

## **LOCAL VESSELS ADVISORY COMMITTEE**

### **Joint Sub-committee on Class I and Class IV Vessels**

#### **Proposed Legislation to Require that Children wear a Lifejacket at all times and a Passenger and Crew List be kept on board a Spectator Vessel during a Major Event at Sea (Cont'd)**

#### **Purpose**

Further to Paper No. 3/2013 and No. 4/2013 on this subject, having taken into account the views of members of this sub-committee and the legal advice, this paper aims to seek members' support for the proposed legislative requirements on wearing of lifejackets by children at all times and on keeping of a passenger and crew list on board a spectator vessel during a major event at sea.

#### **The Proposed Legislative Requirements**

2. The Requirements below are proposed with an aim to enhance the safety of passengers and crew on board a spectator vessel in a major event at sea:

- (i) A child, aged two or above, must be wearing a lifejacket at all times while on board a spectator vessel.
- (ii) A passenger and crew list with the required particulars\* must be kept on board a spectator vessel for emergency purposes.
- (iii) For the purpose of Requirement (ii) above, the coxswain of a spectator vessel must obtain the required particulars from all of his or her passengers; and passengers must furnish the coxswain with

the required particulars.

- (iv) For the purpose of Requirement (ii) above, a tourist guide<sup>1</sup> must furnish the coxswain of a spectator vessel with the required particulars of the travellers who are under his or her care and intend to get on board the spectator vessel to view a major event at sea.
- (v) For the purpose of Requirement (ii) above, a person in charge of a local tour must furnish the coxswain of a spectator vessel with the required particulars of the members of the tour who will get on board the spectator vessel to view a major event at sea.

\*The required particulars are “name” and “gender” for an adult; and “name”, “gender” and “age” for a child. A form will be specified for the passenger and crew list in a Marine Department Notice and the Web site of the Marine Department (a downloadable version in this case). A sample of the form is attached as ***Annex*** for reference.

## **Definitions**

- 3. Below are the meanings of terms for the purpose of the proposal:
  - (i) “major event at sea”: an event, such as fireworks display, pyrotechnic display, etc. which is promulgated by Marine Department Notice as such event, which requires the closure of an area at sea and attracts a number of vessels to gather in the immediate vicinity of the event for viewing.
  - (ii) “child”: a person under the age of 12.

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<sup>1</sup> Tourist guides in Hong Kong are required to be accredited by the Travel Industry Council of Hong Kong.

## Application

4. The proposed Requirements apply to a Class I, Class II transportation boat or Class IV vessel<sup>2</sup> that is on a trip immediately before, and proceeding directly to and from the venue of, a major event at sea, and for the sole purpose of conveying passengers to view the event. The aforesaid trip is deemed to begin when the first passenger gets on board the vessel and end when the last passenger disembarks from the vessel immediately after the event.

## Liability

5. The proposed liabilities for not meeting the proposed Requirements detailed in paragraph 2 above are set out below:

### Requirement (i)

- (i) If Requirement (i) is not met, the coxswain of the spectator vessel or the parent or guardian who accompanies and has the responsibility to take care of the child found not wearing a lifejacket may be guilty of an offence, only if the violation is a result of negligence of any of them, and is liable on conviction to a fine at level 2<sup>3</sup>.

### Requirement (ii)

- (ii) If Requirement (ii) is not met, the coxswain of the spectator vessel may be guilty of an offence and is liable on conviction to a fine at level 2.

### Requirement (iii)

- (iii) If Requirement (iii) is not met, the coxswain of the vessel who fails to obtain the required particulars from all of his or her passengers

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<sup>2</sup> A Class I, Class II transportation boat or Class IV is a vessel so classed under the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation, Cap. 548D.

<sup>3</sup> \$5,000

or the passenger who refuses to provide his or her particulars, or the particulars of a child under his or her care to the coxswain, may be guilty of an offence and are liable on conviction to a fine at level 2.

If a passenger knowingly provides the coxswain with false or inaccurate particulars, the passenger may be guilty of an offence and is liable on conviction to a fine at level 2.

#### Requirement (iv)

- (iv) If Requirement (iv) is not met, or a tourist guide knowingly provides the coxswain with false or inaccurate particulars of the travellers, the tourist guide may be guilty of an offence and is liable on conviction to a fine at level 2.

#### Requirement (v)

- (v) If Requirement (v) is not met, or a person in charge of a local tour knowingly provides the coxswain with false or inaccurate particulars of the members of the tour, that person may be guilty of an offence and is liable on conviction to a fine at level 2.

### **Refusal to Boarding of Passengers**

6. The coxswain of a spectator vessel may refuse the boarding of a child and his or her accompanying parent or guardian if Requirement (i) is defied and the boarding of a passenger if Requirement (iii) is defied.

7. If any passenger defying Requirement (i) or (iii) resists the coxswain's demand to leave the vessel, the coxswain may report to Marine Department or Marine Police, and wait at a safe place for the arrival of the enforcement officers coming to his or her assistance.

## **Negligence under Requirement (i)**

8. With respect to Requirement (i), some members of this sub-committee enquired at the last meeting about the circumstances under which a person may be considered having exercised due diligence to avoid violation of the requirement, and therefore, not be held liable for an act of negligence. The following serves to clarify the queries.

9. In the case of a parent or guardian, he or she may not be blamed for negligence under, but not limited to, the following circumstances:

- (a) owing to reasonable cause, he or she was not aware of Requirement (i) at the time it is violated; or
- (b) for reasons beyond his or her control, he or she had not been able to put a lifejacket on the child or to persuade the child to put it on.

10. In the case of a coxswain, he or she may not be blamed for negligence if he or she had taken adequate precautions, which may consist of, but not limited to, the following:

- (a) alert passengers to Requirement (i) by making announcement at the beginning of the trip and displaying a notice for it;
- (b) provide sufficient lifejackets on board the spectator vessel as required by the law;
- (c) provide clear indication of the locations of lifejackets onboard;
- (d) provide lifejacket donning instructions through demonstration by members of the crew, video playback or posters displayed at conspicuous locations; and
- (e) organise his or her crew to check and remind passengers for compliance with the Requirement before the vessel departs for the event and from time to time during the event;

11. Prosecution against violation of Requirement (i) will only be

initiated if evidence is sufficient to prove that the violation is a result of negligence on the part the parent, guardian or coxswain, and the burden of proof will lie with the enforcement officers.

### **Advice Sought**

12. We invite members to further comment on the proposal as set out in the paper and give support to it. We will then seek the endorsement of the Local Vessels Advisory Committee for legislating the proposed Requirements.

Marine Department  
May 2014