



Law Society
of Scotland

Consultation response

Consultation on additional safety measures for bulk carriers 2021

August 2021



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Marine Law Sub-committee welcomes the opportunity to respond to the Maritime and Coastguard Agency's *Consultation on additional safety measures for bulk carriers 2021*¹. We do not seek to respond to the consultation questions but have the following general comments to make.

General comments

Ambulatory reference

We consider that the intended approach to ambulatory reference in the proposed Merchant Shipping (Additional Safety Measures for Bulk Carriers) Regulations 2021 appears to be sensible and we note the potential benefits of using such power. In particular, we support the simplicity and savings, legal certainty and clarity, and reduced burdens on businesses which this approach is likely to deliver.

However, we note that it remains important that there are suitable opportunities for consultation and scrutiny. It will therefore remain crucial for the UK to be part of the consultation and negotiation process in relation to any proposed changes to SOLAS Chapter XII, and other Chapters of SOLAS that are referenced in the Regulations. There may require to be enhanced opportunities for domestic consultation and scrutiny when changes are being considered at IMO level. It is important that relevant stakeholders who will be affected by any changes are consulted. Consultations themselves are often a trigger point for the industry to become aware of planned rule changes. We therefore consider that awareness-raising will be crucial to the success of use of the ambulatory reference provisions. This will help to ensure that industry stakeholders have the ability to influence and scrutinise the provisions, are aware when changes are made, and may guide their conduct based on a clear understanding of the legal framework.

It is not clear from the consultation if it is intended that the Secretary of State will retain the power to make regulations to prevent an unwanted amendment to SOLAS from becoming UK law, recognising that the measures concerned will be international legal obligations with which UK ships are required to comply

¹ <https://www.gov.uk/government/consultations/consultation-on-additional-safety-measures-for-bulk-carriers-2021>

regardless of the amendments not taking effect in UK law. It is important that these obligations are respected and that in the event of divergence, steps are taken to raise awareness of the situation within the sector.

Transitional provisions

We are not in a position to substantively comment on the ease with which these measures will be able to be adopted by the sector, and therefore, to make comment on how realistic it will be for the sector to make the changes within the transitional period provided. Consultation with those in industry will be important in this regard.

We note that paragraph 1(1) in the draft regulations provides for entry into force on the “22nd day after the day on which they are made” which does not provide much time for awareness raising among those that will be affected by the Regulations.

Offences and penalties

We note that the consultation sets out that the general policy approach is to use civil sanctions whenever possible before using criminal offences. We support the rationale for this approach. We consider that it is appropriate to use civil sanctions where possible, including a potential for use of fixed and variable monetary penalties, and/or enforcement undertakings in some cases, rather than relying on prosecutions.

We note that there are no changes to current offences and penalties which are retained under the new regulations, but some new offences are created. By creating offences by means of regulations, there is a restricted opportunity for scrutiny, and we consider that it is therefore important to consider the content of the criminal law and the principles to which such offences should conform. Such offences carry both the risk of conviction and the consequences and implications for those convicted with a criminal record which may affect professional career opportunities as well as scope for foreign travel. We note that it will be important for a strong awareness raising campaign to be undertaken to make those operating in the sector aware of these regulations and in particular, the criminal offences, before these come into force.

For further information, please contact:

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