



Law Society
of Scotland

Consultation response

The Merchant Shipping (Fire Protection) Regulations 2023

September 2022



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Marine Law Sub-committee welcomes the opportunity to respond to the Maritime and Coastguard Agency's consultation on *The merchant shipping (fire protection) regulations 2023*¹. We do not seek to answer the consultation questions but have the following comments to put forward for consideration.

General comments

We consider that the intended approach to ambulatory referencing in the proposed Merchant Shipping (Fire Protection) Regulations 2023 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 Chapter II-2 of the Annex to SOLAS. 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.

We consider that it will be of utmost importance to ensure that ship-owners and other interested or affected parties are aware of these provisions and fully understand their implications. 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.

¹ <https://www.gov.uk/government/consultations/the-merchant-shipping-fire-protection-regulations-2023-public-consultation>

In relation to the application of the Regulations, we consider that the reference at paragraph 2.4 to “passenger ships operating solely in internal waters” is unclear as to its meaning. A reference to ‘internal waters’ is not the common phraseology used if referring to domestic passenger vessels. The term ‘internal waters’ has a specific meaning under UNCLOS and is defined in Article 8 as being “*the waters on the landward side of the baseline of the territorial sea*”. It is unclear if the reference to ‘internal waters’ is intended to have the same meaning as under UNCLOS. Rather, we anticipate that the vessels being referred to are those to which the following regulations apply:

- MS (Passenger Ships on Domestic Voyages) Regs 2000.
- MS (Fire Protection: Small Ships) Regs 1998 (especially those of classes III to VI(A)).
- MSN 1823 Inland Waterways Passenger Ship Code.

We consider that the Regulations should be very clear on this point so as to avoid ambiguity and uncertainty.

For further information, please contact:

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