

立法會

Legislative Council

LC Paper No. CB(4)446/16-17

Ref: CB4/SS/4/16

Paper for the House Committee meeting on 20 January 2017

**Report of the Subcommittee on Merchant Shipping (Local Vessels)
(General) (Amendment) Regulation 2016 and Merchant Shipping
(Local Vessels) (Safety and Survey) (Amendment) Regulation 2016**

Purpose

This paper reports on the deliberations of the Subcommittee on Merchant Shipping (Local Vessels) (General) (Amendment) Regulation 2016 and Merchant Shipping (Local Vessels) (Safety and Survey) (Amendment) Regulation 2016 ("the two Amendment Regulations").

Background

2. On 22 October 2012, a Commission of Inquiry ("CoI") was appointed by order of the Chief Executive in Council pursuant to section 2 of the Commissions of Inquiry Ordinance (Cap. 86) to inquire into the vessel collision near Lamma Island on 1 October 2012. The report of CoI was issued on 30 April 2013. To enhance marine safety, CoI recommended all ferries and launches for more than 12 passengers to carry a Very High Frequency radiotelephone ("VHF radio"), and for vessels for more than 100 passengers to further install automatic identification system ("AIS") and radar.

The two Amendment Regulations

3. The two Amendment Regulations are made by the Secretary for Transport and Housing ("STH") under section 89 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) in order to implement CoI's recommendations as set out in paragraph 2 above.

4. The Merchant Shipping (Local Vessels) (General) (Amendment) Regulation 2016 amends the Merchant Shipping (Local Vessels) (General) Regulation (Cap. 548F) to:

- (a) impose the requirements in relation to the operation and maintenance of radar equipment fitted on certain Class I vessels ¹;
- (b) prescribe the requirements in relation to the operation and maintenance of an automatic identification system fitted on certain Class I vessels and certain Class II vessels;
- (c) provide for the requirements in relation to the operation and maintenance of radiotelephone equipment and very high frequency ("VHF") radiotelephone communication for certain Class I vessels;
- (d) revise the flash point of flammable liquid on local vessels in respect of which the requirements relating to flying a red flag and exhibiting a red light provided under section 37(2) of Cap. 548F are to apply; and
- (e) provide for offences to be committed upon failure to comply with the relevant requirements.

5. The Merchant Shipping (Local Vessels) (Safety and Survey) (Amendment) Regulation 2016 amends the Merchant Shipping (Local Vessels) (Safety and Survey) Regulation (Cap. 548G) to:

- (a) extend the current requirement on radar equipment under section 80 of Cap. 548G to certain Class I vessels that are licensed to carry more than 100 passengers;
- (b) require certain Class I vessels and certain Class II vessels to be fitted with an automatic identification system and to require the storage and maintenance of prescribed information in the system;
- (c) provide that certain Class I vessels must have on board radiotelephone equipment for prescribed VHF radiotelephone communication which must be operable from the navigational bridge or steering position of the vessel concerned;
- (d) amend the current requirement on the minimum flash point for fuel oil to be used on engines of certain vessels under section 81 of Cap. 548G and to revise the flash points for cargoes carried on board certain vessels; and
- (e) provide for offences to be committed in the event of contravention of the relevant requirements.

¹ Local vessels are classified into Classes I, II, III and IV vessels under the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D). Generally speaking, Class I vessels are passenger vessels while Class II vessels are cargo vessels.

6. The two Amendment Regulations come into operation on 1 April 2017, except for the following:

- (a) provisions relating to radar are to come into operation on 1 December 2017;
- (b) provisions relating to the installation and operation of AIS on Class II vessels are to come into operation on 1 March 2018; and
- (c) provisions relating to VHF radio are to come into operation on a day to be appointed by STH by notice published in the Gazette.

The Subcommittee

7. At the House Committee meeting on 16 December 2016, Members agreed to form a Subcommittee to examine the two Amendment Regulations. Under the chairmanship of Hon Frankie YICK, the Subcommittee held a meeting on 5 January 2017 with the Administration. The membership list of the Subcommittee is in **Appendix I**.

8. To allow time for members to study the Administration's written response, the Council passed a resolution moved by the Subcommittee Chairman at the meeting of 11 January 2017 to extend the scrutiny period of the two Amendment Regulations to 8 February 2017.

Deliberations of the Subcommittee

9. The Subcommittee supports the two Amendment Regulations which enhance navigational and communications equipment on local vessels for marine safety. Nonetheless, members identify a number of issues relating to the requirements and implementation of the two Amendment Regulations which are of concern to the trade.

Implementation of the two Amendment Regulations

10. The Subcommittee notes that at least one crew member on board must hold the certificates of competency for operating radar and VHF radio ("the certificates"). Crew members can obtain the certificates after completing courses² provided by the Hong Kong Seamen's Union or other training institutions for radar qualification and passing the examinations conducted by

² Crew members need to pass the post-course examinations for completing the courses.

the Office of the Communications Authority ("OFCA") for VHF radio qualification.

11. Hon WONG Ting-kwong, on behalf of Hon Steven HO, raises concern about the practical difficulties (such as training and examination requirements, and increase in operation cost) faced by crew members and fishermen who are prepared to switch to operate Class I vessels and Class II vessels in compliance with these requirements. As the education level of crew members is not high, they will have difficulties in taking written examinations and memorizing the 26 code words³ for VHF radio examination. The Subcommittee shares Hon Steven HO's concern. Hon Jeremy TAM is concerned whether radar and VHF radio examinations will form part of the coxswain examination.

12. The Administration responds that there is no need for all coxswains to take the radar and VHF radio examinations as only one crew member on board is required to hold the certificates. Regarding members' concern about examinations, the Administration advises that the average passing rate of the radar examination of Hong Kong Seamen's Union from late 2014 to 2016 has been more than 90% which indicates that the trade does not have difficulty in obtaining the relevant qualification. For VHF radio examination, the Administration explains that its content must cover the practical workflow and knowledge for operating the equipment. The OFCA has simplified the examination format and content from November 2014 to allay the trade's concerns over the examination. The Administration will explore the feasibility of further refining the VHF radio examination. In addition, the Administration has been actively liaising with the training institutions to ensure sufficient training courses on radar and VHF radio for the crew members.

13. Notwithstanding the Administration's explanation, the Subcommittee reiterates the difficulty faced by crew members in learning the 26 code words. The Chairman and Hon WONG Ting-kwong urge the Administration to explore more ways that can help crew members in this aspect, such as putting an emergency button on VHF radio and providing a device with designated buttons for sounding recorded messages through VHF radio.

14. The Administration explains that while an emergency button is provided in a more advanced type of radiotelephone called DSC radio, relevant authorities and nearby vessels still have to communicate with the distressed vessel by using the 26 code words for more details. Furthermore, DSC radio operators must also hold a certificate of competency. The Administration undertakes to further study this matter before finalizing the commencement date for provisions relating to VHF radio under the two Amendment Regulations.

³ The 26 code words are assigned to 26 letters of the English alphabet, such as Alpha, Bravo, Charlie.

15. Hon Jeremy TAM and Hon WONG Ting-kwong enquire about the Administration's monitoring mechanism to ensure that AIS, radar and VHF radio on board are maintained in a good working condition. The Administration advises that regular and random inspections will be conducted. In case irregularities are found, follow-up actions will be taken.

16. Regarding the trade's concern that the Administration will mandate local vessels to install more equipment and crew members to obtain more certificates of competency, the Administration assures members that the trade will be consulted if additional equipment/certificates are required.

Implementation date

17. The Subcommittee notes that at present, only around 30% to 40% of the vessels have crew members holding the certificate for operating VHF radio. Hon Jeremy TAM asks for information on the number of vessels required to install AIS, radar and VHF radio, and the timetable for implementing the two Amendment Regulations.

18. The Administration advises that the numbers of vessels required to install AIS, radar and VHF radio are 225, 50 and 300 respectively. So far, a majority of the 225 vessels have installed AIS. For the 50 vessels which are required to install new radars to meet the relevant requirements, the Administration will extend the radar subsidy scheme to the end of September 2017 and provisions relating to radar under the two Amendment Regulations are to come into operation on 1 December 2017. For VHF radio, the Administration will liaise with the trade about the commencement date of the relevant provisions when 60% to 70% of the vessels have crew members holding the certificate.

Support for the trade

19. The Subcommittee notes that the Maritime and Aviation Training Fund was established in 2014 to subsidize crew members taking marine-related training courses. The Fund is for use over a period of five years from 2014 to 2019. Hon WONG Ting-kwong, on behalf of Hon Steven HO, relays the trade's concern about the provision of subsidy on a longer term. The Administration responds that it will seek the approval of the Legislative Council to continue the operation of the Fund, if necessary.

20. Hon Jeremy TAM is concerned about the adequacy of the existing level of subsidies provided to local vessels for installing AIS and radar. He enquires whether the Administration has made reference to the market price when setting the subsidies. The Administration advises that a survey has been conducted on

the prices of the equipment and the installation charges before setting the subsidies.

Definition of "specified information" under the new section 80A(8) of Cap. 548G

21. The Subcommittee notes that "AIS" is defined in the new section 80A(8) of Cap. 548G to mean a system, among other things, that is capable of providing and receiving the specified information automatically. "Specified information" is defined in the same section, in relation to a vessel, to include the identity, type, position, course, speed, navigational status and other safety related information of the vessel. It is an offence punishable with a maximum fine at level 3 under the new section 80A(7) of Cap. 548G for contravention of the requirement for fitting vessels with AIS under the new section 80A(3) of Cap. 548G without reasonable excuse. The Legal Adviser to the Subcommittee has made enquiry with the Administration as to whether there is any other information about the vessel that AIS should be capable of providing and receiving apart from these expressed items. If so, such information should be spelt out in the definition of "specified information" for the sake of clarity and certainty. Alternatively, if these expressed items are meant to be exhaustive, "includes" in the definition should be replaced by "means". Since "specified information" is currently defined to include a list of expressed items of information, relevant persons may have difficulties to comply with all the relevant requirements in respect of AIS. Further, future amendments to the definition of "specified information" may not have to be made by amending Cap. 548G.

22. In response to the enquiry of the Legal Adviser to the Subcommittee and the request of the Subcommittee, the Administration advises that the definition for AIS is modelled on Regulation 19.2.4.5 in Chapter V of the International Convention for the Safety of Life at Sea (**Appendix II**) (English version only). All AISs produced for use in vessels conform with this and similar international navigation requirements. They typically cover a wide range of information which includes the items of information spelt out in the definition of "specified information" under the new section 80A(8) of Cap. 548G. Those items are essential for marine safety. For the purpose of enforcement, the Administration confirms that an AIS capable of providing and receiving the information spelt out in the definition is taken to have fulfilled the requirements under the Merchant Shipping (Local Vessels) (Safety and Survey) (Amendment) Regulation 2016. If the Administration wishes to require AIS to provide and receive further information other than those currently listed in the definition of "specified information" in the future, it will amend Cap. 548G as appropriate. Similar non-exhaustive approach in defining "specified information" is also adopted in similar legislation in other common law jurisdictions, for example, section 65(4) of the Navigation Safety Regulations of Canada (**Appendix III**) (English version only).

Others

23. The Subcommittee notes the enquiries raised by the Legal Adviser to the Subcommittee on other issues regarding the two Amendment Regulations⁴, and the Administration's response on those issues⁵.

Recommendation

24. The Subcommittee supports the two Amendment Regulations and will not propose any amendment.

Advice sought

25. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 4
Legislative Council Secretariat
19 January 2017

⁴ Issued vide LC Paper No. CB(4)382/16-17(04).

⁵ Issued vide LC Paper No. CB(4)394/16-17(01).

**Subcommittee on Merchant Shipping (Local Vessels) (General)
(Amendment) Regulation 2016 and Merchant Shipping (Local Vessels)
(Safety and Survey) (Amendment) Regulation 2016**

Membership list

Chairman Hon Frankie YICK Chi-ming, JP

Members Hon WONG Ting-kwong, SBS, JP
Hon Steven HO Chun-yin, BBS
Hon Jeremy TAM Man-ho

(Total : 4 members)

Clerk Ms Angel WONG

Legal Adviser Ms Wendy KAN

Date 5 January 2017

《國際海上人命安全公約》第 V 章第 19.2.4.5 條
Regulation 19.2.4.5 in Chapter V of the
International Convention for the Safety of Life at Sea

Title	SOLAS 2001-2003 Amend / Chapter V (Reg.1~35) / Reg. 19.2.4
Effective Date	7/1/2004
For Ships Constructed	On or after 5/25/1980
Note	Retroactive requirements of AIS to existing ships were amended here
Reference Materials	automatic identification system

(5) AIS shall:

- (a)** provide automatically to appropriately equipped shore stations, other ships and aircraft information, including the ship's identity, type, position, course, speed, navigational status and other safety-related information;
- (b)** receive automatically such information from similarly fitted ships;

加拿大的《海上航行安全規例》第65(4)條
Section 65(4) of the Navigation Safety Regulations of Canada

Navigation Safety Regulations (Section 65(4))

- (4)** The AIS shall
- (a)** automatically provide information, including the ship's identity, type, position, course, speed, navigational status and other safety-related information, to appropriately equipped shore stations, other ships and aircraft;
 - (b)** automatically receive such information from similarly fitted ships;
 - (c)** monitor and track ships; and
 - (d)** exchange data with shore-based facilities.