

Title: Amendment to Merchant Shipping (Survey and Certification) Regulations 2014 IA No: DfT00281 Lead department or agency: Maritime and Coastguard Agency Other departments or agencies: Department for Transport	Impact Assessment (IA)			
	Date: 05/01/2015			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Secondary Legislation			
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Summary: Intervention and Options	RPC Opinion: N/A
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Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out?	Measure qualifies as
NQ	NQ	NQ	No	N/A

What is the problem under consideration? Why is government intervention necessary?

The existing Survey and Certification legislation is currently inflexible and restrictive, limiting the scope of survey work that can be delegated to competent private sector organisations; by type of survey, type of vessel and location. Use of exemption powers, by exception, to delegate out survey work has become regularised. Therefore Government intervention is needed to secure the necessary de-regulatory revisions to the 1995 Regulations to allow future delegation, the limitations of which can then be decided as a matter of Maritime and Coastguard Agency (MCA) policy. Without legislation the market would not account for these externalities and underprovide surveying services.

What are the policy objectives and the intended effects?

The policy objectives are to provide the Secretary of State (SoS) with the maximum flexibility to enable full delegation in the future if current policy changes and to regularise the existing arrangements to delegate through exemption where survey work is not yet delegated. There are no intended effects because the scope of this impact assessment (IA) is to amend only legislation, in order to allow for future delegation. Any future changes to existing MCA practices in further delegation, would be subject to a new consultation with stakeholders and industry and also a new IA. The MCA is trying to be pro-active in changing the legislation in advance.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Only one option has been considered against a do nothing scenario that would provide the necessary legislative change to enable further delegation. This IA neither proposes nor considers changes to MCA current practice regarding delegation: any subsequent proposals to change current practice, as a result of legislative changes, would be considered in a future IA.

Option 1 - Amendment to existing legislation to make provision to allow for full delegation of survey work.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** March 2019

Does implementation go beyond minimum EU requirements?			No		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: N/A	Non-traded: N/A	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: John Hayes : 2nd March 2015 Date

Summary: Analysis & Evidence

Policy Option 1

Description: Amendment to existing legislation to allow Full delegation of The Merchant Shipping (Survey and Certification) Regulations

FULL ECONOMIC ASSESSMENT

Price Base Year 2014	PV Base Year 2014	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: NQ	High: NQ	Best Estimate: NQ

COSTS (£m)	Total Transition (Constant Price)	Year	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate	N/A		N/A	N/A

Description and scale of key monetised costs by 'main affected groups'

No costs are associated with this measure as it only changes legislation. It does not allow for further delegation of survey and certification work, it doesn't change MCA practice.

Other key non-monetised costs by 'main affected groups'

There are no non-monetised costs.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition)	Total Benefit (Present Value)
Low	Optional		Optional	Optional
High	Optional		Optional	Optional
Best Estimate	N/A		N/A	N/A

Description and scale of key monetised benefits by 'main affected groups'

There are no monetised benefits associated with this measure as it only changes legislation. It does not allow for further delegation of survey and certification work, it doesn't change MCA practice.

Other key non-monetised benefits by 'main affected groups'

There are no non-monetised benefits.

Key assumptions/sensitivities/risks

Discount rate (%)

3.5%

There are no risk and assumptions as there is no impact from the measure.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:	In scope of OITO?	Measure qualifies as
Costs: N/A	No	N/A
Benefits: N/A		
Net: N/A		

Evidence Base (for summary sheets)

1. Background and introduction

Merchant passenger ships and cargo ships¹ are statutorily required to undergo a range of checks, known as surveys, within prescribed timescales. These surveys verify that a ship meets the required standards of international conventions² and any relevant national laws, to operate safely and without damaging the environment. Areas covered by these surveys can include but are not limited to; hull structure, watertight integrity, machinery and fire, lifesaving and radio equipment. At the end of a satisfactory survey, a certificate relevant to the area of survey undertaken, is issued to the ship which it needs to continue trading.

It is the responsibility of the National Administration of the flag State, which the ship is entitled to fly, to issue these certificates. For the UK this is the Maritime and Coastguard Agency (MCA). The current Merchant Shipping (Survey and Certification) Regulations 1995, as amended, (Statutory Instrument (SI) 1995/1210, "The 1995 Regulations") make it possible for the Secretary of State (SoS) to delegate to Recognised Organisations (ROs) certain survey and certification work relating to the construction, safety equipment and radio equipment of passenger and cargo ships.

The Regulations apply certain limitations on delegation of the work according to the type of survey, type of ship and, on occasions, the location of the ship.

1.2 Delegation to Recognised Organisations (ROs)

In line with most other Maritime Administrations, much of the statutory survey and certification work is delegated, by general agreements, to ROs³ acting on behalf of the SoS. In the UK this is partly due to the MCA not having the facilities to provide a world-wide network of offices like those offered by ROs (MCA surveyors all work from the UK) and partly because some of the statutory survey requirements overlap with the ROs own rules and standards. This is a mutually beneficial arrangement because much of the survey work is carried out abroad depending on where a ship is stopping in port and hence travel costs are kept to a minimum. It also avoids duplication of survey effort and provides shipowners with a wider choice of organisations which can carry out the work.

Even where the MCA has not formally delegated a specific type of statutory survey and certification, it is common practice to appoint individual RO surveyors, on a case by case basis and under its direct control, to conduct a survey abroad on the MCA's behalf. In these cases an Instrument of Appointment (IOA) is issued and around 200 are issued each year by the MCA. The level of delegation is a balance between providing a cost effective survey regime for ship-owners comparable with that offered by other flag States and the need for direct scrutiny of standards by government surveyors (MCA). This satisfies the SoS that the UK is

¹ A passenger ship is a merchant ship carrying more than 12 passengers and a cargo ship is a merchant ship which is not a passenger ship and includes general cargo ships, container ships, tankers and bulk carriers.

² International standards such as the International Conventions for the Safety of Life at Sea (SOLAS), the Prevention of Pollution from Ships (MARPOL) and Load Line.

³ Most ROs are Classification Societies such as Lloyds Register and Bureau Veritas which "class" ships for insurance purposes against a set of detailed technical rules for hull and machinery. International conventions also require ships to meet the hull and machinery standards of a classification society. The UK currently recognises seven classification societies in accordance with EU Directive 2009/15/EU.

meeting its obligations as a flag State to maintain standards of safety, pollution prevention and crew welfare on its ships. Recent decades have seen a trend of delegating more of the hardware surveys to the ROs, such as the ship's hull and machinery and its life-saving, fire-fighting and pollution prevention equipment, while retaining an oversight of the management of ships.

1.3 Certifying Authorities (CAs)

Certifying Authorities (CAs) issue survey certificates. The term "appropriate CA" in the Merchant Shipping (Survey and Certification) Regulations has different meanings dependent on the type of ship being referred to. For example, the appropriate CA in relation to passenger ships is the SoS. In relation to cargo ships (except for surveys to radio stations and safety equipment) the appropriate CA refers to the SoS, or any body authorised by the SoS.

The CAs comprise those ROs listed in the 1995 Regulations, and a further two ROs who have been recognised since the 1995 Regulations came into force; Registro Italiano Navale (RINa) and Nippon Kaiji Kyokai (Class NK). There are survey agreements between the SoS and each of the ROs, including the two newly recognised, authorising them to undertake survey work and issue relevant certificates.

In addition, there are other CAs, such as MECAL⁴, who carry out survey and certification on ships not covered by the 1995 Regulations. This is generally where simpler standards apply, for example on small work boats in domestic waters. It is considered that these other CAs could also be appointed to undertake survey and certification work for some of the smaller domestic passenger ships covered by the 1995 Regulations.

1.4 Where exemption powers are currently used

The main three areas in the current legislation where the exemption powers of the SoS are used are:

1.4.1 Passenger ships

Surveys of passenger ships are currently required to be undertaken by the MCA. The heightened risk to life due to the numbers and nature of the persons onboard and high profile accidents, notably Herald of Free Enterprise, Estonia and Marchioness, have pointed to the need for direct scrutiny by MCA surveyors to provide additional assurance that high standards are maintained. However, the MCA is not obliged to do all the survey work and the 1995 Regulations allow for part of the survey work to be done by a surveyor appointed by an RO. Currently the survey of hull and machinery, but not safety items, on larger passenger ships⁵ is delegated through the agreements mentioned in 1.2.

Where the ship is a roll-on, roll-off (ro-ro) passenger ship (typically a ferry) the surveys, in their entirety, are required to be done by an MCA surveyor although in practice ROs have been authorised to survey the hull and machinery of these ships based on the SoS's exemption powers contained in the regulations.

⁴ MECAL is an international consultancy and certifying authority specialising in the survey and certification of small commercial vessels.

⁵ Typically those on international voyages which are 'classed' by one of the Classification Societies rather than smaller vessels operating in rivers and sheltered waters which are generally not 'classed'.

1.4.2 Alternative Compliance Scheme

The Alternative Compliance Scheme (ACS) applies only to cargo ships. It is a scheme whereby the SoS's exemption powers have been used to delegate survey and certification work to ROs, which would otherwise have to be carried out by MCA surveyors or surveyors appointed by the SoS at each survey. It streamlines the survey and certification process for cargo ship operators, by having a single point of contact for survey issues. There are stringent criteria, such as a clean inspection record, for a ship to meet before being accepted and considered for ACS so as to safeguard standards. Ships not meeting the criteria are subject to survey by the MCA.

ACS for cargo ships has been operating successfully for several years based on Ministerial approval – as a trial between 2003 and 2010 and as a permanent feature since. All statutory certificates are issued by the RO with a few exceptions, notably those required under the International Safety Management Code (ISM Code)⁶ relating to ships and the companies that operate them. The International Ship Security Certificate (ISSC)⁷ remains the responsibility of the MCA – its survey requirements are covered by another Regulation. The arrangement allows MCA surveyors to retain supervision of the management of the ship, onboard and ashore, through ISM audits and general inspections, whilst delegating all hardware surveys; for example the Cargo Ship Safety Equipment Survey, to the ROs. This supervision is seen by the MCA as key to the SoS meeting their responsibilities towards the UK fleet.

1.4.3 Safety Equipment Certificates on Cargo Ships

For those cargo ships not under the ACS surveys, responsibility within the 1995 Regulations for the issue of the Safety Equipment Certificate (SEC) lies with the SoS; ie the MCA. Therefore the actual survey and issue of the SEC has to be undertaken by an MCA surveyor. However, the SoS may also appoint an individual surveyor to undertake a specific SEC survey. That surveyor may be an RO surveyor, but the certificate can only be issued by the MCA. The SEC covers safety items such as navigational equipment (e.g. charts, radars, echo sounders), lifesaving appliances (e.g. lifeboats, lifejackets) and fire fighting equipment (e.g. extinguishers, alarms). Where the cargo ship is in a UK port or UK waters, the 1995 Regulations require the survey to be undertaken exclusively by an MCA surveyor, although in some cases the exemption powers are relied upon to delegate such surveys. Where the ship is not in a UK port or in UK waters, the survey can be carried out by an MCA surveyor or an individual surveyor appointed by the Secretary of State. Because the MCA is unable to provide the necessary global coverage, an RO surveyor is appointed to undertake much of this safety equipment work as discussed in section 1.2.

2. Problem under consideration and rationale for intervention.

Statutory surveys are pivotal to maritime safety, helping to prevent loss of life and pollution incidents at sea. Some of these incidents, for example, the sinking of the tankers ERIKA off the coast of France in 1999 and PRESTIGE off Spain in 2002, have catastrophic implications for the natural environment and the livelihoods of coastal populations.

⁶ The ISM Code, introduced in the 1990s, provides an international standard for safe management and operation of ships. The catalyst for this code was the Herald of Free Enterprise disaster which highlighted failures in operations rather than solely hardware failures.

⁷ The International Ship and Port Facility Security Code is a comprehensive set of measures to enhance the security of ships and port facilities, developed in response to the perceived threats to ship and port facilities in the wake of 9/11 attacks in the United States.

The existing legislation limits the types of survey and certification work which are delegated to competent private sector organisations, ROs and CAs. Much of the survey work is carried out abroad depending on where the ship is stopping in port. This means that ship-owners are potentially subject to high travel and subsistence costs if any survey work, which cannot be delegated either by restrictions in the legislation or use of the exemption provision, is carried out by MCA surveyors located in the UK.

In addition, the inflexibility of the 1995 Regulations has made the use of the exemption powers a regular occurrence rather than by exception as originally intended. Every time an exemption is issued, it places an additional administrative burden on the MCA as IOA letters have to be produced as discussed in section 1.2.

In line with the Government's Civil Service Reform Plan, the MCA is currently undergoing its own internal review of its Survey and Inspection operations. These plans are detailed in the MCA's Business Plan⁸. Part of this review will look at the existing policy on delegation of survey work. The future MCA policy of delegation will very much depend on the outcome of the Survey and Inspection Transformation Programme, the results of which will be made available in 2015. However, given the current Government policy of deregulation and delegation, we are anticipating this may become a future change in policy.

Government intervention is needed to secure the necessary de-regulatory revisions to the 1995 Regulations. The MCA is trying to be pro-active in changing the legislation in advance and would like to be in a position where it would be able to have the legislation in place prior to a possible policy change which could then be delivered at pace. This would enable the MCA to be as flexible as possible in its approach with industry who are expecting the MCA to respond to any changes as swiftly as possible.

3. Policy Objectives

The main legislative and policy objectives are to:

- Provide the Secretary of State (SoS) with the maximum flexibility to enable full delegation of surveys and certificates, if he or she so wishes;
- Regularise the existing arrangements, which are based on Ministerial approval and currently rely on exemption powers in the 1995 Regulations; and
- To consolidate all previous amendments of The Merchant Shipping (Survey and Certification) Regulations 1995, as amended, (Statutory Instrument (SI) 1995/1210, "The 1995 Regulations") into one document.

Full delegation is not the current MCA policy, nor its intention, but the proposed changes to legislation give the potential for full delegation if it becomes policy. If the MCA were to change current practice and policy objectives, this would be subject to further consultation with stakeholders and industry and an IA. As a minimum, amending the 1995 Regulations would remove the current legal restrictions for the SoS to make delegations.

⁸ http://www.dft.gov.uk/mca/maritime_and_coastguard_agency_business_plan_2013-14.pdf

4. Policy options considered:

Option 0: Do Nothing

In this scenario the MCA would continue to rely upon the SoS's exemption powers in the 1995 Regulations and would not have the legislative vehicle to delegate work if this became future MCA policy. All other options have been considered against the do nothing option.

Following the outcome of the Survey and Inspection review, should the MCA policy change, this could leave the MCA without full powers to be able to follow Government policy of deregulation and delegation. Therefore the MCA would have to continue relying on exemption powers in the 1995 Regulations. This would not achieve the policy objectives and is not the preferred option.

Option 1: Amendment to existing legislation to allow Full Delegation.

This option would amend legislation to allow in the future (and if MCA policy on delegation were to change) for the full delegation of the Survey and Certification of cargo vessels and passenger ships.

The preferred option is Option 1; Full Delegation, because this would achieve our objective to provide flexibility in the existing legislation that allows the MCA an instrument to change policy in the future and to regularise the existing arrangements. Any policy decisions on full delegation would be subject to: consideration of impacts and risks; consultation with all stakeholders; and also an IA. A decision regarding the future direction of the MCA policy on delegation will be made following the publication of the outcome of the Survey and Inspection review, which as stated above is expected in mid-2015.

5. Monetised and non-monetised costs and benefits of each policy option. (Including administrative burden).

Quantifying the cost and benefits is not possible because the option considered only changes legislation: it does not change current MCA practice. There will be no new costs or benefits to any parties (e.g. business or the MCA) from amending the current legislation. For instance businesses would still be surveyed by the MCA at the same hourly rate as currently charged. Further, this means that there will be no familiarisation costs associated with the option as this measure does not change MCA practices. It is the future measure that might bring about these costs, not this IA. Full delegation is not the current MCA policy, nor its intention, but the proposed changes give the potential for full or partial delegation in the future if it becomes policy. If in the future MCA policy were to change, there would be another impact assessment to assess and consult upon the impacts of these changes.

A four week targeted consultation was held between 11 November and 10 December 2014, in order to see if the Evidence Base needed improving. It was addressed to the Recognised Organisations and Certifying Authorities who would be most affected by the proposal, and other interested parties. The responses received fully supported the proposed legislative changes (option 1). No queries were received on the draft Statutory Instrument, the supporting Merchant Shipping Notice or the analysis within the Impact Assessment.

6. Rationale and evidence that justify the level of analysis used in the IA. (Proportionality approach.)

A light-touch approach to this assessment has been considered proportionate because the options under consideration will only change legislation; the policy proposal will not change the Maritime and Coastguard Agency's (MCA) current practice and hence the existing impacts and risks associated with enforcing regulations are unaffected. If in the future the SoS decided to exercise this authority (change current practices), it would be necessary to conduct a more in-depth analysis and have another consultation.

7. Risks and assumptions

Because the policy only amends legislation to provide the necessary legislative vehicle to allow future delegation (if this became policy) there are no risks or assumptions that impact upon this IA.

8. Direct costs and benefits to business calculations (following OITO methodology)

This proposal is out of scope of One In, Two Out. It does not have an impact on business or civil society organisations. It only amends inflexible legislation with no financial impact. The proposal is "granting power" to a public body to be able to implement a measure in the future. It is that future measure which might be in scope of OITO.

9. Wider impacts

a. Small and microbusiness assessment

As competition already exists between the ROs, it is assumed that there will be no changes to this from amending legislation. However, in the future if there is further delegation, following consultation, the impact will be re-assessed.

b. Equality assessment

There is no effect, positive or negative, on outcomes for persons in relation to their age, disability, gender assignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

10. Summary of preferred option with description of the implementation plan.

a. Summary of preferred option:

The preferred option is Option 1; Amendment to existing legislation to allow Full Delegation. Any policy decisions on full delegation would be subject to consultation with all stakeholders and also consideration of changed risks.

b. Description of the Implementation Plan:

This measure is within SNR9 with a commitment to completion by April 2015.

The Post Implementation Review will measure the following objectives to see if they have been achieved:

- Whether there has been more or less delegation or any limitations within the delegation that were not envisaged. This will be done in consultation with stakeholders, in particular ROs and CAs.
- Whether there have been more or fewer uses of exemption powers.

11. Enforcement, sanctions and monitoring

Enforcement of contravention of the Regulations will be carried out by the MCA as part of its existing enforcement activities. The penalties for non compliance contained in the Regulations, including a fine not exceeding the statutory maximum or imprisonment not exceeding a specified period are consistent with penalties under the status quo. The existing penalties are being transferred into these new regulations as they stand. To date, no prosecutions related to these Regulations have been brought.