



Law Society  
of Scotland

# Consultation response

Consultation on the draft merchant shipping (nuclear ships) regulations 2021

October 2021



## Introduction

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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 the draft merchant shipping (nuclear ships) regulations 2021*<sup>1</sup>. We do not seek to respond to the consultation questions but have the following general comments to make.

## General comments

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### Ambulatory reference

We consider that the intended approach to ambulatory reference in the proposed Merchant Shipping (Nuclear Ships) 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 VIII and the Code of Safety for Nuclear Merchant Ships. 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.

We consider it appropriate that the Secretary of State will retain the power to make regulations to prevent an unwanted amendment to SOLAS or the Code of Safety for Nuclear Merchant Ships from becoming UK law, recognising, however, that the measures concerned will be international legal obligations with which UK ships are required to comply regardless of the amendments not taking effect in UK law. It is important that these

<sup>1</sup> <https://www.gov.uk/government/consultations/consultation-on-the-draft-merchant-shipping-nuclear-ships-regulations-2021>

obligations are respected and that in the event of divergence, steps are taken to raise awareness of the situation within the sector.

### **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<sup>2</sup>. 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. In relation to civil penalties, we note the desirability of adopting (either directly or through parallel provisions) a set of procedural rules which mirror those within existing similar penalty regimes, rather than introducing a different set of provisions and thus, exacerbating fragmentation of the law.

We note that the proposed regulations create a number of offences and penalties. 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. While the UK does not currently have any nuclear ships on its flag, it will be important to raise awareness of these regulations and in particular, the criminal offences, within the sector so that operators are aware of the requirements should they be considering the use of nuclear ships.

**For further information, please contact:**

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<sup>2</sup> Paragraph 2.17