

LOCAL VESSELS ADVISORY COMMITTEE

Proposed Legislation for Safety Measures during Major Events at Sea

Purpose

The Marine Department (“MD”) proposes to implement by legislation safety measures requiring children on a spectator vessel to wear lifejackets at all times and a list of passengers and crew to be kept during a major event at sea. MD consulted the Local Vessels Advisory Committee (“LVAC”) on the legislative proposals by circulation of LVAC Paper No. 7/2014 (hereinafter referred to as “Paper No. 7/2014”)¹ between August and September 2014. Subsequently, MD sought the advice of the Department of Justice (“DoJ”) on the legislative proposals and amendments were made in light of DoJ’s advice. This paper seeks to consult LVAC on the revised legislative proposals.

Background

2. Since early 1990s, MD has been advising the operators of spectator vessels through an administrative arrangement of issuing Marine Department Notices (“MDNs”) by the Director of Marine (“DM”) to ensure that, during major events at sea, children on spectator vessels wear lifejackets at all times while on board and a list of passengers and crew be kept on board. While non-compliance with MDNs, by itself, is not an offence, MD’s officers are empowered to give directions to coxswains of the non-complying vessels to comply with the above requirements. Non-compliance with such directions is an offence².

3. In the vessel collision incident near Lamma Island on 1 October 2012, the children on board *Lamma IV* did not wear any lifejackets and a list of passengers and crew was not kept on board.

¹ http://www.mardep.gov.hk/en/aboutus/pdf/lvacp07_14.pdf

² Section 24 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548).

4. During the adjournment debate at the meeting of the Legislative Council (“LegCo”) on 18 October 2012, one of the ten improvement measures announced by the Secretary for Transport and Housing was to implement measures currently adopted as guidelines by way of legislation.³ MD viewed that the two requirements for children to wear lifejackets at all times while on board the spectator vessels and for a passenger and crew list to be kept on board during major events at sea should be implemented by legislation, so as to raise the safety awareness on board the vessels in general and to ensure the safety of passengers more effectively.

5. In the meantime, at the New Year’s Eve countdown celebrations, the Lunar New Year Fireworks Display and the National Day Fireworks Display, etc., MD has, since late 2012, stepped up the inspection of spectator vessels to ensure that sufficient life-saving appliances are provided on board, that lifejackets are worn by children at all times, and that a passenger and crew list is kept on board.

Justifications for Legislation

6. The objective of the legislative proposals is to enhance the safety of passengers on board spectator vessels during major events at sea. Examples of such events are fireworks displays and pyrotechnic displays.

7. During major events at sea, passengers on spectator vessels usually gather on open decks to watch the events. As a large number of spectator vessels gather close to the scene of the events, these vessels are more likely to experience wobbly movements such as pitching and rolling. Children who are more active at their young age may easily slip over the railings of the deck and fall into the sea. To better protect the safety of children on board spectator vessels, we propose to require children to wear lifejackets at all times during major events at sea.

³ Vide item 3 on page 518 of “Legislative Council - 18 October 2012 Official Record of Proceedings” at <http://www.legco.gov.hk/yr12-13/english/counmtg/hansard/cm1018-translate-e.pdf>.

8. As major events at sea usually attract spectator vessels carrying a large number of passengers on board, in the unfortunate event of an accident, it is conducive to the search and rescue operation if the rescue parties can ascertain the number of persons on board the vessels involved in the accident. Therefore, we propose to require a list of passengers and crew on board spectator vessels to be kept in case it is needed for the search and rescue operation.

Revised Legislative Proposals

9. The differences between the legislative proposals set out in Paper No. 7/2014 and the revised legislative proposals are outlined as follows:

Applicable local vessels

10. In Paper No. 7/2014, the originally proposed requirements applied to a Class I vessel, Class II transportation boat or Class IV vessel that was on a trip immediately before, and proceeding directly to and from the venue of, a major event at sea⁴, and for the sole purpose of conveying passengers to view the event. The aforesaid trip was deemed to begin when the first passenger got on board the vessel, and was deemed to end when the last passenger disembarked from the vessel immediately after the event.

11. Under the original proposals, the purpose of a vessel's trip and the boarding and disembarking times of passengers were decisive in determining whether or not the requirements should be applicable to the vessel. In actual circumstances, however, it would be difficult to determine whether or not the requirements should be applicable to a vessel because the applicable vessels could be scattered at different locations at different times. As the legislative proposals have been made specifically for major events at sea, after consideration, we now propose that the legislative proposals should be applicable to any local vessel

⁴ The term "major event at sea" means an event, such as a fireworks display or a pyrotechnic display, which (a) is promulgated by MDN as such event; (b) requires the closure of an area at sea; and (c) attracts a number of vessels to gather in the immediate vicinity of the event for viewing.

which is licensed to carry any passenger and which enters into or is present in an area of waters within a certain period of time to be specified in an MDN issued by DM, including Class I, Class II vessels which are licensed to carry passengers and Class IV vessels (whether or not they are let for hire or reward). Taking the fireworks display at the Victoria Harbour as an example, the eastern and western water areas adjacent to the fireworks discharge area in the Victoria Harbour are usually designated in an MDN as specified water areas during the fireworks display as well as one or two hours before and after the event. Any applicable local vessel which enters into or is present in such areas during the specified period must comply with the legislative proposals.

12. As the period specified in an MDN may cover one or two hours before and after a major event at sea and, subject to the venue of the event, the specified water areas may cover areas where berths or typhoon shelters are located, the legislative proposals will not be applicable to local vessels which run a franchised service or a licensed service as defined in the Ferry Services Ordinance (Cap. 104), which lie alongside a berth, or which are berthed, moored, anchored or secured in a typhoon shelter.

Children on board should be wearing lifejackets at all times

Duty of the adult accompanying the child

13. In Paper No. 7/2014, it was originally proposed that any child aged two or above should be required to wear a lifejacket at all times while on board a spectator vessel. If such requirement was not met, the coxswain of the spectator vessel or the accompanying parent or guardian who had the responsibility to take care of the child might be guilty of an offence if the violation was a result of the negligence of any of them, and was liable on conviction to a fine of \$5,000.

14. We now propose that the requirements in paragraph 13 above be amended as follows:

- (a) an adult⁵ who accompanies a child aged two or above and below 12 is required to use his best endeavours to cause the child to wear a lifejacket at all times while on board an applicable local vessel; and
- (b) an adult who accompanies a child aged below two (“infant”) is required to use his best endeavours to ensure that the safety of the infant would not be prejudiced by reason of not having worn a lifejacket while on board an applicable local vessel.

15. The person who accompanies a child to watch a major event at sea may not necessarily be the child’s parent or guardian. Therefore, we now propose that the requirements be applicable to the adult accompanying the child instead. As for infants, the originally proposed requirements did not cover them. As infants only have limited physical ability to move around, and their accompanying adults are most likely to hold or secure them in a safe manner for most of the time, we do not propose to make it a strict requirement for infants to wear lifejackets at all times while on board. However, we propose imposing on the accompanying adult a duty to decide whether and when an infant should wear a lifejacket.

16. We maintain the proposal that a person who, without reasonable excuse, contravenes the proposed requirements in paragraph 14 above should be liable on conviction to a fine of \$5,000.

17. We consider that it is not necessary to prescribe in the legislation the maximum number of children whom each adult may accompany. Given the duties to be imposed on the accompanying adult under the legislative proposals, the accompanying adult should consider and exercise his own judgment on how many children he could accompany and manage on board.

⁵ An “adult” refers to a person aged 18 or above.

Duty of coxswains

18. As stated in paragraph 13 above, we originally proposed that if a child was found not wearing a lifejacket at all times while on board a spectator vessel, the coxswain of the spectator vessel might be guilty of the offence of negligence unless he had taken adequate precautions, including but not limited to the following:

- (a) alert passengers to the requirement that children must be wearing lifejackets at all times by making announcement at the beginning of the trip and displaying a notice on that requirement;
- (b) provide sufficient lifejackets on board the spectator vessel as required by the law;
- (c) provide clear indication as to the locations of lifejackets onboard;
- (d) provide lifejacket wearing instructions through demonstration by members of the crew, video playback or posters displayed at conspicuous locations; and
- (e) organise his 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.

19. Instead of holding the coxswain of an applicable vessel criminally liable for a child's not wearing a lifejacket at all times as a result of his negligence as originally proposed, we now propose that the coxswain be more specifically required to do the following:

- (a) refuse any child who is unaccompanied by an adult to get on board or stay on the vessel;
- (b) distribute suitable lifejackets to the adults accompanying the children;
- (c) demonstrate or illustrate how to wear lifejackets for children; and

- (d) make an announcement to remind the accompanying adults of the requirements in paragraph 14 above in respect of the children whom they accompany.

If, without reasonable excuse, the coxswain fails to do the above, it is proposed that he should be liable on conviction to a fine of \$5,000.

Duty of the vessels' owners, owners' agents and coxswains

20. The current law requires a local vessel to carry children lifejackets in the number of 5% of the total number of persons on board⁶. We now propose to require that a suitable lifejacket should be provided for each child on board an applicable local vessel, where a suitable lifejacket means a lifejacket suitable for a child in terms of his physical attributes. If, without reasonable excuse, the vessel fails to provide each child on board with a suitable lifejacket, it is proposed that the owner of the local vessel, his agent and the coxswain be liable on conviction to a fine of \$10,000 and to imprisonment for 6 months⁷.

List of passengers and crew

Duty of coxswains

21. In Paper No. 7/2014, we originally proposed to require that a list of passengers and crew with the required particulars should be kept on board a spectator vessel and the coxswain of the vessel to obtain the required particulars from all of his passengers. If such requirements were not met, the coxswain might be guilty of an offence and was liable on conviction to a fine of \$5,000. The required particulars on the list were the name and gender for an adult; and the name, gender and age for a child.

⁶ Section 32 of and Part 2 of Schedule 3 to the Merchant Shipping (Local Vessels) (Safety and Survey) Regulation (Cap. 548G).

⁷ The penalties for contravening this proposed requirement are the same as those for contravening the provisions regarding the provision of life-saving appliances currently stipulated in section 32 of Cap. 548G.

22. We now propose to amend the proposed requirements in paragraph 21 above to require the coxswain of an applicable local vessel to cause a list of passengers and crew with the following particulars to be compiled and maintained, and to produce the list when required by an authorized officer⁸:

- (a) the name and gender of the crew and passengers who have attained the age of 12 years; and
- (b) the name, gender and age of the passengers who are under the age of 12, and the name of the adults accompanying those passengers.

We also propose not to pursue the requirement of having a list of passengers and crew kept on board. Instead, the coxswain should produce the list when required by an authorized officer. In other words, there will be no restriction on how and where the list should be maintained. Besides, we propose to require that the name of the adults accompanying passengers under the age of 12 should be provided on the list.

23. Moreover, we now propose to require the coxswain to refuse any person who fails to provide the required particulars for compiling the list of passengers and crew to board the vessel.

24. The proposal that a person who, without reasonable excuse, contravenes the proposed requirements in paragraphs 22 and 23 above should be liable on conviction to a fine of \$5,000 remains unchanged.

Duty of passengers and crew

25. In Paper No. 7/2014, it was originally proposed that passengers should be required to provide the coxswain with the required particulars for compiling the list of passengers and crew. A tourist guide or a person in charge of a local tour should be required to provide the

⁸ The term “authorized officer” is as defined in section 2 of the Merchant Shipping (Local Vessels) Ordinance (Cap. 548), including (a) the Director and any public officer of the Marine Department of or above the rank of Marine Inspector Class II; (b) any police officer of or above the rank of Sergeant; and (c) any public officer authorized in writing in this behalf by the Director.

coxswain with the particulars of the travellers who were under his care and the particulars of members of the tour. Anyone who did not comply, or knowingly provided false or inaccurate particulars, should be liable on conviction to a fine of \$5,000.

26. We now propose to require passengers and members of the crew to provide the coxswain or other members of the crew with the particulars required for compiling the list of passengers and crew on request. If a passenger or a member of the crew fails to do so, or knowingly provides false or inaccurate particulars, we still propose that he should be liable on conviction to a fine of \$5,000. However, we no longer propose to require a tourist guide or a person in charge of a local tour to provide the coxswain with the particulars of the travellers or members of the tour as the liability for providing the required particulars should be borne by the data subjects.

Protection of personal data

27. As the proposed requirements on compiling and maintaining a list of passengers and crew in paragraphs 21 to 26 above involve the collection, holding, processing or use of personal data, operators and coxswains of applicable local vessels shall comply with the requirements for protection of personal data under the Personal Data (Privacy) Ordinance (Cap. 486).

Joint Sub-committee on Class I and Class IV Vessels

28. MD consulted the Joint Sub-committee on Class I and Class IV Vessels (“Sub-committee”) on the revised legislative proposals on 6 October 2016. Members agreed to the revised legislative proposals in principle at the meeting, but they also raised some comments regarding certain matters, such as the meaning of “best endeavours”. MD responded to these comments through Sub-committee Paper No. 5/2016 (*Annex*)⁹, and further consulted the Sub-committee on 11 November 2016.

⁹ http://www.mardep.gov.hk/en/aboutus/pdf/lvac_jsc_p1605.pdf

29. At the meeting on 11 November, some members opined that activity organisers should have a duty to provide the coxswains with the required particulars of those passengers who take part in the activity in order to help the coxswains compile the list of passengers as required, and that tourist guides and persons in charge of local tours should continue to be held responsible. Besides, regarding the number of infant lifejackets to be provided onboard, some members opined that MD should implement the relevant requirement by phase, and that MD should consider prescribing the minimum number of infant lifejackets required to be provided onboard first (e.g. as a certain percentage of the total number of persons onboard), before implementing the requirement that each infant onboard should be provided with a lifejacket.

30. Having considered the comments set out in paragraph 29 above, MD's view is that the revised legislative proposals clearly stipulate that both passengers and members of the crew have a duty to provide the coxswain or other members of the crew the required particulars for the compilation of the list of passengers and crew on request, and that the coxswain is required to refuse any person who fails to provide the required particulars to board the vessel. The liability for providing the required particulars should be borne by the data subjects (i.e. travellers or members of tours). As such, MD does not propose that tourist guides, persons in charge of local tours or activity organisers as suggested by Sub-committee members be made responsible for providing the coxswain with the particulars of the travellers or members of the tours.

31. Regarding the comment on the phased implementation of the provision of infant lifejackets onboard, MD has considered the suggestion and views that the coxswain may arrange early collection of the required particulars from the passengers having regard to the mode of operation, so as to ascertain, on the basis of the particulars provided by the passengers, whether there are sufficient infant lifejackets provided onboard. As the coxswain has a duty to distribute suitable lifejackets to the adults accompanying the children, the coxswain should refuse the concerned infants and the accompanying adults to board the vessel if there are insufficient infant lifejackets onboard. On the basis of the considerations above, MD does not propose to implement by phase the requirement that sufficient infant lifejackets should be provided onboard

during major events at sea.

Way Forward

32. Subject to members' views, MD will consult the LegCo Panel on Economic Development on and seek its support for the revised legislative proposals mentioned above.

Advice Sought

33. Members are invited to give their views on this paper.

Operations Branch
Port Control Division
Marine Department
December 2016

Paper No. 5 /2016

LOCAL VESSELS ADVISORY COMMITTEE**Joint Sub-committee on Class I and Class IV Vessels****Proposed Legislation for Safety Measures
during a Major Event at Sea****Response of the Marine Department to the Views Collected at the
Meeting on 6 October 2016****Purpose**

The Marine Department (“MD”) proposes to implement safety measures by legislation requiring children¹ on a spectator vessel to wear a lifejacket at all times and a list of passengers and crew be kept during a major event at sea. At the meeting of the Joint Sub-committee on 6 October 2016, the MD briefed members on the revised legislative proposals and some members expressed their views on certain issues. This paper aims to give response to the views expressed by the members at the meeting on 6 October 2016.

The Views on Requiring Children on Board the Vessels to Wear a Lifejacket at All TimesChildren aged below two

2. As stated in paragraph 14(a) of the Joint Sub-committee Paper No. 4/2016 (“Paper No. 4/2016”), we now propose that an adult who accompanies a child aged two or above and below 12 be required to use his best endeavours to cause the child to wear a lifejacket at all times while on board the vessels. Nevertheless, a child aged below two (“an infant”) will not be strictly required to wear a lifejacket at all times while on board the vessels. However, as stated in paragraph 14(b), the adult who accompanies the infant is still required to use his best endeavours to ensure that the safety of the infant would not be prejudiced by not having worn a lifejacket while on board the vessels. Also, as

¹ “Children” refers to all persons aged below 12.

stated in paragraph 20 of Paper No. 4/2016, we now propose to require that a suitable lifejacket should be provided for each child (including children aged below two, i.e. infants) on board an applicable local vessel, where a suitable lifejacket means a lifejacket suitable for a child in terms of his physical attributes.

3. At the meeting on 6 October 2016, a member expressed that there was yet to be an international standard for the specifications of infant lifejackets, and there were not many infant lifejackets available in the market and their prices were relatively high. The member also opined that it should not be the duty of the vessels' owners, owners' agents and coxswains to provide infant lifejackets for the infants on board the vessels.

4. According to information available to the MD, the category of infant lifejackets is already included in the standards for lifejacket specifications such as the International Life-Saving Appliance Code and infant lifejackets with specifications meeting the related standards are available for sale in the market. The MD opines that it should be the duty of the vessels' owners, owners' agents and coxswains to provide suitable lifejackets to every person on board the vessels, including infants. If any vessels' owners, owners' agents and coxswains find it difficult to provide suitable lifejackets for the infants on board the vessels, they should consider not carrying infants on their vessels.

“Required to use his best endeavours”

5. As stated in paragraph 14 of Paper No. 4/2016, we now propose:

- (a) an adult² who accompanies a child aged two or above and below 12 is required to use his best endeavours to cause the child to wear a lifejacket at all times while on board an applicable local vessel; and
- (b) an adult who accompanies an infant is required to use his best endeavours to ensure that the safety of the infant would not be prejudiced by reason of not having worn a lifejacket while on board an applicable local vessel.

² “Adult” refers to a person aged 18 or above.

6. At the meeting on 6 October 2016, a member said that the wording “required to use his best endeavours” was ambiguous. The member was concerned that the coxswain might have to bear ultimate responsibility.

7. The phrase “required to use his best endeavours” is used to describe the duty of the adult accompanying the child instead of the duty of the coxswain. As long as the coxswains comply with the requirements stated in paragraphs 19 and 20 of Paper No. 4/2016, they will not be held criminally liable even if the children on board do not wear lifejackets subsequently. Regarding the phrase “required to use his best endeavours”, the wording has been decided with reference to the provisions of the existing law³. The MD considers the wording appropriate.

Views on the List of Passengers and Crew

Removal of the liability of tourist guides or persons in charge of local tours

8. As mentioned in paragraph 26 of Paper No. 4/2016, we no longer propose to require a tourist guide or a person in charge of a local tour to provide the coxswain with the particulars of the travellers or members of the tour as the liability for providing the required particulars should be borne by the data subject (i.e. travellers or members of the tour). A tourist guide or a person in charge of a local tour who boards an applicable local vessel with the travellers or members of the tour is required to provide the coxswain or other members of the crew with his or her particulars as a passenger as well.

Way Forward

9. The MD will submit the revised legislative proposals set out in Paper No. 4/2016 to the Local Vessels Advisory Committee for discussion and support. The Government will then consult the Legislative Council Panel on Economic Development on the legislative proposals and seek its support.

Advice Sought

³ Please refer to the Tung Chung Cable Car Bylaw (Cap. 577A S.22(2)): “The person accompanying a child on the Cable Car System or in the Cable Car System area shall use his best endeavours to prevent the child from behaving in a manner likely to endanger persons or property.”

10. Members are invited to give their views on this paper.

**Operations Branch
Port Control Division
Marine Department
November 2016**