



Law Society
of Scotland

Consultation response

Implementation of the international code for ships
operating in polar waters (Polar Code)

May 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 *Implementation of the international code for ships operating in polar waters (Polar Code)*¹. We do not seek to respond to the consultation questions but have some general comments to make.

General remarks

Polar exploration

We note that the consultation appears to focus on vessels specifically undertaking polar exploration. However, there may be a significant increase in vessels transiting the polar Arctic trade routing through the Northern Arctic routes in years to come as a result of the decline in polar ice². This may allow vessels to pass safely along these routes without special consideration for navigation in ice.

Ambulatory reference

We consider that the proposed approach to ambulatory reference in relation to Chapter XIV of SOLAS and the Polar Code 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 XIV of SOLAS and the Polar Code. 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

¹ <https://www.gov.uk/government/consultations/implementation-of-the-international-code-for-ships-operating-in-polar-waters-polar-code>

² For example, see https://www.nature.com/articles/s41558-020-0865-2.epdf?sharing_token=1EFmnL48E67cx2l_RVvri9RqN0jAjWEl9jnR3ZoTv0NFGJ9CSog2WeErJ2obXR5TFnF426caTUTZmpigDU28DzdG5urNCZ0IBTI8lHZt7f-YPBPBj1ETEUCU0n8LluZDD0ALxKe-m1fgCqULT0jBKshfHrw3E251p10g3taJE-Nwsm8cMhKFamwcp0ISX5nhr63dTat_wTf0CgDVL-LRJ40BB3LyYWhTOTdTsMCdJgM%3D&tracking and

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/634437/Future_of_the_sea_-_implications_from_opening_arctic_sea_routes_final.pdf

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

Application

We note that Regulation 3(3) provides that the Regulations do not apply to certain non-United Kingdom ships if those ships “*would not have been in a United Kingdom port but for stress of weather or any other circumstances which neither the master nor the owner or the charterer could have prevented*”. We suggest that there might be merit in aligning this wording with the more generally used Port State Control language around vessels being in a UK port, or at an anchorage within the jurisdiction of a UK port, and engaging in “ship/port interface” (regulation 3 of the Merchant Shipping (Port State Control) Regulations 2011 and the definitions in Article 2 of Directive 2009/16/EC).

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