	Under Option 3, we estimate that the cost of training for fishing vessels to be £317k on the basis that 50% of fishermen have already had enclosed space training contained within the Basic Health and Safety course for new entrants and in the Safety Awareness course for experienced fishermen. Do you agree with this assumption and if not please explain why and tell us what proportion of fishermen may require more training as a result of the proposed Regulations?	The overall cost of training for the fishing industry was generally felt to be more than estimated, as it was stated that the current mandatory training did not cover enclosed space entry in enough detail. No data was provided to validate what the cost would be.	In response action was taken to increase the analytical costing for the potential impact of training for fishing vessels. Ongoing discussions between the MCA training department and the Fishing Industry Steering Group will consider ways for the fishing industry to access appropriate training, including mandatory training for new entrants.
5	If you do not feel option 3 is suitable, please give evidence to support this view. What alternative measures or action do you feel could be taken to improve awareness within the Merchant and Fishing Industries on the dangers of enclosed spaces?	The majority felt Option 3 was preferable but as outlined under question1, for the fishing industry this was considered too prescriptive.	We have addressed this by exempting fishing vessels from regulations 6, 8 and 9.
6	Do you agree that provision should be made for exemptions for vessels under 500GT which fall outside the scope of the SOLAS requirements? If so, do you agree with the conditions placed on such exemptions?	The majority agreed with the provision of exemptions, as long as there are robust safety management systems / risk assessments carried out instead of compliance.	Relevant general exemptions will be published in due course.
7	Do you agree to using the <b>term</b> 'enclosed spaces' instead of 'dangerous spaces' as defined? (see 2.2.2)	The majority agreed to the term 'enclosed spaces' as it is known within industry and aligns with the SOLAS definition. Some pointed to resources with more detailed definitions and examples, and definitions of related concepts such as 'adjacent spaces'.	There will be clarity on enclosed space definition and examples of spaces that would be included within MCA guidance and the definition will also be updated within the Code Of Safe Working Practices for Merchant Seafarers (COSWP) during 2022.
8	Do you agree to (i) the definition of 'enclosed space' as defined within regulation 3 of the proposed Regulation and (ii) to the alteration of the word ' <b>and</b> ' to ' <b>or</b> ' within regulation 3 (b)? (see 2.2.3) If you do not agree, please outline why.	The majority agreed with the alterations. More clarity was suggested on the definitions. Some pointed out that exclusivity of all characteristics meant that too many spaces would be covered.	We have addressed this by using the following definition:  <i>"enclosed space" means a space which is not designed for continuous worker occupancy and has either or both of the following characteristics—</i> <i>(a) limited openings for entry and exit;</i> <i>(b) inadequate ventilation;</i>
9	What proportion of UK non-tanker and passenger ships of 500GT to 1000GT do you estimate already carry out enclosed space entry drills?	The responses gave varying views and indicated varied rates of compliance throughout the industry.	This response confirmed the assumptions of the impact assessment
10	What proportion of UK merchant ships do you estimate already carry atmosphere testing equipment which meets the standard? If the proportion varies according to size of vessel, please make clear which vessels you are referring to.	The majority felt only vessels which have to comply with the current regulations carry atmosphere testing equipment, even though the dangers of enclosed spaces are well known within the industry.	This response confirmed the assumptions of our impact assessment for the merchant shipping industry

11	What proportion of UK shipping companies do you estimate already send seafarers on the recognised enclosed spaces training courses?	The majority felt only vessels which have to comply with current SOLAS/dangerous spaces Regulations, send seafarers on enclosed space training courses. Responses estimating the proportion of companies sending seafarers on recognised enclosed spaces training ranged widely, dependant on the type of vessel and mode of operation.	This response confirmed the assumptions of our impact assessment for the merchant shipping industry.
12	Do you agree with our assessment of the impact of the proposed Regulations? Are there other costs or benefits to be considered?	The majority agree with our assessment of the impact of the proposed regulations. Responses from the fishing industry, which is currently unregulated for entry into enclosed spaces, indicate that the impact should be higher. Further industry discussion will be undertaken. A potential benefit should be investigated, regarding possible savings with insurance premiums.	Discussions with the fishing industry clarified what action is already taking place with responsible vessel owners but also the complex nature of fishing vessels and their varying modes of operation.  MCA felt adjusting the Regulations' application and delaying their implementation, would offer the fishing industry the time necessary to become more aware and implement safe systems of work. This will be backed up with MCA and industry safety campaigns and publicity.
Section 5.2	Other additional Comments on the consultation	The majority of additional comments indicated areas where the implications of the SI were unclear.	These will form part of further guidance outside of our propose Regulations. Considerations of the exemptions process and training availability will be fully reviewed.

## Section 4: MCA Response

4. The public consultation informed us of current marine industry concerns, acknowledging the need for appropriate action. Comments included a request for clear guidance on definitions for what constitutes an enclosed space and appropriate testing equipment and also where it was considered regulation was not required but where more awareness and improved training would be more beneficial.

4.1 In response to the public consultation, the MCA reviewed the proposed Regulations and have made the following amendments;

- Implementation Date: non-SOLAS ships coming into force date provides 12 months after the regulations are laid.

It is intended to stagger the coming in to force date. For those not currently covered by the SOLAS amendments (non-SOLAS ships and fishing vessels), coming in to force will not happen until 12 months after the Regulations are laid. This will ensure sufficient marine industry awareness of the Regulations, consultation on exemptions and the production of industry wide guidance through various forms of media.

- Enclosed Space Definition:  
*“enclosed space” means a space which is not designed for continuous worker occupancy and has either or both of the following characteristics-*

- (a) limited openings for entry and exit;*
- (b) inadequate ventilation*

A clearer understanding of how to identify an enclosed space was requested. This will be clarified in more detail within the guidance.

- Change in application (Regulation 5): Regulations 6, 8 and 9 will not apply to fishing vessels. Only Regulation 7 (see 4.2 below)

The purpose of applying only Regulation 7 to fishing vessels, will provide the fishing industry which is currently unregulated with regards to entry into enclosed spaces, a measure of safety for fishermen and enhance the awareness of what constitutes an enclosed space and its dangers, on board fishing vessels. This would be carried out through consideration of the enclosed spaces definition and risk assessment of fishing vessels by fishing vessel owners.

- The following definitions have been reviewed for greater clarity;
  - Fish Fishing Vessel
  - Master
  - Relevant Guidance

4.2 Acting on the feedback from the consultation, and further discussions with the Fishing Industry, Option 3 was modified:

4.2.1 **Option 3 (combined with Option 1 & 2): (preferred option)** and extend regulation 7 only (Entry into Enclosed Spaces) of the Merchant Shipping (Entry into Enclosed Spaces) Regulations to all fishing vessels, as outlined above.

4.2.2 This will apply the requirement for the carriage of atmosphere testing equipment to merchant vessels on international and domestic routes and drills (to which the LSA Regulations 2020 do not apply), with the allowance of exemption if meeting the exemption criteria, with only Regulation 7 applying to all fishing vessels:

Regulation 7 (Entry into Enclosed Spaces), of the Merchant Shipping Regulations 2022 states:

#### *7. Entry into enclosed spaces*

*In respect of each ship on board which there is an accessible enclosed space—*

*(a) the shipowner, the employer and any other person referred to in regulation 4 (persons on whom duties are imposed) of the 1997 Regulations(a) must each ensure that –*

*(i) the systems of work provided and maintained in accordance with regulation 5 (general duties) of the 1997 Regulations(b) include systems for entry into and working in enclosed spaces; and*

*(ii) assessment of the risks of entry into and working in enclosed spaces are made in accordance with regulation 7 (risk assessment) of the 1997 Regulations(c);*

*(b) the master must ensure that the systems of work referred to in sub-paragraph (a)(i) are observed on board the ship;*

*(c) no person may enter or remain in an enclosed space, except in accordance with the systems of work referred to in sub-paragraph (a)(i).*



4.3 The MCA has reviewed the impact assessment, and the Equivalent Annual Net Cost to Business has been raised to slightly higher than before, however is still considered a low-medium impact on industry.

The MCA shall be reviewing the safety training for fishermen, to enhance the training on enclosed space entry. This will be reviewed separately to this consultation and does not form part of the proposed Regulations.

4.4 The MCA will consult with marine surveyors and principal fishing vessel surveyors to ensure that the Marine Guidance Notice (MGN) will cover aspects to help with clearer understanding of the Regulations and in respect of definitions, risk assessment, testing equipment, and how to access further information.

4.5 The MCA is now finalising the Regulations and intend to lay them in early 2022.

4.6 Discussion with industry will take place to determine appropriate general exemptions.

## Section 5: Who Responded

5. The MCA would like to thank the following organisations and individuals for taking the time to comment on this consultation:

5.1

Surveyors (Engineering)	Western Fish Producers Organisation
Marine Accident Investigator & Master Mariner	Nautilus International
AMS Global Ltd	British Tug Owners Association
Seafarer (2 <sup>nd</sup> Engineer)	The UK Chamber of Shipping
Ministry of Defence	Royal National Life-Boat Institute
HCMM	Consultant Surveyor
Aquaship UK Ltd	Marine Accident Investigation Branch
Marine Consultancy and Training Services Provider	Chief Engineer (Retired)
Northern Ireland Fishing Federation	South Devon and Channel Shell-fishermen Ltd
Scottish Fishing Federation	InterManager
Welsh Fishermen's Association	MCA Survey Operations
Northern Fishing Federation Organisation	
Scottish Pelagic Fishermen's Association	
IMarEST & HEIG	

*(List does not reflect the number of responses received)*