EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (HIGH SPEED CRAFT) REGULATIONS 2022

2022 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport ("the Department") and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations implement the latest version of Chapter X of the International Convention for the Safety of Life at Sea, 1974 ("the Convention"), relating to the safety of high speed craft, including amendments to Chapter X made since 1st January 2014. Chapter X includes the High Speed Craft Code, 1994 and the High Speed Craft Code, 2000 ("the HSC Codes").

2.2 These Regulations revoke and replace the Merchant Shipping (High Speed Craft) Regulations 2004 (S.I. 2004/302) ("the 2004 Regulations"), and prescribe technical requirements governing the safety of high speed craft; subject to specified exceptions, they apply to all United Kingdom high speed craft and non-United Kingdom high speed craft in United Kingdom waters. These Regulations also make amendments to the Merchant Shipping (Fees) Regulations 2018 ("S.I. 2018/1104") to enable fees to be charged in connection with certain matters under these Regulations and the Merchant Shipping (High Speed Offshore Service Craft) Regulations 2022 ("S.I. 2022/41").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument revokes subordinate legislation made under section 2(2) of the European Communities Act 1972. It therefore engages the procedural and publication requirements of paragraphs 13 to 15 of Schedule 8 to the European Union (Withdrawal) Act 2018, which have been complied with.

3.2 The Secondary Legislation Scrutiny Committee, in its 21st Report of Session 2017-19, included an exchange of correspondence between the Committee and the Department in relation to the implementation backlog of international maritime conventions. The Committee, in its 17th Report of Session 2019-21 and in its 11th Report of Session 2021-22, included further correspondence from the Department which described the steps it was taking to address the backlog. These Regulations are one of the statutory instruments identified in that correspondence which implement outstanding international obligations to which the Department referred in that correspondence. On 19th October 2021, Robert Courts MP appeared before the Committee to provide a further update on the backlog and to explain how it will be discharged by the Department, and the Committee reported on the outcome in its 17th Report of Session 2021–22. Further correspondence from Robert Courts MP and

Trudy Harrison MP, providing detail on the progress made to clear the backlog, was included in the Committee's 37th Report of Session 2021-22.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument is all United Kingdom high speed craft, whether within United Kingdom waters or anywhere else in the world. It also applies to non-United Kingdom high speed craft while in United Kingdom waters.

5. European Convention on Human Rights

5.1 The Parliamentary Under Secretary of State, Robert Courts MP, has made the following statement regarding Human Rights:

"In my view the provisions of the Merchant Shipping (High Speed Craft) Regulations 2022 are compatible with the Convention rights."

6. Legislative Context

6.1 These Regulations implement outstanding amendments to the international regime for high speed craft built or substantially modified after 1st January 1996 engaged on voyages contained in Chapter X of the Annex to the Convention (which includes the HSC Codes). These amendments to Chapter X took effect since its most recent implementation in the Merchant Shipping (Passenger Ships on Domestic Voyages) Regulations 2012 (S.I. 2012/2636). The outstanding amendments are MSC.326(90), MSC.351(92), MSC.352(92), MSC.423(98), MSC.424(98), MSC.438(99) and MSC.439(99), which are available from the International Maritime Organization of 4 Albert Embankment, London SE1 7SR or found on the Foreign, Commonwealth and Development Office treaties database (https://treaties.fcdo.gov.uk/responsive/app/consolidatedSearch/). Chapter X applies to all United Kingdom high speed craft and non-United Kingdom high speed craft in United Kingdom waters, subject to certain exceptions.

6.2 The requirements in Chapter X (including the requirements in the HSC Codes) which create obligations for high speed craft are incorporated by direct references to those requirements in these Regulations. Regulation 5 makes the application of these requirements to high speed craft ambulatory so that all future amendments are automatically given direct effect in the United Kingdom by these Regulations. There are further matters in Chapter X (including in the HSC Codes) which do not require implementation in domestic law but are the subject of guidance. These matters are set out in a Marine Guidance Note (MGN); a draft of the MGN was published at the same time that these Regulations were laid in draft (and a copy is available from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG and on https://www.gov.uk/government/publications/draft-mgn-and-min-relating-to-the-draft-of-the-merchant-shipping-high-speed-craft-regulations-2022).

6.3 Although the ambulatory reference provision in regulation 5 will allow future amendments to the requirements in Chapter X to be incorporated automatically into domestic law, the United Kingdom will, nevertheless, be able to continue to scrutinise (and, if necessary, object to) proposed changes in an international arena (in the IMO) and assess their impact well before any amendment is due to come into force, which

will inform decision making. United Kingdom industry and workers' representatives will also be involved at the stage that the United Kingdom negotiating strategy is being formulated and will be able to influence it. If an amendment is objected to by the United Kingdom but will come into force internationally, the Secretary of State will make amending secondary legislation to prevent that amendment coming into force domestically. An amendment that is accepted will be publicised in advance of its in force date by means of a Parliamentary Statement to both Houses of Parliament and by way of an Marine Notice, which will be available from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG and on https://www.gov.uk.

6.4 Once a future amendment to Chapter X of the Annex to the Convention comes into force it can be obtained in copy from the IMO of 4 Albert Embankment, London SE1 7SR, or found on the Foreign, Commonwealth and Development Office online treaties database: https://treaties.fcdo.gov.uk/responsive/app/consolidatedSearch/. Until such publication is made on the treaties database an amendment will be available from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG and on https://www.gov.uk. The IMO now adopts and gives effect to amendments to the Annexes to the Convention on a quadrennial cycle; on this basis, the most recent amendments came into force on 1st January 2020 and the next amendments are expected to come into force on 1st January 2024.

6.5 These Regulations contain provision in regulations 15 and 16 for offences. A ship may also be detained under regulation 17 where it does not comply with these Regulations. These sanctions are applicable in respect of both United Kingdom high speed craft and non-United Kingdom high speed craft visiting United Kingdom ports.

6.6 These Regulations also amend the Merchant Shipping (Fees) Regulations 2018 to enable the Secretary of State to charge fees for certain actions (e.g. surveys and inspections) carried out under these Regulations and the Merchant Shipping (High Speed Offshore Service Craft) Regulations 2022.

7. Policy background

What is being done and why?

7.1 These Regulations are being made to ensure that the United Kingdom meets its international obligations in respect of Chapter X of the Annex to the Convention, thereby ensuring that the most up to date safety arrangements are in place for high speed craft in the United Kingdom.

7.2 The HSC Codes are given effect by Chapter X of the Annex to the Convention. These Codes, which apply to high speed craft in accordance with the date on which they were built or underwent major refurbishment, regulate the construction, equipment and operation of such craft. High speed craft which comply with the relevant HSC Code are treated as having complied with the corresponding requirements relating to the survey, inspection, construction, fire protection and the fitting of life-saving appliances and radiocommunications equipment which apply to all other ships. The detailed requirements in the HSC Codes were originally implemented into United Kingdom law by the 2004 Regulations. The HSC Codes therefore include provision covering fire-retardant aspects of construction and fire detection and extinction devices, life-saving appliances (including life-rafts and lifejackets), navigational and stability systems, etc.

7.3 The HSC Codes take more of a risk-based approach than many maritime standards, , which tend to be more prescriptive. Against the background of this comprehensive safety regime, the following marginal improvements, which reflect similar changes across different types of vessel in other parts of the Convention, are implemented by the Regulations, namely:

7.3.1 Requirement for crew drills on entry to, and rescue from, enclosed spaces;

7.3.2 Recording of those additional drills.

7.4 The Regulations also implement IMO changes which provide for the cessation of the provider monopoly in respect of Global Maritime Distress and Safety System satellite services. This is intended to create a competitive market and introduce other providers who are approved by the International Maritime Organization to provide such services.

7.5 These Regulations apply the standards of the HSC Codes, as applicable, to high speed craft built on or after 1st January 1996 to date.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018 (the "2018 Act") but relates to the withdrawal of the United Kingdom from the European Union because it revokes subordinate legislation under section 2(2) of the European Communities Act 1972.

8.2 In accordance with the requirements of the 2018 Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 These Regulations revoke and replace the 2004 Regulations. The Department, therefore, currently has no further plans to consolidate this legislation.

10. Consultation outcome

10.1 A consultation was carried out between 12th August 2021 until 6th October 2021. The consultees included industry leaders (e.g. the Chamber of Shipping) and operators. An Outcome Report summarising the responses has been published. The consultation and report are available at:

https://www.gov.uk/government/consultations/the-merchant-shipping-high-speed-craft-regulations-2022

and

https://www.gov.uk/government/consultations/the-merchant-shipping-high-speed-craft-regulations-2022/outcome/consultation-outcome-report.

10.2 Three responses were received. None objected to the proposal to make these Regulations, and there were no objections to the proposed introduction of the ambulatory reference provision to give effect to future updates to the Convention requirements.

10.3 There was a suggestion from the Law Society of Scotland to simplify the formula used to determine whether a vessel qualifies as a high speed craft for the purposes of Chapter X, with the suggestion that this would help operators determine whether a

vessel is a high speed craft. However, this criterion is defined by the IMO (in provision to which the United Kingdom has agreed) and, in any case, operators will know whether or not their vessel is certified as a HSC Code vessel.

11 Guidance

11.1 Further guidance on the implementation of Chapter X to accompany these Regulations is available in a Marine Guidance Note (MGN). A draft of the MGN was published at the same time that these Regulations were laid in draft (and a copy is available from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG and on https://www.gov.uk/government/publications/draft-mgn-and-min-relating-to-the-draft-of-the-merchant-shipping-high-speed-craft-regulations-2022.

12 Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because the instrument relates to the updating and maintenance of existing regulatory standards and no, or no significant, impact on the private or voluntary sector is foreseen. As high speed craft operators have in fact already adapted to meet the relevant IMO obligations, the Department considers that UK HSC will already be compliant and therefore costs will be overwhelmingly sunk.

13 Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken was to analyse the companies owning United Kingdom registered ships to estimate the impacts upon small businesses. The analysis concluded that around 3% of ships (approximately 25 ships) on the United Kingdom Shipping Register are owned by companies which may employ less than 50 people. The vast majority of companies owning United Kingdom registered ships are large multinational, or subsidiaries of multinational, companies and would therefore fall outside of the scope of the small firms' impact test. There are not expected to be any disproportionate impacts on small businesses.

13.3 The basis for the final decision on what action to take to assist small businesses is that the IMO amendments to the Chapter X and the HSC Codes are primarily concerned with the safety aspects of construction, equipment and arrangements onboard the vessels, including stability, life-saving appliances, fire protection, navigational aids and other equipment with key implications for safe operation. In the interests of safety, it is not possible to justify different requirements in these areas on the basis that a company has fewer employees.

14 Monitoring & review

14.1 The approach to monitoring of this legislation is to review the Regulations and a report of that review will be published no later than five years from the coming into force of these Regulations, and every five years thereafter.

14.2 A statutory review clause is included in the instrument.

15 Contact

15.1 Jim House at the Maritime and Coastguard Agency Telephone: 020 381 72392 or email: jim.house@mcga.gov.uk can be contacted with any queries regarding the instrument.

15.2 Gwilym Stone, Deputy Director for Ship Standards at the Maritime and Coastguard Agency, can confirm that this Explanatory Memorandum meets the required standard.

15.3 Robert Courts MP, Parliamentary under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018 and the European Union (Future Relationship) Act 2020

Part 1A

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees
Appropriate-Ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	A statement that the SI does no more than is appropriate.
Good Reasons	Sub-paragraph (3) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA SIs	Explain the instrument, identify the relevant law before IP completion day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained law.
Criminal	Sub-paragraphs (3) and (7)	Ministers of the Crown	Set out the 'good reasons' for creating a

offences	of paragraph 28, Schedule 7	exercising sections 8(1) or 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	criminal offence, and the penalty attached.
Sub-Delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 5 or 19, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 to make a Negative SI	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees

Part 2

Statements required under the European Union (Withdrawal) 2018 Act or the European Union (Future Relationship) Act 2020

1. Scrutiny statement where amending or revoking regulations etc. made under section 2(2) of the European Communities Act 1972

1.1 The Parliamentary Under Secretary of State, Robert Courts MP, has made the following statement regarding this instrument:

"I have taken the following steps to make the draft instrument published in accordance with paragraph 14(2) of Schedule 8 to the European Union (Withdrawal) Act 2018 available to each House of Parliament: a draft of the Merchant Shipping (High Speed Craft) Regulations 2022 was published on the GOV.UK website on 26th April 2022 and the Written Ministerial Statement "Draft Legislation: Ship Safety - The Merchant Shipping (High Speed Craft) Regulations 2022" was tabled in the House of Commons on 26th April 2022. Copies of the draft instrument were also deposited in the libraries of both Houses of Parliament on 26th April 2022. The clerks to the European Scrutiny Committee, the Transport Select Committee and the House of Lords Secondary Legislation Scrutiny Committee were also notified of the publication of the draft of the Regulations."

No recommendations were made by any committee of either House of Parliament and no other representations were made about the published draft Statutory Instrument.

2. Explanations where amending or revoking regulations etc. made under section 2(2) of the European Communities Act 1972

2.1 The Parliamentary Under Secretary of State, Robert Courts MP, has made the following statements in accordance with paragraph 15(3) of Schedule 8 to the European Union (Withdrawal) 2018 Act:

"Paragraph 15(3)(a): law which is relevant to the amendment:

Requirements relating to the safety of high speed craft are currently contained in the Merchant Shipping (High Speed Craft) Regulations 2004 ("the 2004 Regulations"). The 2004 Regulations were made under section 2(2) of the European Communities Act 1972 to implement an EU Directive which contained provision for passenger safety on high speed craft. These Regulations revoke and in effect replace the 2004 Regulations.

Paragraph 15(3)(b): effect of the amendment or revocation of retained EU law:

These Regulations make corresponding provision for passenger safety under international (IMO) requirements, supplanting the need to rely on former EU law obligations."

3. Good reasons

3.1 The Parliamentary Under Secretary of State, Robert Courts MP, has made the following statement regarding regulations made under the European Communities Act 1972:

"In my opinion there are good reasons for the Merchant Shipping (High Speed Craft) Regulations 2022 being made to revoke the Merchant Shipping (High Speed Craft) Regulations 2004 ("the 2004 Regulations") that were made under section 2(2) of the European Communities Act 1972. The Merchant Shipping (High Speed Craft) Regulations 2022 will give effect in UK law to updated international obligations governing high speed craft. These Regulations will also introduce ambulatory referencing to ensure that future changes to those international obligations will have effect in the UK. As such, these Regulations represent a significant consolidation of the updated requirements and existing regulatory framework to ensure the legislation is concise and clear; this also prevents any proliferation of regulation."