Merchant Shipping Bill 2009

Screening Regulatory Impact Analysis

Domestic Passenger and Cargo Vessels

(1) Policy Context/Background

The Merchant Shipping Acts 1894 to 2005 deal with safety of life at sea, in relation to matters such as the construction, equipment and operation of ships (passenger, cargo, fishing and leisure craft), and seafarer training and competencies. The Acts also encompass matters such as navigation, lighthouses, salvage and the investigation of marine casualties.

A number of amendments to the provisions in the Merchant Shipping Acts are now required for the following reasons:

- to improve safety of life at sea by ensuring that enabling provisions in relation to the making of rules and regulations for the safety of cargo and passenger vessels under the Merchant Shipping Acts 1894-2005 are up to date to cover all relevant categories of vessels (cargo, passenger, fishing vessels and leisure craft) and are ample to enable the further implementation of the International Convention for the Safety of Life at Sea (the SOLAS Safety Convention). The matters being regulated for include construction rules for passenger vessels, cargo ship construction and survey rules, radio rules, navigation and tracking rules, cargo ship bulk carrier rules, fire protection rules, rules for life-saving appliances and arrangements and approval of service stations for inflatable life-saving appliances. Details of the enabling provisions as proposed in the Bill are set out at appendix 1.

(2) Statement of Objectives

The amendments are proposed in order to improve safety of life at sea by ensuring that enabling provisions in relation to the regulation of passenger, fishing, leisure craft and cargo vessels (including bulk carriers) are up to date.

(3) Identification of Options/Choices

Option 1 - Do nothing. This is not a realistic option. Due to legal advice received, a doubt has been cast over whether the Minister has powers to make Rules and Regulations under existing primary legislation. Regulations are required to enhance safety at sea by applying up to date safety standards to all vessels in order to prevent casualties and save lives.
Option 2. Self-Regulation. The priority is to save lives by improving standards of safety for all vessels. As the owners of the vessels involved are operating businesses for profit they have no incentives to improve safety standards that would have a cost on business.

Option 3 – Amend the Merchant Shipping Acts to give the Minister the necessary powers to bring in safety regulations. The Minister has brought in various Regulations and Rules for certain categories of passenger ships, passenger boats and cargo ships and now wishes to extend regulations to cover more vessels. The enabling provisions in the proposed Bill are required to do this and details of these are set out in the appendix 1.

(4) Identification of Costs, Benefits and Impacts

(i) Risks and Assumptions

Options 1 and 2. There is a risk that the number of marine accidents and fatalities will not be reduced as the vessels, to which we wish to apply any proposed rules and regulations to be made under this Act, would not have up to date standards.

Option 3. The risk of accidents would be reduced as an enhanced maritime safety regime will be put in place.

There are no assumptions attached to this proposal

(ii) Costs

Option 1. There would be additional costs involved to the Exchequer in relation to accident search and rescue operations and investigations which may arise as a result of vessels not meeting up to date standards.

Option 2. There would be additional initial costs involved to the Exchequer initially in setting up a self regulatory system and also costs on an ongoing basis monitoring it.

Option 3.

<table>
<thead>
<tr>
<th>Vessel</th>
<th>Initial Exchequer Costs</th>
<th>Initial Costs to Industry</th>
<th>Compliance Costs</th>
<th>Costs to Consumers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Passenger Ships</td>
<td>None as system of enforcement and compliance in place</td>
<td>Costs incurred in updating construction standards and equipment</td>
<td>Ongoing application cost for Survey and Certificate</td>
<td>Possible increase in price to cover costs</td>
</tr>
<tr>
<td>Passenger Boats</td>
<td>None as regulations already in place</td>
<td>None as regulations already in place</td>
<td>Application cost for licenses</td>
<td>Possible increase in price to cover costs</td>
</tr>
<tr>
<td>Radio Installations</td>
<td>Additional staff cost to ensure compliance</td>
<td>€450,000 (150 vessels by €3000)</td>
<td>Ongoing costs for radio surveys</td>
<td>Possible increase in price to cover costs</td>
</tr>
<tr>
<td>Cargo Ships</td>
<td>Additional staff cost to ensure</td>
<td>Costs incurred in updating</td>
<td>Ongoing application cost</td>
<td>Possible in crease in price</td>
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<td>compliance</td>
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(iii) **Benefits**

Option 1. There is no benefit to the Exchequer resulting from option 1. Vessel owners would benefit as they would not incur additional costs.

Option 2. The benefit of option 2 to the Exchequer is that it avoids bringing in legislation and allows passengership operators to regulate themselves. This self-regulation would be unlikely as the operators have no incentive to improve safety standards that would have a cost on their business.

Option 3. This will lead to an enhanced maritime safety regime for users of passenger vessels and cargo ships.

(5) **Other Impacts**

**Impact on National Competitiveness**

The proposals will have not have an impact on national competitiveness as all owners will be required to update their vessels to the safety standards proposed under any new regulations.

**Impacts on the Socially Excluded or Vulnerable Groups**

The proposals deal with the implementation of an enhanced maritime safety regime. There may be a minimal impact on the socially excluded or vulnerable groups resulting from its implementation should vessel owners increase their prices to cover costs involved in complying with regulations.

**Impacts on the Environment**

The implementation of the proposals will have a positive impact on sea pollution, i.e. ships will be safer resulting in less accidents and in turn less pollution through oil spillage.

**Economic Market/ Consumers and Competition**

The proposals do not involve a significant policy change in the economic market and will not have any significant impact.

**Impacts on the Rights of Citizens**

There may be negative impacts on the rights of citizens resulting from the implementation of the proposals, in that some owners may feel that any regulations made under the proposals would be too costly to comply with and so cease operating.
Compliance burden

(a) Passenger Ships: there will be a compliance burden for new passenger ships in relation to construction equipment, life-saving appliances and arrangement, fire protection rules and Radio Rules. There are already construction Rules, fire protection rules and rules for life-saving appliance and arrangements in place for existing passenger ships so the compliance burden would only apply to Radio Rules and to a lesser extent the expanded provisions in relation to other rules.

(b) Passenger boats: Passenger Boat Regulations are already in place so there will be no additional compliance burden as a result of this proposal.

(c) Cargo ships: as the proposal will extend the Minister’s power to make construction rules for sea-going cargo ships of less than 500 gross tonnes and all non-sea going cargo ships, there will be a compliance burden on these ships.

(d) Radio Rules: Radio Rules, when enacted, will apply to all ships registered in the State.

(e) Bulk carrier rules: bulk carriers are a sub set of cargo ships and these vessels must comply with cargo ship construction and survey rules in addition to bulk carrier rules, there will be a compliance burden on these ships.

(f) Fire protection rules: ships must comply with fire protection measures already but the Bill proposes to introduce express rules for fire protection, there will be a compliance burden on ships

(g) Service stations for inflatable life-saving appliances: the Bill proposes that new regulations may be introduced for the servicing of inflatable life-saving appliances, there will be a compliance burden.

Consultation

The Bill will provide the Minister with enabling powers to make safety regulations for radio rules and certain cargo ships. Domestic passenger ship owners have been consulted in relation to the proposed rules, and comments received during this consultation process will be taken into consideration during the drafting of the rules.

In relation to the Radio Rules, rules for life-saving appliances and arrangements and fire protection rules the industry will be fully consulted before the new rules come into effect. As the majority of vessels are already using the GMDSS system, compliance should not prove too difficult for the industry. This will also apply in relation to the approval of service stations that is being introduced under this Bill.

As is normal practice, owners of cargo ships (including bulk carriers) will be consulted in relation to the proposed cargo ship rules and any comments received on foot of the consultation process will be taken into consideration in the drafting of the rules. A lead-in period will be given before the rules come into effect.
Enforcement and Compliance

The Department of Transport’s Surveyors of ships will enforce any regulations introduced on foot of the proposed primary legislation. A new provision in the bill introduces a procedure for application to the Circuit Court by surveyors of ships for compliance orders in situations where a safety deficiency has not been remedied. A right of appeal is established for the owners/masters of ships and the operators of service stations in respect of a notice issued to them by a surveyor of ships.

Review

The proposed primary legislation only contains enabling provisions. Rules, once introduced, are kept under review through experience and best practice.

Regulatory parameters

Appendix 1 – enabling provisions

The enabling provisions in relation to the making of rules and regulations contained in the proposed Merchant Shipping Bill are required to enhance safety of life at sea by updating the Merchant Shipping Act 1894-2005 and to provide for the further implementation of the International Convention for the Safety of Life at Sea (SOLAS).

These enabling provisions provide powers for the Minister for Transport to make rules and regulations for matters which include construction rules for passenger vessels, cargo ship construction and survey rules, radio rules, navigation and tracking rules, cargo ship bulk carrier rules, fire protection rules, rules for life-saving appliances and arrangements and approval of service stations for inflatable life-saving appliances.

1. Construction rules

The Minister may make construction rules prescribing the requirements that the hull, superstructure, subdivision and stability, electrical installations, equipment and machinery of and fuel used in passenger steamers.

In making construction rules the Minister may categorise vessels into different classes, where appropriate, having regard to one or more of the following:

(a) the size, shape, speed and configuration of such steamers;
(b) the service for which such steamers are to be employed;
(c) the nature and duration of voyages to be undertaken;
(d) the number of passengers or other persons, or both, that such steamers are designed to carry on board;
(e) such other matter or matters that the Minister considers appropriate to take into account in the circumstances;
(f) the type of cargo carried, including dangerous goods,
(g) the age and date of construction of steamers.

Construction rules shall include such requirements as appear to the Minister to be necessary to implement the provisions of the Safety Convention prescribing the requirements that the hull, superstructure, subdivision and stability, electrical installations, equipment and machinery of and fuel used in passenger steamers must comply with.

Different construction rules may be made in respect of different classes of passenger steamers and in relation to different classes of passenger steamers for different circumstances and different areas of operation.

Construction rules shall apply to passenger steamers registered in the State and to other passenger steamers while in the territorial seas or elsewhere in the State.

2. Radiocommunications rules (radio rules)

The Minister may make radio rules requiring-
(a) ships to which the rules apply to be provided with a radio installation, other than a radio navigational aid, of such a nature as may be prescribed by the rules,
(b) to maintain such a radio service and to carry such number of persons, of such grades and possessing such qualifications, as may be prescribed, and
(c) such ships to be surveyed to such extent and in such manner and at such intervals, as may be prescribed.

In making radiocommunications rules (radio rules) the Minister, after consultation with the Minister for Communications, Energy and Natural Resources, may make rules and may categorise ships into different classes, where appropriate, having regard to one or more of the following:
(a) the service for which such ships are to be employed;
(b) the nature and duration of voyages to be undertaken;
(c) the number of passengers or other persons, or both, that such ships are designed to carry on board,
(d) such other matter or matters that the Minister considers appropriate to take into account in the circumstances.

Radio rules may prescribe requirements for such portable radio apparatus as boats, survival craft, or life-rafts may be required to carry by the rules for life-saving appliances.

Radio rules shall include such requirements as appear to the Minister to be necessary to implement the provisions of the Safety Convention (SOLAS) relating to radiocommunications.

Different radio rules may be made in respect of different classes of ships and in relation to different classes of ships for different circumstances and different areas of operation.
Radio rules shall apply to all ships registered in the State and to other sea-going ships while they are within any port in the State.

3. Navigation and tracking rules

The Minister may make navigation and tracking rules requiring ships to which the rules apply to be provided with navigation and tracking systems and equipment of such a nature as may be prescribed by the rules including requirements relating to their position and method of fitting and to maintain such systems.

In making navigation and tracking rules the Minister may categorise ships into different classes, where appropriate, having regard to one or more of the following:
(a) the size, shape, speed and configuration of such ships;
(b) the service for which such ships are to be employed;
(c) the nature and duration of voyages to be undertaken;
(d) the number of passengers or other persons, or both, that such ships are designed to carry on board;
(e) such other matter or matters that the Minister considers appropriate to take into account in the circumstances.

Different rules may be made in respect of different classes of ships and in relation to different classes of ships for different areas of operation.

Navigation and tracking rules shall include such requirements as appear to the Minister to be necessary to implement the provisions of the Safety Convention relating to navigation and tracking systems and equipment.

Navigation and tracking rules shall apply to all ships registered in the State and to other ships while they are within any port in the State.

4. Cargo ship construction and survey rules

The Minister may make cargo ship construction and survey rules prescribing-
(a) requirements for the hull, superstructure, subdivision and stability, electrical installations, equipment and machinery, fuel used in and fire protection of ships to which this section applies, and
(b) requiring any such ships which are Irish ships to be surveyed to such extent, in such manner and at intervals as may be prescribed by the rules.

In making cargo ship construction and survey rules the Minister may categorise ships into different classes, where appropriate, having regard to one or more of the following:
(a) the size, shape, speed or configuration of such ships;
(b) the service for which such ships are to be employed;
(c) the nature and duration of voyages to be undertaken;
(d) the number of passengers or other persons, or both, that such ships are designed to carry on board;
(e) such other matter or matters that the Minister considers appropriate to take into account in the circumstances;
(f) the type of cargo carried, including dangerous goods,
(g) the age and date of construction of such ships.

Different rules may be made in respect of different classes of ships and in relation to different classes of ships for different circumstances and different areas of operation.

Cargo ship construction and survey rules shall include such requirements as appear to the Minister to be necessary to implement the provisions of the Safety Convention relating to the hull, superstructure, subdivision and stability, electrical installations, equipment and machinery of and fuel used in such ships except so far as those provisions are implemented by any other rules or regulations made under the Merchant Shipping Acts.

Cargo ship construction and survey rules apply to all ships other than passenger steamers, warships, troopships and fishing vessels. It applies to ships not registered in the State only while they are within a port in the State and are not exempted from the cargo ship construction and survey rules.

5. Bulk carrier rules

The Minister may make bulk carrier rules prescribing the requirements that the superstructure, stability and subdivision, hull, arrangements, equipment and machinery and subdivision, hull, arrangement, equipment and machinery of bulk carriers to which this section applies, must comply with.

In making bulk carrier rules the Minister may categorise bulk carriers into different classes having regard to one or more of the following, where appropriate:

(a) the size, shape, speed or configuration of such ships;
(b) the service for which such ships are to be employed;
(c) the nature and duration of voyages to be undertaken;
(d) the type and quantity of cargo such ships are designed to carry on board;
(e) the age and date of construction of such ships;
(f) such other matter or matters that the Minister considers appropriate to take into account in the circumstances.

Bulk carrier rules may require the provision in ships of-

(a) stability analysis including damage and intact stability,
(b) the structural strength of such ships,
(c) the arrangement of such ships including requirements for bulkheads,
(d) information necessary for the guidance of the master and others in maintaining sufficient stability and strength during all loading conditions,
(e) the requirements on cargoes and the requirement to provide to persons information to ensure the safe loading and unloading,
(f) equipment to provide information on strength on such ships,
(g) equipment to detect water in the holds and spaces of such ships and to provide pumping systems.

Bulk carrier rules shall include such requirements as appear to the Minister to be necessary to implement the provisions of the Safety Convention prescribing the
requirements that the superstructure, stability and subdivision, strength, hull, arrangement, equipment and machinery shall comply with except in so far as those provisions are implemented by cargo ship construction and survey rules, rules for life-saving appliances, fire protection rules, radio rules, navigation and tracking rules and collision regulations.

Different bulk carrier rules may be made in respect of different classes of bulk carriers for different circumstances and different areas of operation.

The rules apply to all bulk carriers which are Irish ships and to other bulk carriers if within any port is the State.

6. Rules for life-saving appliances

The Minister may make rules prescribing the requirements for life-saving appliances and arrangements for ships to which the section applies.

In making rules for life-saving appliances the Minister may categorise ships into different classes, where appropriate, having regard to one or more of the following:

(a) the service for which such ships are to be employed;
(b) the nature and duration of voyages to be undertaken;
(c) the number of passengers, ships crew or other persons, or all of them, that such ships are designed to carry on board;
(d) such other matter or matters that the Minister considers appropriate to take into account in the circumstances.

Rules for life-saving appliances shall include such requirements as appear to the Minister to be necessary to implement the provisions of the Safety Convention relating to life-saving appliances and arrangements.

Different rules for life-saving appliances may be made in respect of different classes of ships and in relation to different classes of ships for different circumstances and different areas of operation.

Rules for life-saving appliances apply to Irish ships and to any other ship while it is within any port in the State.

7. Fire protection rules

The Minister may make fire protection rules prescribing the requirements that the hull, superstructure, equipment, arrangement, escapes, fire protection, fire detection and fire extinction equipment and machinery used in ships must comply with.

In making fire protection rules the Minister may categorise ships into different classes having regard to one or more of the following:

(a) the size, shape, speed or configuration of such ships;
(b) the service for which such ships are to be employed;
(c) the nature and duration of voyages to be undertaken;
(d) the number of passengers or other persons, or both, that such ships are designed to carry on board;
(e) the type and amount of cargo that such ships are designed to carry on board;
(f) the age and date of construction of such ships;
(g) such other matter or matters that the Minister considers appropriate to take into account in the circumstances.

Different rules may be made in respect of different classes of ships for different circumstances and for different areas of operation.

Fire protection rules shall include such requirements as appear to the Minister to be necessary to implement the provisions of the Safety Convention prescribing the requirements that the hull, superstructure, equipment, arrangement, escapes, fire protection, fire detection and fire extinction equipment and machinery used in ships shall comply with.

Fire protection rules shall apply to Irish ships and to other ships while they are within and port in the State.

8. Approval of service station

The Minister may make regulations to provide for the inspection and approval of service stations for inflatable life-saving appliances and launching and embarkation appliances for the setting and enforcement of service standards for servicing appliances. Regulations made under this section shall include such requirements as appear to the Minister to be necessary to implement the Safety Convention.


The Minister may, following consultation with any other Minister of the Government who in the opinion of the Minister is concerned, make regulations to fulfil the State’s commitments under the Maritime Labour Convention 2006 to give full force to the Regulation and the Standards of the Code of the Convention with respect to ships. The Convention applies to Irish ships and seafarers sailing on those ships. In making regulations the Minister shall give due consideration to the relevant guidelines of the Code of the Convention.

While large portions of implementation responsibilities for the Maritime Labour Convention fall to the Department of Transport there are a number of areas where competence lies with the Department of Enterprise, Trade and Employment (employment aspects) and the Department of Social and Family Affairs (social security aspects). A Commencement Order must be made to commence this section of the Bill to provide an adequate timeframe for implementation of the Convention. The Bill also provides that the Minister will, before making regulations to fulfil the State’s commitments under the Convention, consult with any other Minister of the Government who in the opinion of the Minister is concerned.
10. Categorisation of domestic passenger boats, fishing vessels and pleasure craft under safety regulations

The Minister may by regulations make such provision as he considers necessary or expedient for the purpose of ensuring the safety of passenger boats, fishing vessels and their crew and pleasure yachts and their occupants. In making regulations under this section the Minister may categorise passenger boats, fishing vessels and pleasure yachts into different classes, where appropriate, having regard to one or more of the following:

(a) the size, shape, speed or configuration of such boats;
(b) the service for which such boats are to be employed;
(c) the nature and duration of voyages to be undertaken;
(d) the number of passengers or other persons, or both, that such boats are designed to carry on board;
(e) such other matter or matters that the Minister considers appropriate to take into account in the circumstances.

Different provision may be made in regulations in respect of different classes of passenger boats, fishing vessels and pleasure yachts.

11. Further regulatory impact assessment

The provisions in the Bill are of an enabling nature for the making of rules and regulations. The proposals in the Bill set out different rules that may be made in respect of different classes of ships and in relation to different classes of vessels for different circumstances and different areas of operation. However the detail of the categorisation of vessels into classes and the formulation and extent of the regulatory proposals to apply to each class will be developed at regulation stage and, in recognition of the importance of the regulatory process a regulatory impact assessment (RIA) will be conducted on all of the proposed measures when secondary legislation is being prepared.