

## IN 1345 – Regulatory Update - September 2016

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### 1. Welcome

**Welcome to the first of what is intended to be a series of regular bulletins from the IMCA team to keep Members informed about regulatory developments. These bulletins will be kept short and to the point.**

Rather than providing detailed evaluations of new regulations and other activities, they will raise awareness and point to more comprehensive sources of information where necessary.

As a general comment, today's regulatory agenda is being increasingly driven by environmental issues. Shipping is under increasing pressure to lower greenhouse gas emissions and to contribute to global efforts to counter anthropogenic climate change. This pressure is unlikely to abate, on the contrary shipping should expect these pressures to increase.

Some of the work items at the International Maritime Organization (IMO) may well affect IMCA Members significantly, especially those who are not yet prepared, such as the entry into force of the International Convention for the Control and Management of Ships' Ballast Water & Sediments. Whilst some of these items – such as the IMO's efforts to reduce emissions of greenhouse gases – appear to have limited immediate impact for our Members, they have the potential to profoundly alter the face of shipping in the longer term.

Looking beyond IMO, the United States and European Union both continue to develop a range of new regulations, many of which will affect IMCA Members. Some of these initiatives are not fully aligned with IMO requirements.

IMCA believes that IMO is the most appropriate forum to develop regulations for international shipping and that regional and national regulations applicable to international shipping should be aligned with those agreed at IMO.

### 2. Ballast water

Perhaps the regulatory issue generating the most concern amongst our Members (and indeed, the wider maritime community) is the International Convention for the Control and Management of Ships' Ballast Water & Sediments.

Following Finland's recent ratification, the Convention has now reached the required limit of global merchant shipping tonnage required to trigger its entry into force. 12 years after being adopted by IMO, it will enter into force on 8 September 2017. IMCA Members need to be prepared.

### 3. Greenhouse gas emissions and global warming

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There is now a global consensus that anthropogenic climate change is real and general agreement that something needs to be done to reduce emissions of greenhouse gases. This is not primarily a marine or offshore energy debate, but these sectors can expect increasing pressure from international bodies to reduce greenhouse gas emissions and they will be expected to 'do their bit'.

## **IMO developments on the energy efficiency of international shipping**

IMO considered the impact of the Paris agreement on climate change agreed at the 21st session of the Conference of Parties (COP 21) and the responsibility of the shipping industry to contribute to a reduction of global greenhouse gas emissions at MEPC 69. IMO is recognised as the appropriate body to develop measures to promote such a reduction. The main tool to achieve this is the work item on further technical and operational measures for enhancing the efficiency of international shipping. MEPC 69 agreed to establish a working group under this item at MEPC 70, with a view to an in-depth discussion on how to progress the matter, taking into account all documents submitted to this session, comments made and any further related proposals.

The work being undertaken by IMO on further technical and operational measures for enhancing the energy efficiency of international shipping will result in a mandatory mechanism for the reporting of fuel use by merchant shipping.

MEPC 69 established a correspondence group to develop a draft proposal for such a scheme and IMCA is a member of this group. The draft data collection requirements will be put forward for adoption at MEPC 70 in October 2016 and could enter into force in 2018. IMO is pursuing a three phase approach; data collection, data analysis and then consideration of what measures may be necessary to improve the efficiency. This is logical and sensible.

IMCA is working to ensure that the particular operating challenges of the contracting sector and dynamically positioned vessels are recognised. In particular, IMCA has been focusing on issues around anonymity and the fact that IMO guidelines for dynamically positioned ships are based on managing risk through redundancy, which effectively means that they will not operate at maximum possible efficiency. IMCA believes that the safety of such vessels is paramount and that whilst we support efforts to improve efficiency – after all, reducing fuel use has both environmental benefits for society and financial benefits for our Members – this should not be at the expense of safety.

## **EU regulation**

The IMO work is equivalent to the measures which the European Union is introducing as a result of Regulation 2015/757, which provides requirements for the monitoring and reporting of carbon dioxide emissions from maritime transport, and will take effect from 1 January 2018.

The EU scheme may have limited impact on IMCA Members, one of the key European clauses is:

'Voyage' means any movement of a ship that originates from or terminates in a port of call and that serves the purpose of transporting passengers or cargo for commercial purposes;

This indicates that most IMCA Members' vessels will probably be excluded as they

are carrying neither passengers nor cargo for commercial purposes. Also, the minimum size threshold for the European MRV scheme is 5,000GT which will probably mean that many Members' vessels are outside the scope. Significantly, the IMO arrangements will probably not apply this threshold, therefore there may be a significant variation between EU and IMO requirements.

This is unhelpful as duplication of regulation, in ways which include such variations, merely adds additional burdens and costs to industry in having to manage compliance plans for different regimes.

Although, at the moment, the collection of fuel use data may present an additional administrative burden for Members, they should appreciate the implications of phase three of this work. Ultimately the data may be used to support further technical and regulatory changes.

IMCA plans to play an active part in discussions so as to advocate that any planned measures are pragmatic, proportionate, and achievable

## **4. Emissions to air**

With all of the debate around greenhouse gases, carbon emissions and climate change it is easy to forget that emissions to air are about much more than carbon dioxide. IMO has been active in regulating emissions to air for many years, using Annex VI of the MARPOL Convention. These regulations are mainly concerned with emissions of sulphur oxides (SO<sub>x</sub>) and nitrogen oxides (NO<sub>x</sub>), although there is increasing attention on black carbon.

### **ECA-NO<sub>x</sub> planned for North Sea & English Channel**

The big news on emissions to air is that applications have been submitted to MSC 97 to make the North Sea & English Channel and Baltic Sea emissions control areas (ECAs) into ECA-NO<sub>x</sub>. If approved, then this would mean that ships built on or after 1 January 2021 would need engines approved to the Tier III NO<sub>x</sub> emission standard as defined in MARPOL Annex VI Regulation 13.

### **IMO plans SO<sub>x</sub> cap**

IMO has regulated emissions of SO<sub>x</sub> by mandating maximum allowable fuel sulphur content, including a global cap of 0.5% sulphur to take effect in either 2020 or 2025, subject to a review of fuel availability. IMO plans to complete this review of fuel availability and make a final decision (on whether to implement the cap in 2020 or delay it until 2025) at MEPC 70. Whilst many IMCA Members may see this as a peripheral issue, if their vessels operate on low sulphur distillate fuels they should be aware that a global shift of the conventional merchant shipping fleet to these fuels may result in higher prices. This would be the inevitable result of a tightening of the availability of distillate fuel.

### **BOEM draft regulations for air quality**

In April 2016, the US Bureau of Ocean Energy Management (BOEM) published draft regulations for air quality which would include ships and vessels working as

part of the regulated activities. IMCA submitted a response to the invitation to comment, stressing that shipping is already subject to international and national emissions regulation – including MARPOL Annex VI – and that duplicating regulations and adding additional requirements will increase the burden on vessel operators without adding value. Additionally, IMCA expressed concerns that some of the detailed technical content was unsound. We are awaiting further developments.

## **5. Carriage of personnel**

The ‘carriage of more than 12 industrial personnel on board vessels engaged on international voyages’ referred to in the SOLAS Convention has been a long running issue for some IMCA Members.

The SOLAS Convention only recognises two categories of person on-board:

- Crew and persons otherwise engaged on the work of the vessel; and
- Passengers.

There is a third category of special person provided by the SPS Code, however the SPS Code explicitly prohibits its application to the carriage of industrial personnel not engaged in the work of the vessel (SPS Code 2008 paragraph 1.2.3). Industrial personnel, in the context of the ongoing IMO discussions, are workers transported on offshore vessels who have received appropriate safety training and who are medically fit. As a result, their risk profile is very different when compared with ordinary passengers.

### **Development of a chapter and code regulating industrial personnel**

At MSC 96 a working group considered the development of a new chapter of SOLAS, solely regulating industrial personnel, and a new Code, addressing the carriage of more than 12 industrial personnel on board vessels engaged on international voyages. The working group proposed a road map identifying the priorities, time frames, responsibilities and long and short-term objectives. This working group also proposed a non-mandatory interim recommendation to support industry in the form of an MSC resolution. This resolution was intended to be superseded by the anticipated new chapter of SOLAS and new Code on Industrial Personnel upon their entry into force. The non-mandatory interim recommendations were considered to be necessary in light of the urgent need for a solution and the time which is expected to be needed to agree the new chapter of SOLAS and the new code.

### **Resolution not approved**

IMCA felt that the draft resolution was a useful intermediate step which would have assisted its Members. Unfortunately, it was not approved by the committee and further discussions are planned at MSC 97. The challenge is that reconciling guidance for industrial personnel with SOLAS is difficult. The draft resolution recommended using exemptions and equivalents under SOLAS. Nevertheless, some delegations are uncomfortable with introducing those exemptions. Countries are developing their own codes and positions for vessels carrying industrial personnel on non-international voyages. One concern is that this could result in a

divergence of standards and make an IMO solution even more difficult to achieve.

IMCA is considering a submission to MSC 97 and will continue its efforts to secure a workable solution for this issue.

## **6. Vessels and equipment**

The more traditional marine regulatory matters (of ensuring ships and their equipment are designed and constructed to suitable standards and that there are appropriate requirements for the use of their equipment and on-board systems) continue to receive much attention.

### **Revised Dynamic Positioning (DP) guidelines**

Work at IMO to revise the guidelines for Dynamically Positioned (DP) vessels continues with IMCA having just submitted its responses to round 4 of the correspondence group's work. IMO hopes that the revised guidelines will be finalised at the next meeting of the Sub-Committee on Ship Systems and Equipment (SSE) in March 2017, and approved at MSC 98 in June 2017. The core principles of the DP equipment classes and redundancy will not change.

### **US requirements for DP vessels**

The United States Coast Guard (USCG) has been developing US requirements for DP vessels. IMCA and other interested stakeholders, such as the International Association of Drilling Contractors (IADC), submitted responses to the draft proposals (79 FR 70944) in 2015. We are still awaiting further information and issue of the USCG response to the consultation, but expect that the next stage of the process will be in 2016. These requirements have the potential to significantly affect Members.

### **Intact Stability Code amendments**

Another item of particular interest to many IMCA Members is work at IMO to amend the intact stability code. Following the 3rd session of the Sub-Committee on Ship Design and Construction (SDC 3), MSC 96 approved amendments to the introduction of the code regarding vessels engaged in lifting and towing operations. Proposed amendments to Part B of the code regarding anchor handling and lifting operations were agreed in principle at MSC 96, but it was agreed that they would be included in a consolidated proposal for amendments to the code, which will be submitted to MSC 97 for approval. IMCA Members were very active in assisting IMCA's IMO representatives at the correspondence and working groups on this issue and were satisfied with the proposed Part B amendments for lifting operations and calculation of stability criteria.

### **Onboard lifting appliances and winches**

A correspondence group of the IMO SSE sub-committee is continuing its work to develop draft IMO guidelines for onboard lifting appliances and winches. The group

is working within the instructions agreed at MSC 95 that the IMO guidelines should cover: design, fabrication and construction for new installations; onboard procedures for routine inspection; maintenance and operation of lifting appliances and winches; and familiarisation of ship's crew and shore-based personnel. The group will propose goal and function-based SOLAS regulations requiring that onboard lifting appliances and winches be designed, constructed and installed either "in accordance with codes or standards acceptable to the Organization" or "to the satisfaction of the Administration"; and maintained in accordance with guidelines for onboard lifting appliances and winches being developed by the Organization. IMCA features in the correspondence group and is representing the interests of its Members in advocating appropriate goals and recognition of existing industry codes and standards.

## **7. Security**

Cyber security is increasingly being recognised as a significant threat to maritime safety and security. At IMO MSC 96 the committee agreed to develop high-level and non-mandatory guidelines on cyber risk management, with a focus on operational aspects. A working group on maritime security is considering this matter. It was also agreed that the guidelines should be practical, easy to use, risk-based and should take into account existing standards and the work done by other organisations. ISO indicated that they intended to complement the work on cyber security using the ISO/IEC 27000 series and would submit a progress report to MSC 97.

### **New EU network and information security directive**

The new European network and information security directive (Directive (EU) 2016/1148) was approved by the European Parliament in July. Member States are obliged to transpose it by May 2018. Note that for UK based Members, Brexit will not affect the UK's adoption and implementation of this directive.

The Directive requires operators of essential services to "take appropriate and proportionate technical and organisational measures to manage the risks posed to the security of network and information systems which they use in their operations". Additionally, they are to "take appropriate measures to prevent and minimise the impact of incidents affecting the security of the network and information systems used for the provision of such essential services, with a view to ensuring the continuity of those services". The directive requires operators of essential services to report "incidents having a significant impact on the continuity of the essential services they provide" without undue delay to "competent authorities" or computer security incident response teams that will be established within each EU member state.

Whilst this is not specifically a maritime or energy directive, it will affect members and is a further sign of the increasing awareness by regulators of the need to protect cyber security. IMCA has been active in promoting awareness of cyber threats and the need for cyber security for a long time and will continue to monitor and participate in cyber security initiatives as a member of the European Commission Stakeholder Advisory Group on Maritime Security (SAGMaS).

## **8. Maritime Labour Convention**

An amendment concerning financial security arrangements/insurance for abandoned seafarers takes effect on 18 January 2017. This will ensure that abandoned seafarers, or those suffering death, injury and/or long term disability are insured and will be repatriated.

## 9. European affairs

The European Union (EU) continues to develop regional regulations applicable to the maritime sector.

The major EU development in recent months has been the result of the United Kingdom referendum on its continuing Membership of the EU, so called Brexit. At the moment nothing has changed, the UK has not triggered the exit clause or commenced serious negotiations on exit and is still developing its exit strategy. Therefore, despite a lot of media reporting and emotional responses, it is important to retain some sense of perspective and objectivity. Whilst it is still uncertain what will happen, IMCA expects that Brexit will have limited impact for most of its Members.

Returning to regulatory developments, some of the more notable items are the potential extension of European product safety directives to the offshore sector and work to develop a hydrocarbon Best Available Techniques Reference (BREF).

### **ATEX directive concerns**

Following the publication of a European Commission (EC) Joint Research Centre Study in April 2016 – which assessed the impacts of possible amendments to the ATEX (equipment for potentially explosive atmospheres), Machinery and Pressure Equipment Directives, with respect to equipment intended for use in the offshore oil & gas industry – IMCA joined with the **European Community Shipowners' Associations** (ECSA) and **IADC** to submit a response to the EC. -

IMCA, along with its partners at ECSA and IADC, believes that flag administration and classification society rules are already sufficient and that in some cases application of the ATEX directive would actually be a dilution of risk controls. Extending the European product directives to the offshore sector would be onerous, costly and not offer technical benefit.

### **European Commission Hydrocarbon BREF work**

The EC continues to work on its proposed Hydrocarbon BREF process. Although the outcome of the BREF process is unlikely to apply to IMCA Members directly, the potential negative consequences are likely to have implications across the oil and gas supply chain, in which the majority of our Members work. IMCA responded formally to the EC in September 2015 to raise its concerns. At the most recent meeting of the **EU Offshore Authorities Group** (EUOAG) meeting in June 2016 there was an update; it was clear that some of the member state regulators still have serious reservations about this work. These member state regulators share IMCA's view that the work could potentially undermine existing implementation of EU legislation, which already addresses the safety and environmental risks which would be the focus of the BREF.

The BREF may be perceived as promoting a more prescriptive selection of appropriate safety and environmental protocols. Such an approach would be in conflict with the goal-based approach on which the Offshore Safety Directive is based and would undermine the ALARP (as low as reasonably practicable) principle, to which the oil and gas industry is already working. The Environment Directorate-General of the European Commission (DG Environment) has previously offered assurance that BREF reports are not legally binding and that the industry would not be obliged to follow the recommendations that came out of one.

However, experience suggests that once a procedure or piece of equipment has been identified as representing 'best practice', companies can find themselves legally obliged to defend any deviation from those best practices, particularly in the case of an incident. Under the ALARP approach, operators are already required to justify the risk mitigation procedures that they put in place. Having to defend any decision to select alternative procedures to those identified in a BREF could divert resources and also have safety implications. IMCA continues to attend EUOAG meetings and will monitor this issue.

## 10. US affairs

United States regulators continue to be active in developing and revising regulations on a range of issues. Some of the more significant items have already been considered, such as work to develop DP requirements and new BOEM emissions regulations.

### Well intervention vessels policy

The USCG and **Bureau of Safety & Environmental Enforcement** (BSEE) have been collaborating to consider a new policy for well intervention vessels. IMCA has been participating in the work of a National Offshore Safety Advisory Committee (NOSAC) task group which has been developing recommendations for the USCG/BSEE and promoting an appropriate balance between vessel standards and risk assessment. The task group will deliver its report later in 2016. The revised draft USCG diving regulations are due to be reissued again later this year for consultation.

Depending on the number and significance of the responses during the next review phase, they may be reissued again for comment, before enactment.

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