

Summary: Analysis & Evidence

Policy Option 2

Description: Bring the UK in line with recent updates to international requirements and introduce ambulatory referencing

FULL ECONOMIC ASSESSMENT

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

| COSTS (£m) | Total Transition (Constant Price) Years | Average Annual (excl. Transition) (Constant Price) | Total Cost (Present Value) |
|---------------|---|--|----------------------------|
| Low | Optional | Optional | Optional |
| High | Optional | Optional | Optional |
| Best Estimate | | | |

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

No monetised costs

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

As the ILLC and ILLP are already in force internationally, shipowners will overwhelmingly have incurred any associated costs already in order for the ship to continue operating internationally. Regardless of the drivers of implementation, the modifications imposed on ship design by the ILLC and the ILLP tend to be minor and technical in nature and as such are not likely to have a significant cost to industry to implement when creating design specifications for ships.

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

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

No monetised benefits.

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

A key benefit of the ILLC and ILLP is the reduction in risk of maritime incidents as a result of overloaded ships, there is potential for this to have the added benefit of reducing insurance premia. Under option 2 (Ambulatory Referencing) there would be resource savings to government as it would no longer have to transpose amendments into UK legislations. As shipowners would only have to consult one piece of legislation familiarisation costs to industry of future amendments will be lower.

Key assumptions/sensitivities/risks

Discount rate (%)

N/A

BUSINESS ASSESSMENT (Option 1)

| | | |
|--|-----------------|------------|
| Direct impact on business (Annualised) £m: | | |
| Costs: NQ | Benefits: NQ | Net: NQ |

Evidence Base

1 Background

- 1.1 Shipping is an international industry and the regulatory framework must reflect this. The International Maritime Organization¹ (IMO) is the United Nations specialized agency with responsibility for the safety and security of shipping and the prevention of marine pollution by ships. The IMO has 171 Member States, 3 Associate Members and numerous Non-Governmental and Intergovernmental Organizations. Its main role is to create a regulatory framework for the shipping industry that is fair and effective, universally adopted and implemented.
- 1.2 The International Load Line Convention (ILLC) and its Protocol (ILLP) focus on measures which enhance hull strength, stability and watertight integrity, especially of doors and hatches exposed to the weather. It reduces the risk of sinking due to overloading, instability and insufficiency or failure of drainage structures resulting in the retention of water. The Convention includes complex formulae to be used by a ship surveyor when calculating whether a ship is safe, in particular how much is a safe amount of freeboard for the ship, and the pressures which hatch covers, etc., can withstand. These are not easily understood by the lay person but are pivotal to maritime safety, and it is important that these are agreed at an international level to minimise the risk of maritime disasters globally.
- 1.3 The extant international legislation dealing with load lines comprises three main elements:
- The International Convention on Load Lines, 1966;
 - The Protocol of 1988 modifying the Convention; and
 - Amendments to the Protocol adopted by Resolution MSC. 143(77);
 - plus some additional IMO Resolutions²
- 1.4 It should also be noted that the United Kingdom has been a strong proponent of improved safety measures in the Convention including the strengthening of hatch covers (which is an aspect of Load Line Convention) especially after the recommendations from Lord Justice Colman's Report in 2000 of the Re-opened Formal Investigation into the loss of the MV DERBYSHIRE. The DERBYSHIRE (formerly named the LIVERPOOL BRIDGE) was the largest UK merchant ship ever lost at sea. It perished off Okinawa on 9 September 1980 with the loss of all 44 crew, and was one of an ill-fated type of cargo ship known as the Bulk Carrier. Indeed, its sister ship, the MV KOWLOON BRIDGE, was also lost when it broke up after grounding. Although not the only type of vessel the safety of which is heavily dependent on the provisions of international load line legislation, Bulk Carriers have been the subject of safety concerns over many years, and have been dubbed by many "coffin ships".

2 Problem under consideration

- 2.1 **Rationale for Intervention** – The ILLC aims to correct market failures in the maritime sector with the intention of increasing safety and protecting the environment.
- 2.2 **Load Line** – The current UK transposition position, to the extent it has been transposed, is contained in the following instruments:
- Merchant Shipping (Load Line) Regulations 1998;
 - Merchant Shipping (Load Line) (Amendment) Regulations 2000;
 - Civil Partnership Act 2004 (Amendments to Subordinate Legislation) Order 2005; and
 - Merchant Shipping Notice 1752.

¹ Further information on the IMO is available from: <http://www.imo.org/en/About/Pages/Default.aspx>

² Resolution MSC.143(77) of 1 July 2004, Resolution MSC.172(79) of 9 Dec 2004, Resolution A.972(24) of 1 Dec 2005, Resolution MSC.270(85) of 4 Dec 2008, Resolution MSC.223(82) of 8 Dec 2006, Resolution MSC.345(91) of 30 Nov 2012, MSC Corrigendum Annex B, Annex II, Resolution MSC.356(92) of 21 Jun 2013, Resolution A.1038(28) of 4 Dec 2013, Resolution MSC.375(93) of 22 May 2014

Several Resolutions, one of which is a complete re-write of the technical aspects of the Annexes, have still to be transposed.

- 2.3 **Regulatory approach** – Current implementation practice has created a complicated and disjointed regulatory regime that diverges significantly from the international structure. Current practice is to use a mixture of primary and secondary legislation with technical provisions included either in the instrument, relegated to separate government publications, or occasionally incorporated by direct reference to the international text. The choice between these options has been dictated by the available powers or by what seemed most expedient at the time. Consequently there is an absence of any coherent regulatory framework to guide users (such as a framework mirroring the international agreements), and this, combined with a mix of international and domestic obligations in the same instrument results in a position that is confusing to both industry regulators alike. This creates administrative burden for industry, because of the needless duplication of effort needed to ascertain the domestic legal position, and because of the unnecessary complexity of the domestic regime.
- 2.4 Using current procedures and practice to implement regular changes to international agreements is time consuming and resource intensive. The UK currently has a backlog of some 40 separate items of maritime regulation. Without changes to current resourcing or practice, this backlog is unlikely ever to be eliminated and, indeed, can be expected to grow. During the Red Tape Challenge industry raised its concern over the lengthy delays between amendments to international Conventions coming into force globally and being transposed into UK law. These delays lead to legal uncertainty and disparity between national and international legislation.

Box 1: Specifically the UK Chamber of Shipping's³ response to the Red Tape Challenge was:

“The UK shipping industry was very pleased to contribute to the Government's recent Red Tape Challenge initiative and proposed a number of basic principles which might help ensure 'better regulation' into the future.

One of these involved the direct read-across through 'ambulatory references' of international conventions which have been accepted by Government into UK law without their provisions having to be rewritten in the national context.

This would in particular help with keeping the national law up to date when amendments were agreed, of course again subject to their acceptance by Government.

The international convention text would clearly remain subject to the same scrutiny as at present and could be supplemented by guidance in the UK as to interpretation as necessary.

We believe that such a practice in the UK would substantially reduce the regulatory and legal process surrounding the adoption in this country of international regulations, which are an essential part of international shipping and without which the UK merchant fleet would not be able to operate.”

The UK Chamber of Shipping responded to the consultation on this impact assessment saying:

“The UK Chamber welcomes the use of ambulatory reference as a means of introducing amendments to international conventions promptly and with reduced bureaucracy. Since we appear to be bound by such international regulations in any case, it is of course concerning that Resolutions dating back to 2003 have yet to be transposed into UK law.”

- 2.5 While the ILLC/ILLP is not transposed into UK law the UK does not have the legal authority to certify its own ships to the relevant standards. Failure to do so makes it much more likely that a UK ship will be detained in a non-UK port for non-compliance, leading to expensive delays and inconvenience for UK flagged ships trading internationally, and to global criticism and the UK's loss of status as a leading maritime nation.
- 2.6 While the ILLC/ILLP is not transposed into UK law the UK is unable to take enforcement action against non-compliant ships because it does not have legal authority to require compliance. As

³ The UK Chamber of Shipping is a trade association and considered to be voice for the UK shipping industry. It has around 150 members from across the maritime sector. Further information on the Chamber is available from: <https://www.ukchamberofshipping.com/about-us/>

most UK owners and operators comply as a matter of course with ILLC/ILLP requirements in order to continue their global operations the UK must be able to enforce the same standards against non-UK ships in UK ports, to ensure that compliant UK ships are not disadvantaged.

- 2.7 The UK, as a signatory to the ILLC/ILLP Convention, has an obligation to implement any changes. Given the backlog of over 40 items of international maritime legislation that have not yet been transposed there is a danger that the UK's failure to comply with its obligations will be identified through the mandatory IMO Member State Audit Scheme which entered into force at the start of 2016. A poor audit performance increases the possibility of the UK losing its "low risk status", this would increase the frequency of inspections for UK flagged vessels in foreign ports and hence increase cost to UK industry. In addition, the European Commission will take a keen interest in the IMO Member State Audit Scheme and a non-compliance for implementing IMO Conventions in their up to date form will be indicative of the UK failing to meet obligations under the Flag State Directive.⁴ The Commission would then be able to commence infraction proceedings against the UK.
- 2.8 Overall, there is a pressing need for Government intervention to provide for an alternative, simplified, approach to help speed up implementation and / or reduce the resources required, particularly as transposition for international measures is subordinate to EU measures with associated infractions.

3 Policy Objectives

- 3.1 The policy objectives are divided into two distinct areas: transposition of outstanding amendments to the International Load Line Convention/Protocol into UK law; and the introduction of ambulatory referencing.
- 3.2 **Transposition of outstanding amendments to the ILLC/ILLP into UK law**
- 3.3 The existing regulations will be recast to cover, in addition to those aspects of the Convention/Protocol which have already been transposed, the outstanding varied and detailed amendments to the Convention/Protocol as identified in section 6.
- 3.4 The outstanding elements for transposition fulfil a variety of functions, including incremental technical design changes in the interests of safety, such as the strengthening of certain components, clarification of provisions and alternative methods of compliance. These improve the seaworthiness of a ship and reduce the likelihood of a ship becoming unstable.
- 3.5 **Introduce Ambulatory Referencing**
- 3.6 It is intended that the new Regulations will require ships to comply with ILLC/ILLP in its up to date form, this will ensure that the UK is always up to date with the transposition of ILLC/ILLP.

⁴ Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag state requirements. Recital 3 of the Flag State Directive, which is theoretically non-binding, requires the implementation of IMO Conventions into Member States' law. Article 4(1) of the same Directive requires Member States to take all the measures it deems appropriate to ensure that the ship in question complies with the applicable international rules and regulations. Reading both recital and article in conjunction, the requirement can be deduced as implementation of IMO Conventions into domestic law.

Box 2: Ambulatory Referencing

During the Red Tape Challenge industry raised its concern over the lengthy delays between amendments to international Conventions coming into force globally and being transposed into UK law.

In response, DfT sought regulatory reform through the Deregulatory Act 2015. The Act introduced an additional power that allows for ambulatory referencing to be made to international instruments. Ambulatory Reference means a reference in legislation to an international instrument as modified from time to time (and not simply to the version of the instrument that exists at the time the secondary legislation is made).

Supporting documentation will be provided by the Maritime and Coastguard Agency (MCA) to add legal prescription and additional guidance, as required e.g.: where the Convention states that a requirement is “to the satisfaction of the administration”, the MCA will specify what is required to meet this obligation.

It is worthwhile noting that this does not negate the Government’s principle of consultation and that the principles of Better Regulation will still apply (see Box 3 below).

ILLC/ILLP Project

Under ambulatory referencing, future amendments to the ILLC/ILLP agreed internationally will automatically come into force. This IA explores published changes which have come into force internationally since the Load Line Regulations were last amended.

The ILLC/ILLP is long established and deals with a single issue (load lines). Amendments to the Convention/ Protocol in recent years have largely focused on editorial changes with little real impact on business (as can be seen in Annex A).

There have only been 10 amending Resolutions, one with a Corrigendum (correction), in the last 28 years (i.e. since the Protocol was added in 1988). These mostly provide further clarity, make marginal technical changes, or redefine geographical operational areas. Even those which do make “real” changes to equipment standards do not have significant cost attached (see Annex A).

Consideration of future amendments

There are currently no future changes planned in the IMO work programme which spans the next two years. Additionally, there are currently no further changes beyond two years in the pipeline. It is fully expected that any further changes which do occur will be minor, as those over the last 28 years have been. Any future amendments will nevertheless go through scrutiny by the UK government and industry, as they progress through the IMO process. In addition, any amendments that are introduced will be reviewed again at five-yearly intervals through the PIR process.

- 3.7 **Provide legal certainty** - A transparent, accessible and up-to-date legal regime will reduce legal uncertainty and red tape for industry.
- 3.8 **Reduce administrative burden** – Ambulatory referencing will reduce the administrative burden of implementing future technical changes to the Convention. It will save time and resources for government as it will no longer have to transpose amendments into UK legislation.
- 3.9 **Level Playing Field** – By ensuring that the UK is always up-to-date with the transposition of ILLC/ILLP, ambulatory referencing will provide the UK with the legal authority to certify its own ships to the relevant standards. Timely implementation will mean that UK ships plying internationally can properly be issued with certificates that confirm compliance with relevant international rules. This will mitigate the risk of UK ships being detained in non-UK ports for non-compliance, avoiding expensive delays and inconvenience for UK flagged ships trading internationally, and shoring up the UK’s status as a leading maritime nation.
- 3.10 At the same time, it will be enable the UK to take enforcement action against non-compliant ships, ensuring that UK owners and operators, most of which comply as a matter of course with ILLC/ILLP requirements in order to continue their global operations, are not at a disadvantage.
- 3.11 **UK Reputation and status on the white list** – The UK, as a signatory to the ILLC/ILLP Convention, has an obligation to implement any changes. Ambulatory referencing would implement

future technical changes to the Convention in a timely manner. This would avoid a poor audit performance under the mandatory IMO audit scheme, shoring up the UK's "low risk status" and thereby avoiding any increase in the frequency, and associated cost, of inspections for UK flagged vessels in foreign ports.

- 3.12 At the same time, improving the way we implement international law will reflect the UK's ambition to make its flag a more attractive place to do business, as well as protecting our reputation as a world-class maritime administration, both with industry and the international institutions (such as the EU and the IMO) with responsibility for maritime policy.
- 3.13 **Compliance with the Flag State Directive** - By implementing IMO Conventions in their up to date form the UK will meet its obligations under the Flag State Directive,⁵ thereby avoiding infraction proceedings for non-compliance.
- 3.14 **Reduce debates on whether a provision has been "gold-plated"** - Ambulatory Referencing transposes international provisions without gold plating or adding any additional obligations.

⁵ Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag state requirements. Recital 3 of the Flag State Directive, which is theoretically non-binding, requires the implementation of IMO Conventions into Member States' law. Article 4(1) of the same Directive requires Member States to take all the measures it deems appropriate to ensure that the ship in question complies with the applicable international rules and regulations. Reading both recital and article in conjunction, the requirement can be deduced as implementation of IMO Conventions into domestic law.

Box 3: Ambulatory Referencing

What assurances are in place to prevent undesirable amendments to the ILLC/ILLP automatically coming into force?

Ambulatory referencing does not negate the Government's principle of consultation. Amendments to international Conventions are developed and agreed at the IMO, where in addition to Member States, industry is well represented. Industry is therefore heavily involved with policy development and also in helping to shape the UK's negotiating position. Working in partnership UK officials and industry actively contributes to negotiations on new initiatives to ensure they are appropriate and proportionate measures to improve safety.

All the subject matter contained in the ILLC/ILLP Annex that is subject to Ambulatory Reference is technical in nature. Subsequent technical amendments, during the international negotiation process, will continue to be subject to:

- consideration of high level impacts against a checklist; and
- stakeholder engagement involving representatives of the UK shipping industry.

All amendments to the Load Line Convention and Protocol are negotiated in the IMO, and the UK will make any proposals it thinks fit during those negotiations. Although no undesirable outcomes are expected at negotiation stage, if the agreed text of an amendment is deemed unacceptable, the UK can reject it in accordance with Article 29 of the ILLC/ILLP. Regardless of whether the UK rejects an amendment, the Secretary of State will have the power to prevent such an amendment coming into force in the UK, or revoke it if already in force. However, the likelihood of this is thought to be remote because the amendments will have been negotiated between IMO member states, including the UK, and industry and union representatives, before coming into force.

Any amendments will be reviewed at five yearly intervals through the post-implementation review process. The Post Implementation Reviews (PIR) undertaken will evaluate whether the policy has achieved its goal and is still valid, and also evaluate the costs and benefits of all the technical amendments enacted since the previous review (or Impact Assessment). This will be validated by the Regulatory Policy Committee (RPC).

How will the principles of Better Regulation still apply:

Alternatives to Regulation – prior to work commencing on any proposal at the IMO, a case for action must be demonstrated against the following criteria: practicality, feasibility and proportionality; costs and benefits to industry, including legislative and administrative burdens; and alternatives to regulation.

Consultation – industry is represented at the IMO through non-governmental organisations, which are heavily involved in early stage policy development, contributing to working and drafting groups where policy is designed, as well as participating in plenary where policy is examined. Industry representatives are invited to meetings hosted by the MCA prior to IMO sessions to assist with the development of the UK's negotiating position.

Assessment of Impact – a high level consideration of impact is undertaken at proposal stage to inform the UK's negotiation position. Post Implementation Reviews will be used to assess the robustness of the original assessment and will be timed to ensure they can feed into negotiations for future rounds of amendments.

4 Description of options and issues considered

4.1 Do nothing

The "Do nothing" option is that the international amendments are not transposed into UK law. The UK, as a signatory to the ILLC/ILLP, has an obligation to implement any changes to the ILLC/ILLP in UK law. Without timely implementation:

- there is a lack of legal certainty for operators due to differing international and domestic requirements;

- the playing field is not level for UK operators; and
 - the UK's reputation is at risk
- 4.2 Further details on each of these rationale for intervention are contained under sections 2 and 3 of this IA. The 'Do Nothing' is the baseline against which Options 1 and 2 are assessed.
- 4.3 **Option 1: Bring UK law in line with recent updates to ILLC/ILLP requirements by transposing them into UK law via traditional statutory instruments and without including an Ambulatory Reference provision for future amendments**
- 4.4 This Option would implement outstanding amendments to the Load Line Convention by transposition into secondary legislation, i.e. without Ambulatory Reference. The outstanding amendments, among other things, enhance watertight integrity, especially of doors and hatches exposed to the weather, and reduce the risk of sinking due to overloading, instability and insufficiency or failure of drainage structures resulting in the retention of water.
- 4.5 This option would very likely to take longer than Option 2, and would fail to address industry's concerns expressed at the time of the Red Tape Challenge. This would only be a temporary fix, and by the time it is implemented new amendments are likely to have been published so the UK will still be behind and it will be necessary to go through the whole process again. In other words, the UK would always be playing "catch-up". This Option would therefore lack effectiveness and be resource intensive, continuing the merry-go-round of spending public money on implementing legislation inefficiently.
- 4.6 **Option 2: Bring UK law in line with recent updates to ILLC/ILLP requirements and introduce ambulatory referencing to refer UK industry to the most up to date international Load Line legislation.**
- 4.7 This option would incorporate the outstanding international amendments into UK law and introduce ambulatory referencing by which future amendments would be introduced more efficiently, and at lower cost to the taxpayer.
- 4.8 This option will introduce ambulatory referencing to ILLC/ILLP which will directly fulfil the main request of industry from the Red Tape Challenge, which was to address the delay in transposition of international requirements. This option also:
- provides the legal certainty sought by industry as domestic legislation will no-longer be out of step with international requirements;
 - reduces the administrative burden for industry, as it can focus on the ILLC/ILLP text in technical areas, rather than also having to refer to national implementing legislation;
 - meets the industry desire for copy-out text, and reduce debates on whether a provision has been "gold-plated"; and
 - provides a level playing field between UK ships calling at foreign ports and foreign flagged ships calling at UK ports
- 4.9 This option has the support of the UK shipping industry and is therefore **the preferred option**.

5 Costs and benefits of each policy option

5.1 Introduction

This impact assessment (IA) has tried to qualitatively assess the additional costs and benefits of the recast Regulations compared with the 'Do Nothing' scenario, appraised over a ten-year period.

- 5.2 The full implications of these changes have required expert technical knowledge. Upon discussion with a major Classification Society⁶ and Maritime and Coastguard Agency surveyors we have concluded that the changes are broadly cost neutral. The results of this discussion, and indicative cost categories, can be found in Annex A.

⁶ Classification societies are private organisations that establishes and maintains technical standards for the construction and operation of ships. They will also validate that construction is according to these standards and carry out regular surveys in service to ensure compliance with the standards.

- 5.3 After discussions with industry stakeholders, we have agreed it would be extremely disproportionate to monetise the impacts, given the insignificance of the vast majority of changes. Doing so would require the employing a surveyor to do a detailed gap analysis of the changes and apply it to a number of hypothetical vessels that broadly represent the UK industry - neither the MCA nor industry have the resource to do this. As a whole, the International Load Line Convention imposes largely minor obligations at a highly technical level, and is primarily designed to provide information to ship operators on the safe operation of vessels. The changes assessed in the current impact assessment have been assessed by both MCA surveyors and the Classification Society as having a negligible impact, both individually and cumulatively. They are largely items of clarification and as such are not likely to have a significant cost to industry to implement when making design specifications for ships.
- 5.4 The consultation process did not yield any additional evidence that could be used to monetise these costs and benefits.
- 5.5 As with the MS (Safety of Navigation) impact assessment, it is expected that the proposals will lead to a benefit from a reduction in time spent to familiarise with both international and national legislation. At present ship operators need to be sure that where provisions of international conventions have been framed differently in UK law, it is given the same interpretation that it has internationally (in the convention). The introduction of an ambulatory reference to the international regulations means that ship operators can focus on the convention text in technical areas rather than also having to refer to national implementing legislation; which presents a benefit to industry. The consultation process did not yield any evidence that could be used to sensibly monetise the benefit from reduced time costs of familiarisation.
- 5.6 ***Option 1: Bring UK law in line with recent updates to ILLC/ILLP requirements by transposing them into UK law in the “traditional” way of writing new Statutory Instruments reproducing the obligations.***
- 5.7 **Costs**
Although the amendments to the ILLC and ILLP have already been implemented by shipowners, and any associated costs have already been incurred in order to continue operating internationally, this section seeks to identify the changes which have international force. Due to the fact that most of the changes are incremental, and all are technical – with implications that have long histories and complicated implications that can depend on circumstances on a case by case basis - the main areas of change are summarised in Annex A, with indicative cost categories. Drawing on expertise from a major Classification Society and Maritime and Coastguard Agency surveyors, the changes are considered broadly cost neutral.
- 5.8 Familiarisation costs - From informal discussions with industry, we have ascertained that there were familiarisation costs incurred when the international regulations came into force. However, they have been unable to put a value to the costs as they were incurred several years ago and were minor relative to other regulatory changes.
- 5.9 **Benefits**
The main benefit of the amendments to the ILLC and ILLP is to reduce the risk of maritime incidents, as a result of overloaded ships. As the amendments involve a large number of technical amendments, are a regulatory ‘stamp of approval’ of existing best practice and because incidents resulting from Load Line related issues tend to be major (e.g. sinkings) and are rarely caused by a single failure it is difficult to quantify the consequential reduced risk.
- 5.10 There may also be a reduction in insurance premia as a result of following more stringent load line regulation. However, when this has been investigated for previous impact assessments, it has been difficult to link specific regulatory interventions with a change in insurance premia.
- 5.11 From the large list of amendments, the following amendments have been identified as having some cost savings to ship manufactures:
- 5.12 Regulation 3(9)(b)(iii) - This clarification of what constitutes a lower deck when designated as a freeboard deck could result in less stringent door/hatch strength requirements higher up in the vessel. There could be a slight cost reduction, although whether this was realised would depend on circumstances on a case by case basis.
- 5.13 Regulation 10(3)(c) – the flexibility to dispense with an inclining test in specified circumstances has the potential to save owners the cost of such a test, which can work out expensive with the hire of

weights, cranes, surveyor time, etc.. Costs involved depends entirely on the vessel and the circumstances.

- 5.14 Regulation 18(2) – a slight relaxation that provides an equivalent level of safety, which allows that if internal doors in the companionway are weathertight, the external door need not be.
- 5.15 ***Option 2: Bring UK law in line with recent updates to ILLC/ILLP requirements and introduce ambulatory referencing to refer UK industry to the most up to date international Load Line legislation.***
- 5.16 **Costs**
The cost implications for Option 2 of implementing the outstanding amendments are the same as those described for Option 1.
- 5.17 **Benefits**
Option 2, due to the Ambulatory Reference element, would result in cost savings to government from implementing future amendments to the ILLC/ILLP. As these amendments would automatically apply, there would be a resource saving from not having to transpose the amendments into UK legislation, with the associated cost savings to government of policy officials', economists', lawyers' and MPs' time, and not having to produce additional legislation.
- 5.18 This option would also result in cost savings to industry as shipowners would only have to consult a single piece of legislation. Familiarisation costs resulting from future amendments to the ILLC/ILLP will therefore be lower as they will not read separate international and domestic requirements – although the UK government will provide guidance and clarification of the international text where necessary.
- 5.19 The risk of “gold plating” the original text would also be removed, as it would be the original text which would be incorporated into UK law.
- 5.20 This Ambulatory Reference Option, by efficient implementation of Convention amendments, also supports the UK status not only as host to the International Maritime Organization (IMO) – which brings in revenue for the City of London and the UK generally, but also as a Category A member of the IMO Council, which is important to the UK's influence as a maritime nation.
- 5.21 Furthermore, this Option fulfils the specific request by the Chamber of Shipping, the UK's industry body, for the use of Ambulatory Reference.
- 5.22 The benefits brought about by Regulation 3(9)(b)(iii), Regulation 10(3)(c) and Regulation 18(2) are the same as for Option 1.

6 Rationale and evidence that justify the level of analysis used

- 6.1 The proposed Regulations would incorporate the outstanding amendments to the ILLC/ILLP dating back to 2004. Industry has been fully engaged with these amendments throughout their development at the IMO and have contributed to the UK negotiating position at the IMO. Industry voiced its concern regarding the perceived lengthy delay for the transposition of international requirements into domestic law and championed Ambulatory Referencing as the solution.
- 6.2 Industry has had to comply with the international amendments in order to operate internationally. There is therefore no additional cost for industry involved in the UK incorporating the amendments into domestic law, which is the UK's obligation under international law. However, we have still attempted to provide indicative estimates of the scale of the impacts of the proposal where feasible.
- 6.3 The incremental and technical nature of changes means that benefits, relating to safety, and costs are not quantifiable without disproportionate effort. Incidents resulting from Load Line related issues tend to be major (e.g. sinkings) and are rarely caused by a single failure.
- 6.4 The level of analysis undertaken is in line with the depth of available information. A major Classification Society has been asked for their views on the cost implications the amendments identified had, and these views have been incorporated into Annex A which lists the changes and places them in broad cost “categories”.

7 Risks and assumptions

7.1 Risks of doing nothing

The risk of doing nothing is the damage to the UK's reputation as a world leader in the maritime industry. This would have a negative effect on the UK's influence at the IMO and in the EU forum on maritime issues. Furthermore the UK would not be able to detain and/or prosecute any substandard non-UK ships operating in UK waters, especially if an incident occurred, as is currently the case.

7.2 Risks of only bringing UK law in line with recent updates to international navigational requirements – as in Option 1

Whilst the recent updates will be implemented into UK law, this option only brings temporary relief to the backlog of international legislation to be implemented into UK law. Owing to finite policy/legal/analytical resources, any future amendments to ILLC/ILLP will join the aforementioned backlog. Therefore this option will not address industry's key demand during the RTC for the use of ambulatory referencing to expedite the implementation of amendments to international conventions.

7.3 Risks of implementing Option 2

There are no risks involved in implementing the ILLC/ILLP measures; industry are fully aware of the changes and are in compliance in order to continue trading internationally without hindrance.

7.4 There is a low risk of adverse publicity in connection with introducing Ambulatory Reference, in that there may be suggestions that this is by-passing the parliamentary and public scrutiny process for new legislation. However, this should be easily refuted by referral to the new scrutiny process, which not only incorporates public scrutiny, but does so at an earlier stage, with the involvement of industry. The reason the risk is assessed as "low" is that industry as a whole have requested Ambulatory Reference to give them legal certainty – so few of their members are likely to challenge it - and members of the public are unlikely to challenge it as the new process incorporates public element of consultation for those relatively few members of the public who have an interest in the highly technical detail involved.

7.5 Assumptions in relation to the monetary analysis

The following assumptions have been made for the cost-benefit calculations:

- Operators have already complied with the latest revisions of the ILLC/ILLP, therefore the cost is considered neutral (is a "sunk cost") as it has already been incurred. This assumption is supported by PSC data and the fact that ships' operators will comply to mitigate the potential for delays at PSC which can be very costly due to the logistical implications.
- The trend for ships joining and leaving the UK flag continue as per the last 24 months.

8 Wider Impacts

8.1 The wider social, environmental and economic impacts of the proposed policy options have been considered, together with possible unintended consequences. Where we have identified potential impacts, they are described in the following paragraphs:

8.2 Competition assessment

The new measures apply equally to all ships of the appropriate size calling at UK ports. Issues would not arise in respect of competition as ILLC/ILLP applies equally to all international ships.

8.3 Small and Micro Business Assessment (SaMBA)

Based on an analysis of the companies owning UK registered vessels (as at 16 October 2015), it is concluded that the majority of these companies affected by the ILLC/ILLP amendments are large, multinational or subsidiaries of multinationals and would therefore fall outside of the scope of the

small firms' impact test⁷. It is estimated that around 3% of ships (approximately 25 ships) on the UKSR are owned by companies which may employ less than 50 people. These smaller companies include the operators of tugs and local passenger ferries.

- 8.4 The proposed Regulations are targeted towards large ships, which in most cases be operated internationally. It is also anticipated that large ships are operated by large firms.
- 8.5 In any event, the ILLC/ILLP amendments are primarily concerned with loading, stability, drainage and watertight integrity on board ships, in order to protect lives and the environment. In the interests of safety, it is not possible to justify different requirements in these areas just because a company has fewer employees.
- 8.6 **Environmental & Carbon Impact**
None of the options would have any adverse environmental or carbon impact. In fact the amendments to ILLC/ILLP would only have the effect of improving the impact of the environment as they enhance ship safety with a view to reducing unwelcome incidents.
- 8.7 **Race, Disability and Gender Impact Assessment**
All options have been assessed for relevance but the measures proposed are not going to have any variation in impact on different groups; an Equalities Impact assessment is therefore not required.
- 8.8 **Human Rights**
It is believed that the Minister would be able to make the following statement: "In my view the provisions are compatible with the Convention rights."
- 8.9 **Family Test**
It is considered that there are no significant impacts on families.
- 8.10 **Enforcement**
There are no new penalties being introduced by these new measures as the existing offences and penalties are sufficiently broad to cover all requirements which fall under ILLC/ILLP. In fact, it may be possible to reduce the number of offences as offences which can be linked to the possession of a valid certificate may be incorporated with the offence of sailing without such a certificate. Upon introduction of the recast Regulations, the MCA enforcement team could then prosecute those ships that do not comply.

9 Post-implementation Review Plan

1. **Review status:** Please classify with an 'x' and provide any explanations below.

| | | | | | | | | | |
|--------------------------|---------------|-------------------------------------|---------------------|--------------------------|----------------------|--------------------------|--------------|--------------------------|-------------------|
| <input type="checkbox"/> | Sunset clause | <input checked="" type="checkbox"/> | Other review clause | <input type="checkbox"/> | Political commitment | <input type="checkbox"/> | Other reason | <input type="checkbox"/> | No plan to review |
|--------------------------|---------------|-------------------------------------|---------------------|--------------------------|----------------------|--------------------------|--------------|--------------------------|-------------------|

⁷ The following assumptions have been made when analysing companies owning UK registered ships:

i. Multinational / Multidisciplinary companies are unlikely to be smaller than a medium sized firm – otherwise they will not be able to conduct their operations

ii. Companies operating 6 small cargo/ 5 small passenger ships or more are unlikely to be smaller than a medium sized firm – otherwise it would not be able to comply with safe manning requirements and provide the shore based personnel infrastructure to deliver business needs. For example, based on a sample of the minimum number of crew required to comply with safe manning requirements for ships less than 50,000GT, it was found that on average:

| Ship Type and Size | Min. no. of crew |
|--------------------------------|------------------|
| Cargo Ship 150GT - 499GT | 5 |
| Cargo Ship 500GT - 2,999GT | 10 |
| Cargo Ship 3,000GT - 19,999GT | 14 |
| Cargo Ship 20,000GT - 49,999GT | 17 |

| Ship Type and Size | Min. no. of crew |
|------------------------------------|------------------|
| Passenger Ship 150GT - 499GT | 6 |
| Passenger Ship 500GT - 2,999GT | 10 |
| Passenger Ship 3,000GT - 19,999GT | 16 |
| Passenger Ship 20,000GT - 49,999GT | 31 |

2. **Expected review date** (month and year, xx/xx):

| | | | | |
|---|---|---|---|---|
| 0 | 4 | / | 2 | 2 |
|---|---|---|---|---|

Rationale for PIR approach:

Describe the rationale for the evidence that will be sought and the level of resources that will be used to collect it.

- **Will the level of evidence and resourcing be low, medium or high? (See Guidance for Conducting PIRs)**

The level of evidence and resourcing for this review will be low. The Regulations implement the International Load Line Convention 1966 and International Load Line Protocol 1988 (LLC/ILLP).

- **What forms of monitoring data will be collected?**

The review will include analysing data contained on the Ship Inspection and Surveys (SIAS) and THETIS databases to identify non-compliances with the requirements of ILLC/ILLP established through Port State Control inspections.

- **What evaluation approaches will be used? (e.g. impact, process, economic)**

The Maritime & Coastguard Agency (MCA) will check whether the shipping industry is complying with the new Regulations and, where possible, also whether they are having the desired effect on improving safety.

- **How will stakeholder views be collected? (e.g. feedback mechanisms, consultations, research)**

Officials from the MCA regularly host and/or attend meetings with stakeholders – their feedback on whether measures have had the desired effect or problems encountered is sought as part of ongoing stakeholder engagement.

Annex A – Full list of amendments

The cost categories below have been agreed with DfT Economists, MCA Surveyors and have been verified by a large Classifications Society:

| Cost Classification | Meaning |
|---------------------|---|
| A | There could have been significant costs which can be quantified. |
| B | There could have been significant costs which cannot be quantified. |
| C | Change was cost-neutral. |
| D | Change was cost saving which can be quantified. |
| E | Change was cost saving which cannot be quantified. |

| Convention/ Protocol/ Resolution reference | Subject matter | Cost | Remarks |
|---|---|--|---|
| Resolution MSC.143(77) | Structural strength Clarification of calculation method Relaxation of requirement to conduct inclining tests | C for majority of changes and E for one or two changes | This re-words text on structural strength, and assigns standards depending on the age of the ship, to reflect the state of the shipbuilding art at the time of build. Assessed as cost-neutral. |
| Resolution MSC.172(79) | Load Line Certificate, Load Line Exemption Certificate | C | Certificates design change to include survey date. |
| Resolution MSC.270(85) | Intact Stability (IS) Code Definition of IS Code | C | IS Code made mandatory. Cost negligible, as individual elements have already been implemented in domestic law via other SIs |
| Resolution 223(82) | Editorial reference relating to valves Moulded depth | C | Clarification of determination of moulded depth. |
| Resolution MSC.345(91) | Derivation of intact loading conditions Treatment of ballast water in loading calculations Alternative treatments for free surface effects Condition of Equilibrium | C | Clarification only. |
| Resolution MSC.329(90) | Boundary changes of Southern Winter Seasonal Zone | C | |
| MSC Corrigendum – Annex B, Annex II | Boundary changes of Southern Winter Seasonal Zone | C | Correction to Resolution 329(90) only. |
| Resolution MSC.356(92) | High Speed Craft (HSC) compliance | C | Confirmation that HSC built to HSC Code deemed compliant. |
| Resolution A.1083(28) | Audit, code of implementation Application, verification of compliance | C | Addition of definitions only. New Annex IV |
| Resolution MSC.375(93) | Audit, code of implementation | C | Addition of definitions only. New Annex IV. Incorporates elements of the IMO |

| | | | |
|--|--|--|--|
| | | | Audit. Cost is insignificant and is out of scope as it relates to policy development and state compliance with international conventions |
|--|--|--|--|

Annex B – Ambulatory Reference

Definition of ambulatory reference

An ambulatory reference for the purposes of this Impact Assessment is a reference in domestic legislation to an international instrument which is interpreted as a reference to the international instrument as modified from time to time (and not simply the version of the instrument that exists at the time the domestic legislation is made).

What does an ambulatory reference achieve?

Once an ambulatory reference to an international Convention, or part of an international Convention, is introduced into a Statutory Instrument (SI), new amendments to the Convention (or the referenced part of the Convention, if only part of it is referenced) will automatically become UK law. No additional SIs/ amendments to existing SIs will be required to bring such amendments into force.

Enabling Power to make Ambulatory Reference

On 26 March 2015, the Deregulation Act 2015 received Royal Assent. The Act introduced a new power to make ambulatory references to international instruments under a new section 306A of the Merchant Shipping Act 1995 (MSA 95). This power will only be used for “technical”, and therefore non-controversial, aspects of the Convention.

What assurances are in place to prevent undesirable amendments to international Conventions automatically coming into force?

1. A new SI must be created to introduce an ambulatory reference to an international Convention. The suitability of the international Convention will be assessed (taking into consideration the nature of amendments and the likelihood of whether they will be controversial) prior to the use of ambulatory reference being approved.
2. There is the facility for the Secretary of State (SoS) to block measures coming into force with which the UK does not agree. This facility will be available for exceptional circumstances, however, this “opt-out” it is not expected to be used frequently, if at all, because:
 - any UK arguments deemed necessary to shape the amendments will have been applied in the international negotiation stage;
 - the amendments, being of a technical nature, are not expected to be politically controversial;
 - the amendments, once agreed, will in any case be binding on the international community and therefore it will be necessary for UK ships wishing to operate internationally without hindrance to comply anyway

Regulatory process supported by the Better Regulation Executive for Ambulatory Reference measures

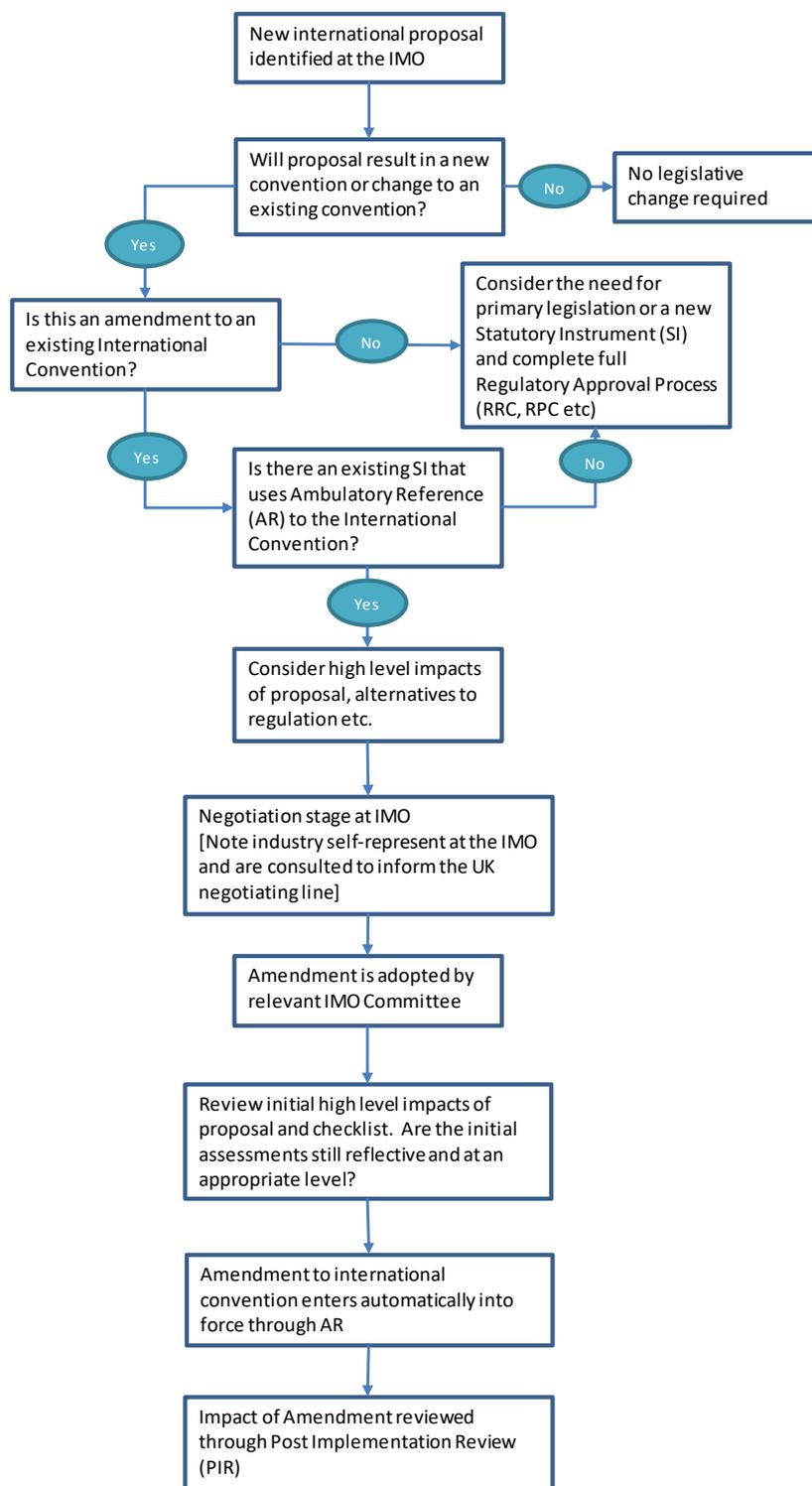
A flow diagram of the agreed scrutiny process is depicted overleaf, in essence the process will require:

- an ambulatory reference provision to be included in secondary legislation which will follow the full Parliamentary and Regulatory processes;
- subsequent technical amendments during the international negotiation process, will continue to be subject to:
 - consideration of high level impacts
 - stakeholder engagement
- full Post Implementation Review to be undertaken to evaluate whether the policy has achieved its goal and is still valid, and also evaluate the costs and benefits of all the technical amendments enacted since the previous review (or impact assessment)

The proposed approach streamlines the traditional regulatory process and directs it where the greatest influence can be achieved, at negotiation stage. The principles of Better Regulation are still captured:

- Alternatives to Regulation – prior to work commencing on any proposal at the IMO, a case for action must be demonstrated against the following criteria: practicality, feasibility and proportionality; costs and benefits to industry, including legislative and administrative burdens; and alternatives to regulation.

- Consultation – industry is represented at the IMO through non-governmental organisations, which are heavily involved in early stage policy development, contributing to working and drafting groups where policy is designed, as well as participating in plenary where policy is examined. Industry representatives are invited to meetings hosted by the MCA prior to IMO sessions to assist with the development of the UK’s negotiating position.
- Assessment of Impact – a high level consideration of impact is undertaken at proposal stage to inform the UK’s negotiation position. Post Implementation Reviews will be used to assess the robustness of the original assessment and will be timed to ensure they can feed into negotiations for future rounds of amendments.



How does Ambulatory Reference support Economic Growth?

The UK's ability to implement international agreements efficiently and effectively is important to the commercial shipping sector for a number of reasons:

- timely implementation means that UK ships plying internationally can properly be issued with certificates that confirm compliance with relevant international rules. Recent experience with the Maritime Labour Convention has highlighted a risk that current implementation practice could result in the UK delaying ratification of major agreements, potentially restricting the participation of UK shipping in international trade;
- the uniform implementation of international rules in all contracting states is vital in order to achieve a level playing field for UK ships that trade internationally. The UK must be capable of certifying its own ships to the relevant standards; failure to do so makes it much more likely that a UK ship will be detained in a non-UK port for non-compliance. We must also be able to enforce those same standards against non-UK ships in UK ports, to ensure that compliant UK ships are not disadvantaged;
- current implementation practice has created a complicated and disjointed regulatory regime that diverges significantly from the international structure. This creates administrative burden for industry, because of the needless duplication of effort needed to ascertain the domestic legal position, and because of the unnecessary complexity of the domestic regime;
- a transparent, accessible and up-to-date legal regime is a vital component of a quality flag. Improving the way we implement international law will reflect the UK's ambition to make its flag a more attractive place to do business, as well as protecting our reputation as a world-class maritime administration, both with industry and the international institutions (such as the EU and the IMO) with responsibility for maritime policy;
- when discussing technical matters with overseas clients or shipyards and designers, it helps to have a common source of reference. Those working within the UK regime will be familiar with the UK's implementation, but those in other states will have no knowledge of it;
- when an owner wishes to change flag to the UK, the ship will have been constructed to the international requirements. Differences in UK law (occasionally deliberate gold-plating, but mostly differences in legislative drafting styles and delays in implementing amendments) make assessing a ship's compliance unnecessarily complicated, and may create additional hurdles capable of discouraging owners from transferring to the UK.

Annex C – Glossary of Terms

Amidships - Amidships is at the middle of the length (L). *Taken/adapted from definition in International Load Line Convention*

Block coefficient - is given by

The block coefficient (C_b) is given by:

$$C_b = \frac{\Delta}{L \cdot B \cdot d_1}$$

Where Δ is the volume of the moulded displacement of the ship, excluding appendages, in a ship with a metal shell, and is the volume of displacement to the outer surface of the hull in a ship with a shell of any other material, both taken at a moulded draught of d_1 ; and where d_1 is 85% of the least moulded depth. *Taken/adapted from definition in International Load Line Convention*

Breadth - Unless expressly provided otherwise, the breadth (B) is the maximum breadth of the ship, measured amidships to the moulded line of the frame in a ship with a metal shell and to the outer surface of the hull in a ship with a shell of any other material. *Taken/adapted from definition in International Load Line Convention*

Bridge - a superstructure which does not extend to either the forward or after perpendicular. *Taken/adapted from definition in International Load Line Convention*

Bulwark - a wall that is part of a ship's sides and that is above the ship's upper deck. *Merriam-Webster*

Depth for freeboard - is the moulded depth amidships, plus the freeboard deck thickness at side. *Taken/adapted from definition in International Load Line Convention*

Fiddley - The vertical space above a vessel's engine room extending into its stack, usually covered by an iron grating. Also applied to the framework around the opening itself. *Lexbook.net*

Forecastle - a superstructure which extends from the forward perpendicular aft to a point which is forward of the after perpendicular. The forecastle may originate from a point forward of the forward perpendicular. *Taken/adapted from definition in Annex 1, Regulation 3(8) of the International Load Line Convention*

Freeboard - the freeboard assigned is the distance measured vertically downwards amidships from the upper edge of the deck line to the upper edge of the related load line. *Taken/adapted from definition in International Load Line Convention*

Freeboard Deck - Deck from which freeboards are calculated, usually the uppermost deck completely exposed to the sea (weather deck).

Freeing port - An opening in the rail (bulwarks) along the deck to allow water to drain. *MiMi Boating website: http://en.mimi.hu/boating/freeing_port.html*

Load Line Length - 96% of total length on a waterline at 85% of the least moulded depth measured from the top of the keel, or length from fore-side of stem to the axis of the rudder stock on that waterline. *Taken/adapted from definition in International Load Line Convention*

Load line mark - a ring 300 mm in outside diameter and 25 mm wide which is intersected by a horizontal line 450 mm in length and 25 mm in breadth, the upper edge of which passes through the centre of the ring. The centre of the ring is placed amidships and at a distance equal to the assigned

summer freeboard measured vertically below the upper edge of the deck line. *Taken/adapted from definition in International Load Line Convention*

Moulded depth - is the vertical distance measured from the top of the keel to the top of the freeboard deck beam at side. *Taken/adapted from definition in International Load Line Convention*

Perpendiculars - The forward and after perpendiculars shall be taken at the forward and after ends of the length (L). The forward perpendicular shall coincide with the foreside of the stem on the waterline on which the length is measured. *Taken/adapted from definition in International Load Line Convention*

Poop - a superstructure which extends from the after perpendicular forward to a point which is aft of the forward perpendicular. The poop may originate from a point aft of the aft perpendicular. *Taken/adapted from definition in International Load Line Convention*

Rake of Keel - is defined as the height the keel raises from the after perpendicular to the fore perpendicular *Shipping Encyclopedia.com*

<http://www.shippingencyclopedia.com/term/rake-of-keel>> (i.e., sloping keel not parallel to the waterline).

Sea – does not include Category A, B, C or D waters [**or similar coastal areas of other states**]. Regulation 2(1) Merchant Shipping (Load Line) *Regulations 1998 (SI 1998/2241)*

Sheer - The upward curve of the deck of a ship toward the bow and stern with the lowest point at or near the waist when viewed from the side. *Age of Sail.net ageofsail.net*

Spurling pipe - a pipe or tube through which an anchor chain passes to the chain locker below the deck of a ship. *Merriam-Webster*

(Deck) Stringer - a strake of plating secured to the deck beams along the outer edge of a ship's deck in order to connect the beams to the side of the ship and to each other. *Merriam-Webster*

Superstructure - a decked structure on the freeboard deck, extending from side to side of the ship or with the side plating not being inboard of the shell plating more than 4% of the breadth (B). *Taken/adapted from definition in International Load Line Convention*

Verification of marks - the International Load Line Certificate must not be delivered to the ship until the officer or surveyor acting under the provisions of Article 13 of the International Load Line Convention has certified that the marks are correctly and permanently indicated on the ship's sides. *Taken/adapted from definition in International Load Line Convention*

Watertight - means capable of preventing the passage of water through the structure in either direction with a proper margin of resistance under the pressure due to the maximum head of water which it might have to sustain. *Taken/adapted from definition in International Load Line Convention*

Weathertight - means that in any sea conditions water will not penetrate into the ship. *Taken/adapted from definition in International Load Line Convention*