

INTERNATIONAL MARITIME ORGANIZATION
4 ALBERT EMBANKMENT
LONDON SE1 7SR

Telephone: 0171-735 7611
Fax: 0171-587 3210
Telex: 23588 IMOLDN G



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**GUIDELINES ON METHODS FOR MAKING REFERENCE TO IMO
AND OTHER INSTRUMENTS IN IMO CONVENTIONS AND
OTHER MANDATORY INSTRUMENTS**

1 The Maritime Safety Committee, at its seventy-first session (19 to 28 May 1999), and the Marine Environment Protection Committee, at its forty-third session (28 June to 2 July 1999), approved the Guidelines on methods for making reference to IMO and other instruments in IMO conventions and other mandatory instruments and agreed to issue these Guidelines as a joint MSC/MEPC circular.

2 These Guidelines, as approved by the Committees, are set out at annex.

ANNEX

GUIDELINES ON METHODS FOR MAKING REFERENCE TO IMO AND OTHER INSTRUMENTS IN IMO CONVENTIONS AND OTHER MANDATORY INSTRUMENTS

General

1 The purpose of these Guidelines is to provide a standard text for inclusion in new IMO conventions and other mandatory instruments relating to maritime safety and pollution prevention and in future amendments to existing conventions and other instruments, in order to ensure that, where reference is made to IMO and other instruments, a uniform wording is used to clearly indicate the legal status of the instrument in question after the IMO body concerned has decided on such a status.

IMO instruments to be treated as mandatory

2 When Contracting Governments or Parties to an IMO convention have decided that full effect should be given to the provisions of certain codes or requirements under that convention in the same manner as the regulations of the convention themselves, such instruments should be treated as mandatory and have the same legal status as the parent convention.

3 The most appropriate method for referencing, in an IMO convention, instruments determined to become mandatory under the parent convention is to follow the SOLAS provisions used for making the IBC and IGC Codes (under chapter VII) and HSC Code (under chapter X) mandatory, i.e.:

- .1 to expressly refer to such instruments in the text of the relevant convention regulations;
- .2 to expressly provide that future amendments to such instruments should follow the amendment procedures laid down in the relevant article of the parent convention; and
- .3 to expressly prescribe in the text of the relevant convention regulations that "such requirements shall be treated mandatory" in case the word "should" has been used in such instruments instead of "shall".

4 For such instruments, the use of terms such as "guidelines" or "guidance", which might be misunderstood as implying recommendations, should be avoided as far as possible.

5 It would be preferable to adopt the text of the instrument being referenced at the time of adoption of the relevant amendments to the convention concerned and to prepare an authentic text of the instrument, which will be used as the basis for the preparation of any certified copies of future amendments to such an instrument.

Performance standards and technical specifications in IMO instruments

6 The SOLAS, MARPOL and other IMO conventions contain provisions referring to performance standards and technical specifications, such as performance standards for GMDSS equipment, shipboard navigational equipment, oil discharge and monitoring systems, etc. which are accompanied by footnotes identifying such performance standards or technical specifications as adopted by the Organization, i.e. by means of Assembly resolutions, MSC or MEPC resolutions, etc. Such standards and specifications referred to in the footnotes are not regarded as mandatory instruments for treaty purposes, since they do not appear in the authentic text of the parent convention and can be updated by the Secretariat as necessary; hence, they do not constitute an integral part of the parent convention. Nevertheless, Contracting Governments or Parties to the parent conventions are obliged to establish national standards not inferior, or at least equivalent, to those developed by the Organization.

7 In referencing such standards and specifications, the expressions shown in the following examples should be used:

- "equipment shall conform to performance standards not inferior to those adopted by the Organization";
- "equipment shall be tested in accordance with specifications at least equivalent to those developed by the Organization"; or
- "the manual shall be drawn up to a standard at least equivalent to that developed by the Organization."

8 Expressions, such as "the equipment shall comply with the standards adopted by the Organization" or "... in accordance with the standards adopted by the Organization", should not be used in order to avoid any misunderstanding that the standards not identified in the regulation are mandatory.

9 Standards and specifications referred to in footnotes should not appear in the authentic text of the convention and may be updated by the Secretariat as necessary when a new edition of the relevant publication is prepared.

10 For such standards and specifications, the use of terms such as "guidelines" or "guidance" should be avoided as far as possible.

11 The standards and specifications referred to above should clearly indicate their effective date and application to new and existing ships, or both, and new and existing installations of equipment, or both, unless this is already specified in the relevant regulations of the parent convention.

12 Future amendments to performance standards and technical specifications should be processed and adopted in accordance with the Committees' Rules of Procedure and the Guidelines on the organization and method of work of the Committees and their subsidiary bodies. When such amendments are adopted as new standards superseding existing ones (with new resolution numbers), the revised standard(s) should normally take effect not earlier than six months after adoption unless expressly decided otherwise by the relevant Committee at the time of adoption.

IMO instruments to be treated as recommendations

13 When Contracting Governments or Parties to an IMO convention have decided that they should implement certain instruments, such as guidelines, manuals or guidance, with certain discretion and flexibility, such instruments should be treated as recommendatory instruments.

14 Instruments of recommendatory status should be referred to in the footnote accompanying the relevant regulations of the parent convention. In such cases:

- .1 clear expressions should be used in the regulation indicating the recommendatory status of the instrument, e.g. "... shall be approved by the Administration, taking into account the recommendations developed by the Organization" or "...., based on the guidelines developed by the Organization"; and
- .2 self-contradictory expressions, such as "shall comply with the recommendations", should be avoided.

15 Guidelines or recommendations referred to in the footnotes should not appear in the authentic text of the convention and may be updated by the Secretariat as necessary when a new edition of the relevant publication is prepared.

Method for referencing instruments in mandatory IMO instruments

16 The above procedures should also apply for the purpose of referencing IMO instruments in mandatory instruments, such as the IBC, IGC, HSC Codes, etc.

17 If the Committee concerned decides that an instrument referred to in the mandatory instrument should be treated as mandatory, the text to make reference to such an instrument in accordance with paragraph 3 above should be included in the relevant regulation of the parent convention rather than in the mandatory instrument itself.

Method for referencing industry standards in mandatory IMO instruments

18 If industry standards, such as ISO or IEC standards, or IACS unified requirements, are to be referred to in IMO conventions or other mandatory instruments, the following method should be used:

- .1.1 industry standards to be treated as mandatory should be adopted by the relevant Committee in the form of an appropriate resolution, and should be referenced as described in paragraphs 2 to 5 above;
- .1.2 industry standards containing performance standards or technical specifications should be referred to as "standards acceptable to the Organization" with an appropriate footnote to identify such standards, e.g. "equipment shall conform to performance standards not inferior to those acceptable to the Organization" or "equipment shall be tested in accordance with specifications at least equivalent to those acceptable to the Organization"; and

- .2 in the case of industry standards which should be treated as recommendations and referred to in footnotes, expressions similar to those mentioned in paragraph 14 above should be used, e.g. "... should be tested in accordance with specifications at least equivalent to those acceptable to the Organization".

19 The standards referred to in footnotes should clearly indicate their edition, such as the number or the effective date. When amended by the relevant industry organization, the revised edition of the standards should be approved by the relevant Committee and the footnote amended accordingly.

20 The provisions of paragraph 11 should apply, *mutatis mutandis*, to the standards referred to in paragraph 18.1.2.
