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## **GUIDANCE ON DRAFTING OF AMENDMENTS TO THE 1974 SOLAS CONVENTION AND RELATED MANDATORY INSTRUMENTS**

1 The Maritime Safety Committee (the Committee), at its ninety-fourth session (17 to 21 November 2014), having considered a number of issues related to the drafting of amendments to the International Convention for the Safety of Life at Sea, 1974, as amended (the Convention) and related mandatory instruments, from the initial proposal and preparation process to the approval and adoption stages and entry into force of amendments, approved the *Guidance on drafting of amendments to the 1974 SOLAS Convention and related mandatory instruments* (MSC.1/Circ.1500) (hereinafter referred to as the Guidance).

2 The Committee, at its ninety-ninth session (16 to 25 May 2018), having considered the amendments proposed by the Secretariat to address the Committee's decisions taken after the approval of the Guidance, regarding its application to the 2011 ESP, IBC, IGC, IMDG and IMSBC Codes, amendments considered and finalized by sub-committees in plenary within one session, minor corrections and procedure for the production of certified true copies, approved the revised Guidance, as set out in the annex.

3 Without prejudicing the amendments procedure specified in article VIII of the Convention and the provisions set out in the *Organization and method of work of the Maritime Safety Committee and the Marine Environment Protection Committee and their subsidiary bodies* (MSC-MEPC.1/Circ.5/Rev.1), the information contained in the annex provides relevant guidance for the drafting of amendments to the Convention and related mandatory instruments, including procedural aspects related to the approval and adoption of amendments.

4 Contracting Governments to the Convention are invited to take into account the provisions of the present Guidance when submitting proposals for amendments in accordance with article VIII(b)(i) of the Convention and/or proposals for new outputs in accordance with section 4 of the *Organization and method of work of the Maritime Safety Committee and the Marine Environment Protection Committee and their subsidiary bodies* (MSC-MEPC.1/Circ.5/Rev.1).

5 The Committee and its subsidiary bodies, including working, drafting and intersessional groups, should apply the present Guidance during the preparation of draft amendments to the Convention and related mandatory instruments, as well as during the approval and adoption stages.

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## ANNEX

### GUIDANCE ON DRAFTING OF AMENDMENTS TO THE 1974 SOLAS CONVENTION AND RELATED MANDATORY INSTRUMENTS

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## 1 INTRODUCTION

1.1 This note provides guidance for the drafting of amendments to the International Convention for the Safety of Life at Sea, 1974 (the Convention), and related mandatory instruments (hereinafter referred to as the Guidance). It also contains procedural aspects related to the approval and adoption of related amendments.

1.2 This Guidance does not fully apply to amendments to an article of the Convention or to chapter I of the annex to the Convention, where an explicit amendment procedure is required.

1.3 This Guidance should always be read with reference to the provisions of article VIII for amending the Convention and in conjunction with the *Organization and method of work of the Maritime Safety Committee and the Marine Environment Protection Committee and their subsidiary bodies* (MSC-MEPC.1/Circ.5/Rev.1) and the *Guidance on entry into force of amendments to the 1974 SOLAS Convention and related mandatory instruments* (MSC.1/Circ.1481).

1.4 The process described in this Guidance summarizes the most common actions for the consideration and development of amendments to the Convention and related mandatory instruments. Although the approval of draft amendments is not a mandatory requirement under the amendments procedure specified in article VIII of the Convention, it has become the practice of the Committee to submit draft amendments for approval prior to their adoption.

## 2 GOALS

2.1 The Guidance is meant to ensure that submission and development of new or amended regulations are carried out in an appropriately comprehensive and detailed manner and, in particular, that:

- .1 the application of regulations is sufficiently clear and without the need for additional interpretation;
- .2 the nomenclature related to the application and the structure of chapters are harmonized through the entire Convention;
- .3 the implementation of either amendments or new provisions is improved and facilitated through a specified interval between entry into force of successive sets of amendments; and
- .4 Contracting Governments to the Convention, the Maritime Safety Committee (the Committee) and its subsidiary bodies, including working and drafting groups, as well as other interested parties, are provided with appropriate guidance on drafting of amendments to the Convention and its related mandatory instruments.

2.2 In order to achieve the above goals, the Guidance is based on the following two main principles:

- .1 a systematic control process throughout the different stages of the amendments' development; and
- .2 relevant guidance for drafting amendments.

### **3 PROCEDURAL ASPECTS RELATED TO THE DRAFTING OF AMENDMENTS**

#### **3.1 Timing of entry into force of amendments**

3.1.1 The Committee, at its ninety-third session, approved the *Guidance on entry into force of amendments to the 1974 SOLAS Convention and related mandatory instruments* (MSC.1/Circ.1481), which reinstated the four-year cycle of entry into force of amendments to the Convention and related mandatory instruments. In this respect, due attention should be paid to the timeline agreed for the entry into force of amendments when developing amendments to the Convention and related mandatory instruments.

3.1.2 Notwithstanding paragraph 3.1.1 above, the Guidance should not apply, in its entirety, to the 2011 ESP, IMDG and IMSBC Codes which are updated continuously (i.e. annually and biennially), and chapter 17 of the IBC Code and chapter 19 of the IGC Code should not be subject to the Guidance.

#### **3.2 Amendment control process**

##### **3.2.1 Process for amending the Convention and related mandatory instruments (from proposal to adoption)**

3.2.1.1 At a proposal stage and in addition to the information to be provided in proposals for new outputs (see annex 1 to the *Organization and method of work of the Maritime Safety Committee and the Marine Environment Protection Committee and their subsidiary bodies* (MSC-MEPC.1/Circ.5/Rev.1)), where possible, the following elements should be addressed when considering proposals for a new output that may require the preparation of amendments to the Convention and/or related mandatory instruments:

- .1 ship type(s) to which the proposed amendment(s) is/are expected to apply (e.g. scope, size, type, tonnage/length restriction; service areas (international/non-international); activities (e.g. supporting diving activities));
- .2 the extent of application to existing ships,<sup>1</sup> along with any relevant safety measures that may be applied to existing ships;
- .3 the intended instrument(s) that should be amended (i.e. the Convention and associated mandatory instruments); and
- .4 the use of the check/monitoring sheet (refer to paragraph 3.2.1.3.16 below).

3.2.1.2 During the consideration of new outputs, and in addition to the actions to be taken based on MSC-MEPC.1/Circ.5/Rev.1, the Committee should consider the elements listed below and, in this respect, should give clear instructions to the relevant technical subsidiary body/bodies (i.e. sub-committees, including their working/drafting/intersessional groups, as well as those reporting directly to the Committee), as may be applicable:

- .1 target completion date at the sub-committee level;
- .2 expected date(s) of entry-into-force and implementation/application date(s) (e.g. possible phase-in arrangement for existing ships) of the amendment(s) or of the new requirement(s) to be developed;

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<sup>1</sup> Refer to the *Interim guidelines for the systematic application of the grandfather clauses* (MSC/Circ.765-MEPC/Circ.315).

- .3 whether the proposal should be considered an exceptional circumstance, as specified in MSC.1/Circ.1481; and
- .4 scope of application of the proposed amendment(s) or new requirement(s), along with the instrument(s) which would be required to be amended/developed. In this regard, the following should be taken into consideration:
  - .1 if a comprehensive revision to an instrument is required, a decision should be taken whether to revise the existing instrument or create a new version, which may co-exist with the existing instrument (e.g. 1994 and 2000 HSC Codes); and
  - .2 if the instrument to be amended has different versions, a decision should be made whether older versions of the instrument should also be revised, especially when considering amendments to operational requirements which are likely to result in the revision to all versions of the instrument.

3.2.1.3 At a subsequent processing stage, but before the conclusion of the approval for adoption, each allocated sub-committee should ensure that:

- .1 at an initial engagement, sufficient time is allocated for technical research and discussion before the target completion date, especially when the issue is needed to be addressed by more than one sub-committee where timing of meetings of relevant sub-committees and exchanges of the result of considerations need to be carefully examined;
- .2 the intended scope of application agreed by the Committee (refer to paragraph 3.2.1.2 above) is not changed without approval of the Committee, providing clear justification for such change (e.g. in case of unintended omissions);
- .3 the technical base document or draft amendment addresses the proposal's issue(s) through the suggested instrument(s) and, if not, an alternative method is offered to the Committee for addressing the problem raised by the proposal;
- .4 if application to existing ships is agreed by the Committee under paragraph 3.2.1.1.2 above, due attention is paid to the *Interim guidelines for the systematic application of the grandfather clauses* (MSC/Circ.765-MEPC/Circ.315);
- .5 all references have been examined against the text that would be valid if the proposed amendment enters into force (refer to section 4.2.4 below);
- .6 the location of the inserted or modified text is correct with regard to the text that would be valid when the proposed amendment enters into force on a four-year cycle entry-into-force date, as there may be other relevant amendments adopted that might enter into force on the same date;
- .7 there are no inconsistencies between the scope of application of a particular technical regulation and the application statement of the relevant chapter that may be given in regulations 1 or 2, and application is specifically addressed for existing and/or new ships, as necessary;

- .8 if a new term is introduced in a regulation and a clear definition is necessary, the definition is given in the relevant article of the Convention or at the beginning of the chapter, as appropriate;
- .9 when terms such as "fitted", "provided", "installed" or "installation" are used, a clear understanding of the intended meaning of the term is provided;
- .10 all necessary related and consequential amendments to other existing instruments, including non-mandatory instruments, in particular the forms of certificates and records of equipment required in the instrument being amended, have been examined and included as a part of the amendment(s);
- .11 the forms of certificates and records of equipment are harmonized, where appropriate, between the Convention and its Protocols;<sup>2</sup>
- .12 attention is paid with regard to the possible application's criteria using building contract date, keel laying date or delivery date, as and where appropriate, and to the possible impact of that decision (refer to section 4.2.1). In making such a decision, the following should be taken into consideration:
- .1 in principle, the three-date system can be used for a chapter or regulation/paragraph governing design/construction of a ship, while the keel laying date can be used for a chapter or regulation/paragraph governing ship's equipment;
- .2 the period to be established between events in the three-date system versus the actual timing needed in the shipbuilding process;
- .3 the period needed between adoption and entry into force versus the time for design, manufacture and approval of new equipment;
- .4 that a single keel laying date implementation criteria could require a series of ships under the same building contract to apply different requirements (pre- and post-entry into force) which may cause significant changes to the design;
- .5 with respect to application to existing ships, the need to carefully word the three-date criteria implementation scheme (e.g. application of certain "measures" of the Noise Code) versus the more straightforward application of a single keel laying criteria; and
- .6 where a phase-in arrangement for existing ships is deemed appropriate and that arrangement is based on the first survey or dry-docking after a specified date, the date of completion of the first scheduled survey or the date of completion of the first scheduled dry-docking should be used;<sup>3</sup>
- .13 draft amendments are presented for consideration, as far as practically possible, as tracked changes within the context of the relevant provisions to be amended (refer to section 3.2.3 below);

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<sup>2</sup> Refer to the Committee's decision, as reported in document MSC 72/23, paragraph 3.10.

<sup>3</sup> Refer to the *Unified interpretation of the date of completion of the survey and verification on which the certificates are based* (MSC-MEPC.5/Circ.3).

- .14 due attention is paid to the "application" and "definition" regulations/ paragraphs of the chapter where these are likely to affect or be affected by the proposed amendments;
- .15 when preparing amendments to mandatory instruments, the relationship between the Convention and the instrument is observed (refer to section 4.1.5);
- .16 the check/monitoring sheet given in annex 2 is observed and completed throughout the progress at each one of the above stages. In this respect, it is intended that:
  - .1 parts I and II should be completed by the submitter of a proposal for a new output, as far as possible, as an annex to the submission document (refer to paragraph 3.2.1.1.4 above); and
  - .2 part III should be completed by the drafting or working group that prepares the draft amendment(s);<sup>4</sup>
- .17 the final draft text of proposed amendments to the Convention or any related mandatory instrument is reviewed by either a drafting group or by a working group<sup>4</sup> to properly address the issues listed in part III of the check/monitoring sheet, as given in paragraph 3.2.2.2 below;
- .18 the check/monitoring sheet is presented along with the draft amendments submitted for approval; and
- .19 the record format given in annex 3 is completed in the module "Development of amendments to the 1974 SOLAS Convention and related mandatory instruments" of GISIS by the drafting or working group that prepares the draft amendment(s).<sup>4</sup>

#### 3.2.1.4 At the approval and adoption stages:

- .1 the Committee should:
  - .1 carefully review the draft amendments submitted for approval, using the associated check/monitoring sheet prepared by the subsidiary body. In doing so, issues requiring further drafting consideration may be identified. Under those circumstances, the Committee may consider instructing the drafting group on amendments to review the draft amendments and the associated check/monitoring sheet before approval of the related amendments, taking into account the information contained in the related record format; and
  - .2 agree on which session of the Committee the amendments should be adopted as well as the dates on which the amendments would be accepted and would enter into force, taking into account the four-year cycle or the exceptional circumstance as per MSC.1/Circ.1481, as may be the case; and

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<sup>4</sup> For the draft amendments to be considered and finalized by sub-committees in plenary within one session, the Secretariat may be requested, when necessary, to complete part III of the check/monitoring sheet and the records for regulatory development after the session, instead of establishing a specific working/drafting group. "Minor corrections" (C/ES.27/D, paragraph 3.2(vi)) may be excluded from application of the provisions for completion of the check/monitoring sheet and the records for regulatory development.

- .2 the Secretariat should:
  - .1 ensure that the draft amendments submitted for approval, as well as those contained in the annexes of the Committee's report after approval, are presented in tracked changes, as appropriate (refer to section 3.2.3 below);
  - .2 prepare the appropriate text of draft amendments without tracked changes for circulation to all Members of the Organization and all SOLAS Contracting Governments after approval, in accordance with the provisions of article VIII of the Convention;
  - .3 prepare documents containing the text of the approved draft amendments without tracked changes, together with the draft resolution(s), for submission to the session of the Committee that will consider the amendments for adoption;
  - .4 prepare a working paper consolidating all draft amendments submitted for adoption with tracked changes, including proposals for modifications or editorial improvements, if any, as well as notes and comments, as appropriate (refer to section 3.2.3 below). This document should be made available in IMODOCS as soon as possible after the deadline for commenting documents and should be used as the base document for the preliminary consideration by the expanded Committee and final revision by the drafting group on amendments;
  - .5 ensure that, after adoption, the final text of the amendments which are contained in the annexes of the Committee's report (i.e. the MSC resolutions) is presented without tracked changes;
  - .6 prepare the authentic text of the adopted amendments after adoption, when requested, and make it available on IMODOCS;<sup>5</sup> and
  - .7 keep the related record format updated in respect to relevant decisions taken at the sub-committee or committee level.

### **3.2.2 Drafting group arrangements**

3.2.2.1 Drafting groups have a relevant role in the amendment control process. Although drafting groups cannot change the essence of the amendments, they should ensure that the drafting of amendments is carried out in accordance with the present Guidance. Therefore, this Guidance should be included as a standing reference in the terms of reference of these groups, along with references for completion of the check/monitoring sheet and record format, set out in annexes 2 and 3, respectively.

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<sup>5</sup> The whole process of the production of certified true copies, in all cases, should not take longer than 100 days for non-bulky documents (those containing six pages or fewer) and 160 days for bulky documents (those containing more than six pages) after the date of adoption of the amendment.

3.2.2.2 The first stage of the engagement in the control process of drafting works should be undertaken by a drafting group or by a working group of the subsidiary body or by those reporting directly to the Committee.<sup>6</sup> In doing so, the check/monitoring sheet set out in annex 2 should be observed and completed before submitting the draft amendments for approval.

3.2.2.3 At the approval stage of amendments, the Committee should carefully review the draft amendments submitted for approval, along with the related check/monitoring sheet (refer to paragraph 3.2.1.4.1.1).

3.2.2.4 Depending upon the findings in the check/monitoring sheet, the Committee may consider tasking the drafting group established for reviewing the amendments submitted for adoption (refer to paragraph 3.2.2.6 below) to review the draft amendments submitted for approval and the related check/monitoring sheet, including the information contained in the related record format.

3.2.2.5 After the approval of draft amendments by the Committee, the Secretariat should review the approved draft amendments from the drafting and editorial point of view. Any findings by the Secretariat should be submitted to the session of the Committee that would adopt the amendments as part of the working paper consolidating the amendments, comments and proposals for modifications, which would be prepared in advance by the Secretariat (see paragraph 3.2.1.4.2.4).

3.2.2.6 At the adoption stage, the above-mentioned working paper should be used as the basis document for consideration of the draft amendments by the expanded Committee and by the drafting group that would conduct the final review of the draft amendments, along with any comments provided in any of the documents submitted to that session for consideration.

### **3.2.3 Use of tracked changes**

3.2.3.1 The use of tracked changes during the preparation, approval and adoption of draft amendments may facilitate the consideration of proposed amendments. It may also assist the work of translators and reduce the number of misinterpretations.

3.2.3.2 Tracked changes should mainly be used, as far as practically possible, for draft amendments to the text of existing regulations, paragraphs or tables, in order to easily identify the changes proposed with respect to the original text. In this respect, only the relevant part(s) of the original text should be reproduced.

3.2.3.3 For insertions of new regulations, paragraphs or tables, or deletion of existing ones, the use of tracked changes may not be practical.

3.2.3.4 Tracked changes should be created using "strikeout" for deleted text and "grey shading" to highlight all modifications and new insertions, including deleted text (i.e. not using the track changes function of Microsoft Word), in order to ensure that such changes are not lost during further editorial work (e.g. cut and paste).

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<sup>6</sup> For the draft amendments to be considered and finalized by sub-committees in plenary within one session, the Secretariat may be requested, when necessary, to complete part III of the check/monitoring sheet and the records for regulatory development after the session, instead of establishing a specific working/drafting group. "Minor corrections" (C/ES.27/D, paragraph 3.2(vi)) may be excluded from application of the provisions for completion of the check/monitoring sheet and the records for regulatory development.

3.2.3.5 Tracked changes should be made against the text that has already entered into force. However, subject to section 3.3.1 below, if the draft amendments under development are expected to be adopted after the entry-into-force date of other related amendments, then the adopted amendments should be included using a different colour and including a note indicating the number of the resolution by which the amendments were adopted. The note should be used as a drafting tool only and should not be considered as part of the related draft amendments.

### **3.3 Points for attention in preparing an amendment**

#### **3.3.1 *An amendment to a pending amendment***

3.3.1.1 A further amendment to an already adopted amendment which is still pending entry into force may be approved by the Committee but should not be adopted until the previous adopted amendment enters into force.

3.3.1.2 Other elements of the same regulation which are not related to a previous adopted amendment which is still pending entry into force may be amended accordingly, in accordance with the procedures for amending the Convention.

#### **3.3.2 *Work of other bodies of the Organization***

3.3.2.1 In drafting an amendment, due attention should be paid to any possible related amendments being prepared by other bodies of the Organization based upon the information provided by the Secretariat or as may be advised.

## **4 GUIDANCE FOR DRAFTING AMENDMENTS**

### **4.1 Principles**

#### **4.1.1 *A comprehensive revision of a chapter***

4.1.1.1 A comprehensive revision is a revision of a chapter which fundamentally alters the structure of the chapter and resets its application date.

4.1.1.2 A comprehensive revision should take place only if the entire philosophy or basis of the chapter is restructured (e.g. from ship's type-based requirements to functional based requirements, or based on a new concept).

4.1.1.3 As far as possible, comprehensive revisions should be avoided since they can make historical tracking of regulations difficult.

4.1.1.4 When a chapter of the Convention is comprehensively revised, the following principles should be followed:

- .1 application date of the chapter: The application date of the chapter should be reset. The application date (e.g. DDMMYYYY in annex 1) in the statement of regulation 1.1.1 "Unless expressly provided otherwise, this chapter shall apply to ships constructed on or after DDMMYYYY" should be kept until the next comprehensive revision of the chapter. This date should be aligned with one of the four-year cycle dates;

- .2 list of resolutions: A list of resolutions that apply to ships constructed prior to the comprehensive revision (e.g. regulation 1.2 in annex 1) should be included in the text of the chapter; and
- .3 additional requirements contained in the chapter that apply to ships constructed before the application date of the chapter: When a comprehensive revision is carried out, some of the requirements applicable to ships constructed on or after the application date of the chapter may also be applicable to ships constructed before that date. These regulations should be recorded in the list of regulations applicable to existing ships (see regulation 1.4 in annex 1).

#### **4.1.2 Amendments adopted between comprehensive revisions**

4.1.2.1 For amendments adopted between comprehensive revisions, the following principles should be observed:

- .1 the application date of a new amendment should be clearly stated under each specific new or amended regulation/paragraph, in the format given in section 4.2.1 below;
- .2 if an amendment revises a regulation/paragraph, or part of a regulation/paragraph, the original part of the regulation/paragraph which would continue being applicable to ships constructed on or after the original application date of the revised regulation/paragraph should be retained with a clear statement of its application dates (i.e. from and to);
- .3 regardless of the dates included in the amended regulation(s)/paragraph(s), the chapter's application should include a list of amended regulations/paragraphs that contain provisions that apply to ships constructed on or after the general application date of the chapter (e.g. regulation 1.3 in annex 1); and
- .4 if the new or amended regulation/paragraph is also applicable to ships constructed before the general application date of the chapter, then that regulation/paragraph should also be added to the list referred to in paragraph 4.1.1.4.3 (e.g. regulation 1.4 in annex 1).

#### **4.1.3 Amendments adopted at subsequent comprehensive revision**

4.1.3.1 In the event of a second or a subsequent comprehensive revision to a chapter, the following principles should also be observed:

- .1 the application date of the chapter given in paragraph 4.1.1.4.1 above should be reset;
- .2 the list of resolutions referred to in paragraph 4.1.1.4.2 should be updated by adding any further resolutions relevant to the chapter adopted after the previous comprehensive revision; and
- .3 application dates introduced in the regulations/paragraphs that entered into force between the comprehensive revisions should be removed, and the list indicated in paragraph 4.1.2.1.3 should also be reset. Moreover, the list indicated in paragraph 4.1.1.4.3 should be reset and completed with requirements contained in the revised chapter that apply to ships constructed before the subsequent revision date, if any.

#### **4.1.4 Referencing other instruments**

4.1.4.1 When referencing other mandatory/non-mandatory instruments in a mandatory instrument, the *Guidelines on methods for making reference to IMO and other instruments in IMO conventions and other mandatory instruments*, as set out in the annex to resolution A.911(22) on *Uniform wording for referencing IMO documents*, should be applied.

4.1.4.2 The above Guidelines provide standard text for references for inclusion in new IMO conventions and other mandatory instruments relating to maritime safety and pollution prevention and in future amendments to existing conventions and other instruments, in order to ensure that, where reference is made to IMO conventions and other instruments, a uniform wording is used. This is to indicate clearly the legal status of the instrument in question after the IMO body concerned has decided on the status. Therefore, references to standards which are intended to be mandatory should not be included as a footnote. They should instead be included explicitly in the text of relevant regulations/paragraphs or amendments.

#### **4.1.5 Relationships between the Convention and related mandatory instruments**

##### *General principles*

4.1.5.1 The relationship between the Convention and a mandatory instrument should be clearly identified in both the Convention and the mandatory instrument.

4.1.5.2 Instruments are made mandatory through reference in the text of the SOLAS regulations. Thus, the application of the mandatory instrument cannot exceed the relevant SOLAS regulation.

4.1.5.3 In drafting new instruments or amendments, care should be taken to ensure consistency between the Convention and the related mandatory instrument.

4.1.5.4 If a decision is taken to develop a new version of an instrument with co-existing sets of requirements (refer to paragraph 3.2.1.2.4), applicability should be clearly defined within the Convention, especially regarding the scope and dates of application/ implementation.

4.1.5.5 If different parts of an instrument have different characteristics, mandatory and recommendatory, the different relationships to the Convention should be indicated in the Convention.

##### *Instruments providing an alternative or additional set of requirements to the Convention for particular ship types or providing supplementary requirements for specific circumstances*

4.1.5.6 For instruments providing an alternative set of requirements to the Convention for particular ship types, such as the IGC, IBC and the 1994 and 2000 HSC Codes, or providing supplementary requirements for specific circumstances, the following should be taken into consideration:

- .1 the scope of application should be detailed in the instrument using the principles laid down in sections 4.1.1 to 4.1.3 and 4.2.1, accordingly; and
- .2 the relationship between the Convention and the instrument should be clearly identified in the applicable chapter of the Convention, in the definition of the instrument concerned and in any specific regulation addressing the application of the instrument.

### *Instruments governing operational and survey/audit elements*

4.1.5.7 With regard to instruments governing operational and survey/audit elements, such as the 2011 ESP, ISM or RO Codes, a clear definition of the instrument and its status, whether mandatory or recommendatory, as well as the scope of application, should be provided in the Convention. Any subsequent amendment to the instrument is understood to have the same application as the original, unless otherwise specified. Nevertheless, attention should be paid to:

- .1 whether either the instrument or the Convention should further clarify ship types that are subject to the proposed requirements; and
- .2 application statements that may be indicated in the resolution adopting the amendments to clarify application criteria, for example, the first survey/audit after the given date or actual date of the activity.

### *Other instruments*

4.1.5.8 In instruments other than those specified in paragraphs 4.1.5.6 and 4.1.5.7, the application principle should be clearly stated at the beginning of the instrument. In these cases, attention should be paid to:

- .1 whether to set up a principle for application criteria of any amendment, not specifically indicating the application date of each amendment (e.g. the FSS Code, section 1.1.2) or;
- .2 if not, whether the application provision of the amendment should be clearly stated and/or a chronological record of the amendments be maintained for each section; and
- .3 where specific equipment is identified as necessary, the carriage of such equipment can only be required by inclusion in the Convention.

## **4.1.6 Relaxation/dispensation**

4.1.6.1 General relaxation/dispensation clauses should be given at the beginning of the chapter.

4.1.6.2 Specific relaxation/dispensation clauses applicable to specific requirements should be given under the technical regulations.

## **4.2 Specific details**

### **4.2.1 Format of application dates**

4.2.1.1 Format of application dates should be defined, as applicable, using the criteria based on "three dates"<sup>7</sup> or the "keel laying date based on a single date".

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<sup>7</sup> Refer to MSC-MEPC.5/Circ.8 on *Unified interpretation of the application of regulations governed by the building contract date, the keel laying date and the delivery date for the requirements of the SOLAS and MARPOL Conventions.*

4.2.1.2 At a comprehensive revision, a decision should be made as to whether to use the criteria based on three dates or the keel laying date based on a single date. Depending on that decision, one of the following definitions of the chapter's application for "ship constructed" should be inserted in the regulation corresponding to the "application" or "definition" part of the chapter:

- .1 In case the three dates criteria is used, the following should be the definition inserted:

"The expression *ship constructed on or after DDMMYYYY* means:

- .1 for which the building contract is placed on or after (date 1); or
- .2 in the absence of a building contract, the keel of which is laid or which is at a similar stage of construction on or after (date 2); or
- .3 the delivery of which is on or after (date 3)".

Note: As guidance, date 1 is DDMMYYYY, date 2 is 6 months after date 1, and date 3 is 48 months after date 1.

- .2 In case the single ship's construction/keel laying date criteria is used, the following should be the definition inserted:

"The expression *ship constructed on or after DDMMYYYY* means:

- .1 the keel of which is laid or which is at a similar stage of construction on or after DDMMYYYY;
- .2 *Similar stage of construction* means the stage at which:
- .1 construction identifiable with a specific ship begins; and
- .2 assembly of that ship has commenced comprising at least 50 tonnes or 1% of the estimated mass of all structural material, whichever is less."

4.2.1.3 Subsequent amendments between comprehensive revisions should also address the options given in paragraph 4.2.1.2 above.

#### **4.2.2 All ships**

4.2.2.1 When used, a clear definition of the term "all ships" for the purpose of the chapter should be given in the "application" or "definition" part of the chapter.

#### **4.2.3 Conversion**

4.2.3.1 A clear definition of "conversion" and "alteration or modification of major character" for the purpose of application provisions of the chapter or a specific regulation should be given.

#### **4.2.4 Consequential amendments to the Convention and/or other instruments**

4.2.4.1 An amendment to the Convention occasionally introduces a change to the regulation number or paragraph number. As far as possible, this practice should be avoided because the number might be referred to in the Convention itself or in other instruments. MSC 71, when discussing the situation regarding cross-reference of regulations in and between IMO instruments, agreed to (MSC 71/23, paragraph 16.10):

- .1 request the sub-committees, in the course of preparation of amendments to IMO instruments, to also check the references in the provisions of the instruments concerned which may not be within their purview; and
- .2 invite Member Governments to inform the Secretariat, at an early stage, of any modifications to cross-references they would identify when introducing new amendments in their legislation, in order that necessary rectification could be made by the Secretariat.

#### **4.2.5 Other best practices for the drafting of amendments**

4.2.5.1 In addition to principles specified in section 4.1, the following best practices should be taken into account during the preparation and drafting of amendments to the Convention:

- .1 General format of regulations:
  - .1 titles of regulations: for consistency, all regulations should have a title;
  - .2 subtitles within regulations should be numbered accordingly; and
  - .3 numbering of paragraphs and tables within a regulation: unless the regulation contains only one paragraph or table, all paragraphs and tables should be numbered accordingly within the regulation. For tables, the format "x.y" should be used, where "x" represents the number of the regulation and "y" is a correlative number within the regulation.
- .2 New regulations: Whenever possible, new regulations should be inserted at the end of the corresponding chapter. However, due to the nature of the regulation and/or the structure of the chapter, new regulations may be inserted sometimes between existing regulations. In these cases and in order to avoid renumbering existing regulations, the new regulation should be inserted using an existing regulation number by adding "-1" after the number. For further insertions, correlative numbers should be used.
- .3 Deletion of regulations: To avoid renumbering existing regulations, the number of deleted regulations should be kept. A footnote could be added indicating that the regulation was intentionally deleted and left blank.
- .4 Amending or replacing existing regulations, paragraphs or tables: Given the diversity of situations that could be presented under the current structure of the Convention, special attention should be paid to the definition of the scope of application of new amendments, as appropriate. Under these circumstances, the scope of application of new amendments should be specified as follows:
  - .1 within the amended text of the existing regulation; or

- .2 using a dedicated separate paragraph within the same regulation; or
- .3 adding a note within parentheses under the title of the regulation.

When modifying or replacing contents of existing tables, a note under the table or a dedicated separate paragraph should be used to clarify the application of existing requirements, as appropriate.

Duplication of regulations, paragraphs or tables should be avoided as much as possible.

#### **4.2.6 Format of application date to be used in mandatory instruments**

4.2.6.1 In instruments providing an alternative set of requirements to the Convention for particular ship types or providing supplementary requirements for specific circumstances (refer to paragraph 4.1.5.6), the format of application date should follow section 4.2.1.

4.2.6.2 In instruments governing operational and survey/audit elements (refer to paragraph 4.1.5.7):

- .1 where a single date of application is used and not changed, it is not necessary to track the amendments; or
- .2 where a single date of application is not used or a previous date of application is changed, then the format described in section 4.2.1 should be used.

4.2.6.3 In other mandatory instruments (refer to paragraph 4.1.5.8), the following format of application dates may be used:

- .1 when the installation date is used:

"Unless expressly provided otherwise, this instrument is applicable to installations (equipment, appliances, fittings, etc.) installed on board ships on or after DDMMYYYY.

The expression *installations (the type of installations should be clearly specified here) installed on board ships on or after DDMMYYYY* means:

- (a) for ships the keel of which is laid or which is at a similar stage of construction on or after DDMMYYYY, all installations of the specified type on board those ships; or
- (b) for ships other than those specified in (a), all installations of the specified type, having a contractual delivery date to the ship on or after (DDMMYYYY + x) or, in the absence of a contractual delivery date to the ship, actually delivered to the ship on or after (DDMMYYYY + y)."

Notes:

- .1 if an amendment is not applicable to all ships, then the general application provisions of the instrument or its particular chapter should be taken into account; and

.2 "x" and "y" are time frames to be decided based on consideration of the specified type of installations to be installed;

.2 otherwise, the format given in section 4.2.1 should be used.

#### **4.3 Example of regulation 1**

An example of regulation 1 is given in annex 1.

### **5 OTHERS – REMINDER OF THE BASIC ARCHITECTURE OF THE CONVENTION**

#### **5.1 Application provisions**

5.1.1 Application provisions in the Convention are given in three layers:

.1 article II (Application): article II of the Convention states that:

"The present Convention shall apply to ships entitled to fly the flag of States the Governments of which are Contracting Governments."

.2 chapter I, regulation 1 (Application): regulation I/1 of the Convention states that:

"(a) Unless expressly provided otherwise, the present regulations apply only to ships engaged on international voyages.

(b) The classes of ships to which each chapter applies are more precisely defined, and the extent of the application is shown, in each chapter."

.3 Each chapter: each chapter, in regulations 1 or 2, provides application of that chapter.

.4 Each regulation: each regulation may provide further specific application details of the requirement.

#### **5.2 Application to new/existing ships**

5.2.1 In drafting a regulatory text, there should be a clear understanding of the nature of modifications to the technical regulations and of the scope of application of newly introduced or additional technical measures, e.g. whether they should be applied to "new ships", or "existing ships" (i.e. ships which are not new ships), or both; as well as the time frame for the amendments introducing the technical measures to come into force. It is essential to have proper understanding of the following:

.1 article VIII (Amendments):

"(e) Unless expressly provided otherwise, any amendment to the present Convention made under this article, which relates to the structure of a ship, shall apply only to ships the keels of which are laid or which are at a similar stage of construction, on or after the date on which the amendment enters into force."; and

- .2 *Organization and method of work of the Maritime Safety Committee and the Marine Environment Protection Committee and their subsidiary bodies (MSC-MEPC.1/Circ.5/Rev.1):*

In paragraph 4.26, some guidance on the application to new/existing ships is provided.

### **5.3 Ship type**

5.3.1 For ship types, it is noted that, unless expressly provided otherwise, regulation I/2 applies. If a regulation/paragraph applies to a particular ship type, this should be clearly stated in the regulation/paragraph. If a ship type, other than that stated in regulation I/2, or as may be specified in the chapter under amendment, is introduced, then a corresponding definition for that ship type should be specified within that chapter.

### **5.4 Status of footnotes**

5.4.1 The *Guidelines on methods for making reference to IMO and other instruments in IMO conventions and other mandatory instruments*, adopted by resolution A.911(22), reflect that standards and specifications referred to in footnotes, as well as guidelines and recommendations, should not appear in the authentic text of mandatory instruments but may be included in sales publications and updated by the Secretariat as necessary when a new edition of the relevant publication is prepared.

5.4.2 For future amendments to the Convention or related mandatory instruments, text intended to be a mandatory part of the instrument should not be included in a footnote.

### **5.5 Human element**

5.5.1 Reference is made to paragraph 4.27 of the *Organization and method of work of the Maritime Safety Committee and the Marine Environment Protection Committee and their subsidiary bodies (MSC-MEPC.1/Circ.5/Rev.1)*, which states that, recognizing the human factor as an integral part of any effort to enhance maritime safety, maritime security or protection of the marine environment, the subsidiary bodies should consider the human factor whenever new requirements are developed and existing requirements are reviewed, by taking into account the human element principles, as set out in the annex to resolution A.947(23) on *Human element vision, principles and goals for the Organization*.

ANNEX 1

**EXAMPLE OF REGULATION 1**

Regulation 1 should be expressed as:

**"Regulation 1 – Application**

**1 Application** (refer to section 4.1.1.4.1 – Application date of the chapter)

1.1 Unless expressly provided otherwise, this chapter shall apply to ships constructed on or after [DDMMYYYY] (refer to paragraph 4.1.1.4.1)

2 Resolutions applicable to ships constructed before [DDMMYYYY] (refer to paragraph 4.1.1.4.2)

Unless expressly provided otherwise, for ships constructed before [DDMMYYYY], the Administration shall ensure that the requirements which are applicable under chapter [...] of the International Convention for Safety of Life at Sea, 1974, as amended by resolutions MSC.[...] ([...]) (the resolution of the previous revision) are complied with. (Note: this should be the previous comprehensive revision).

3 Additional or revised regulations applicable to ships constructed on or after [DDMMYYYY] (refer to paragraph 4.1.2.1.3)

<b>Regulation</b>	<b>Application date</b>	<b>Adopted by</b>
II-2/1.2.4	first renewal survey on or after 1 January 2011	MSC.269(85)
II-2/4.5.2.3	on or after 1 July 2008	MSC.216(82)
II-2/5.3.4	first survey on or after 1 July 2008	MSC.216(82)

4 Requirements contained in this chapter that are applicable to ships constructed before [DDMMYYYY] (refer to paragraph 4.1.1.4.3)

<b>Regulation</b>	<b>Application date</b>	<b>Adopted by</b>	<b>Applicable ship types</b>
II-2/1.2.2	see paragraphs 2.2.1 to 2.2.4	MSC. 99(73)	as applicable
II-2/4.5.7.1	1 January 2012	MSC. 291(87)	in all tankers
II-2/15, heading, first sentence	1 July 2010	MSC.201(81)	applicable to passenger ships and cargo ships from 500 GT with building contract date between 1 February 1992 and 1 July 1998

ANNEX 2

**CHECK/MONITORING SHEET FOR THE PROCESS OF AMENDING  
THE CONVENTION AND RELATED MANDATORY INSTRUMENTS  
(PROPOSAL/DEVELOPMENT)**

**Part I – Submitter of proposal (refer to paragraph 3.2.1.1)\***

1	<i>Submitted by (document number and submitter)</i>
2	<i>Meeting session</i>
3	<i>Date (date of submission)</i>

**Part II – Details of proposed amendment(s) or new mandatory instrument (refer to paragraphs 3.2.1.1 and 3.2.1.2)\***

1	<i>Strategic direction</i>
2	<i>Title of the output</i>
3	<i>Recommended type of amendments (MSC.1/Circ.1481) (delete as appropriate)</i> <ul style="list-style-type: none"><li>• Four-year cycle of entry into force</li><li>• exceptional circumstance</li></ul>
4	<i>Instruments intended for amendment (SOLAS, LSA Code, etc.) or developed (new code, new version of a code, etc.)</i>
5	<i>Intended application (scope, size, type, tonnage/length restriction, service (International/non-international), activity, etc.)</i>
6	<i>Application to new/existing ships</i>
7	<i>Proposed coordinating sub-committee</i>
8	<i>Anticipated supporting sub-committees</i>
9	<i>Time scale for completion</i>
10	<i>Expected date(s) for entry into force and implementation/application</i>
11	<i>Any relevant decision taken or instruction given by the Committee</i>

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\* Parts I and II should be completed by the submitter of a proposed new amendment, to the fullest extent possible.

**Part III – Process monitoring to be completed during the work process at the sub-committee and checked as part of the final approval process by the Committee (refer to paragraph 3.2.1.3)\*\***

1	The sub-committee, at an initial engagement, has allocated sufficient time for technical research and discussion before the target completion date, especially on issues needing to be addressed by more than one sub-committee and for which the timing of relevant sub-committees meetings and exchanges of the result of consideration needed to be carefully examined.	
2	The scope of application agreed at the proposal stage was not changed without the approval of the Committee.	
3	The technical base document/draft amendment addresses the proposal's issue(s) through the suggested instrument(s); where it does not, the sub-committee offers the Committee an alternative method of addressing the problem raised by the proposal.	
4	Due attention has been paid to the <i>Interim guidelines for the systematic application of the grandfather clauses</i> (MSC/Circ.765-MEPC/Circ.315).	
5	All references have been examined against the text that will be valid if the proposed amendment enters into force.	
6	The location of the insertion or modified text is correct for the text that will be valid when the proposed text enters into force on a four-year cycle of entry into force, as other relevant amendments adopted might enter into force on the same date.	
7	There are no inconsistencies in respect of scope of application between the technical regulation and the application statement contained in regulation 1 or 2 of the relevant chapter, and application is specifically addressed for existing and/or new ships, as necessary.	
8	Where a new term has been introduced into a regulation and a clear definition is necessary, the definition is given in the article of the Convention or at the beginning of the chapter.	
9	Where any of the terms "fitted", "provided", "installed" or "installation" are used, consideration has been given to clarifying the intended meaning of the term.	
10	All necessary related and consequential amendments to other existing instruments, including non-mandatory instruments, in particular to the forms of certificates and records of equipment required in the instrument being amended, have been examined and included as part of the proposed amendment(s).	
11	The forms of certificates and records of equipment have been harmonized, where appropriate, between the Convention and its Protocols.	

\*\* Part III should be completed by the drafting/working group that prepared the draft text using "yes", "no" or "not applicable". For the draft amendments to be considered and finalized by sub-committees in plenary within one session, the Secretariat may be requested, when necessary, to complete part III of the check/monitoring sheet after the session, instead of establishing a specific working/drafting group. "Minor corrections" (C/ES.27/D, paragraph 3.2(vi)) may be excluded from application of the provisions for completion of the check/monitoring sheet.

12	It is confirmed that the amendment is being made to a currently valid text and that no other bodies are concurrently proposing changes to the same text.	
13	All entry-into-force criteria (building contract, keel laying and delivery) have been considered and addressed.	
14	Other impacts of the implementation of the proposed/approved amendment have been fully analysed, including consequential amendments to the "application" and "definition" regulations of the chapter.	
15	The amendments presented for adoption clearly indicate changes made with respect to the original text, so as to facilitate their consideration.	
16	For amendments to mandatory instruments, the relationship between the Convention and the related instrument has been observed and addressed, as appropriate.	
17	The related record format has been completed or updated, as appropriate.	

## **GUIDANCE NOTES FOR COMPLETING THE CHECK/MONITORING SHEET**

### **Part I – Submitter of proposal**

This part should be completed by the submitter of a proposed new amendment, to the fullest extent possible.

The original proposal for amendment(s) should be sponsored by, at least, a Contracting Government to the Convention. The Contracting Government (or in the case of a number of Contracting Governments, a nominated lead Contracting Government) should complete part I.

### **Part II – Details of proposed amendment(s) or of the proposed new mandatory instrument**

This part should be completed by the submitter of a proposed new amendment, to the fullest extent possible.

Details of the proposal should be complete and as detailed as possible. If the proposal is related to a casualty, a full explanation of the factors involved or the safety analysis should be appended to the proposal, especially, when the submitter considers a case of "exceptional circumstance", as per MSC.1/Circ.1481. Consideration of the size of the affected fleet or number of affected mariners, or both, should form part of the justification of the proposal.

### **Part III – Process monitoring to be completed during the work process at the sub-committee and checked as part of the final approval process by the Committee**

This part should be completed by the drafting/working group that prepared the draft text. For the draft amendments to be considered and finalized by sub-committees in plenary within one session, the Secretariat may be requested, when necessary, to complete part III of the check/monitoring sheet after the session, instead of establishing a specific working/drafting group. "Minor corrections" (C/ES.27/D, paragraph 3.2(vi)) may be excluded from application of the provisions for completion of the check/monitoring sheet.

This checklist should be completed to the fullest extent possible at each stage of the regulatory project process. Each time the regulatory project receives a set of terms of reference for a correspondence, working or drafting group, the Chair or the Secretariat should review the checklist with the group at the completion of that group's report.

Each process means:

- Initial engagement at the sub-committee (items 1 to 2).
- During the discussion at the sub-committee (items 3 to 6).
- Finalization stage at the sub-committee (items 7 to 16).

The concept is to create a tracking mechanism, by a complete synopsis record of the regulatory process, to assure those delegations unable to participate in the work of working/drafting groups due to personnel and/or time constraints that the strictures of the process method are complied with in accordance with the dictates of the Committee.

ANNEX 3  
**RECORD FORMAT**

The following records should be created and kept updated for each regulatory development.\*

The records can be completed by providing references to paragraphs of related documents containing the relevant information, proposals, discussions and decisions.

<b>1</b>	<b>Title (number and title of regulation(s))</b>
<b>2</b>	<b>Origin of the requirement (original proposal document)</b>
<b>3</b>	<b>Main reason for the development (extract from the proposal document)</b>
<b>4</b>	<b>Related output</b>
<b>5</b>	<b>History of the discussion (approval of work programmes, sessions of sub-committees, including CG/DG/WG arrangements)</b>
<b>6</b>	<b>Impact on other instruments (codes, performance standards, guidance circulars, certificates/records format, etc.)</b>
<b>7</b>	<b>Technical background</b>
<b>7.1</b>	<b><i>Scope and objective (to cross check with items 4 and 5 in part II of the checklist)</i></b>
<b>7.2</b>	<b><i>Technical/operational background and rationale (e.g. summary of FSA study, if available, or engineering challenge posed)</i></b>
<b>7.3</b>	<b><i>Source/derivation of requirement (non-mandatory instrument, industry standard, national/regional requirement)</i></b>
<b>7.4</b>	<b><i>Short summary of requirement (what is the new requirement – in short and lay terms)</i></b>
<b>7.5</b>	<b><i>Points of discussions (controversial points and conclusion)</i></b>

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\* For the draft amendments to be considered and finalized by sub-committees in plenary within one session, the Secretariat may be requested, when necessary, to complete the records for regulatory development after the session, instead of establishing a specific working/drafting group. "Minor corrections" (C/ES.27/D, paragraph 3.2(vi)) may be excluded from application of the provisions for completion of the records for regulatory development.