EXPLANATORY MEMORANDUM TO

THE MARINE POLLUTION AND MERCHANT SHIPPING (REVOCATION) REGULATIONS 2013

2013 No. 2944

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

2. Purpose of the instrument

These Regulations revoke four sets of regulations. They are being revoked because they are spent or have been superseded.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

4.1 These Regulations revoke (in chronological order):

- The Oil in Navigable Waters (Transfer Records) Regulations 1957 (S.I. 1957/358);
- The Oil in Navigable Waters (Records) Regulations 1972 (S.I. 1972/1929);
- The Merchant Shipping (Safety Convention) (Transitional Provisions) Regulations 1981 (S.I. 1981/584); and
- The Prevention of Oil Pollution Act 1971 (Application of Section 1) Regulations 1984 (S.I. 1984/1684).

4.2 These Regulations form part of the implementation of the Government's 'Red Tape Challenge' initiative. More information about this programme of work, and the instruments revoked by these Regulations, is provided below.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

5.2 The Prevention of Oil Pollution Act 1971, with the exception of section 2(1) and (3), was repealed in so far as it extended to Northern Ireland by the Merchant Shipping Act 1995. The instrument made under that Act which is revoked by these Regulations (S.I. 1984/1684) no longer, therefore, extends to Northern Ireland.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 In November 2011 the Government launched, as part of its Red Tape Challenge programme, the wholesale review of all maritime statutory instruments. Following a rigorous process of challenge, stakeholder engagement and public consultation, 63% of the instruments were identified as being suitable for either revocation or improvement.

7.2 *The Oil in Navigable Waters (Transfer Records) Regulations 1957* ("the 1957 Regulations") have effect as if made under section 142 of the Merchant Shipping Act 1995. This is as a result of the application of section 17(2) of the Interpretation Act 1978, which provides that where primary legislation is repealed and its provisions re-enacted in a new Act, secondary legislation made under the repealed legislation has effect as if made under the new Act. The regulations require records to be kept about the transfer of oil to and from certain classes of vessels whilst within the territorial waters of the United Kingdom. The regulations were developed in response to the growth in tanker traffic experienced in the post-war period and, in particular, the expansion of the coastal shipping fleet of small vessels. The regulations are being revoked because such requirements are now prescribed in more recent regulations, as described below.

7.3 The Merchant Shipping (Prevention of Oil Pollution) Regulations 1996 (S.I. 1996/2154) ("the 1996 Regulations") consolidated the Merchant Shipping (Prevention of Oil Pollution) Order 1983 (S.I. 1983/1106) and implemented certain international conventions on the prevention of pollution. Regulation 10 requires all vessels above a certain size to be provided with an Oil Record Book, and for records to be kept in relation to the loading and unloading of oil, and the internal transfer of oil during a voyage. Many of the discharges permitted under the 1950's regime, and which required record keeping under the 1957 Regulations, are no longer permitted under the modern oil pollution regime and the development of the North Sea oil industry has necessitated a change in approach to the management of discharges. In addition, oil discharges from and transfers within offshore installations (floating or fixed) are now regulated under the Offshore Petroleum Activities (Oil Pollution Prevention and Control) Regulations 2005 (S.I. 2005/2055) ("the 2005 Regulations"). These regulations introduced a permit system to replace the regime under the Prevention of Oil Pollution Act 1971 under which certain discharges into the sea were allowed. Permits issued under these regulations include a record keeping requirement, and such records may be inspected by inspectors appointed by the Secretary of State (see regulation 12). Activities regulated under the 1996 Regulations are exempt from the relevant requirements in the 2005 Regulations, so the two regimes compliment each other to provide comprehensive coverage with the 1996 Regulations covering shipping, and the 2005 Regulations addressing the offshore sector. It has been confirmed by the Department for Energy and Climate Change ("DECC") (the only body with reason to continue to use the 1957 Regulations) that no implications would arise from the revocation of S.I. 1957/358 because all relevant transfers and discharges are regulated either by the 1996 or the 2005 Regulations. The Department is therefore satisfied that the combination of the 2005 Regulations under which no discharges may be made without a permit (and which contains a requirement for the

keeping of records) and the 1996 Regulations, which require records of discharges and transfers to be kept, is sufficient to enable S.I. 1957/358 to be revoked.

7.4 *The Oil in Navigable Waters (Records) Regulations 1972* ("the 1972 Regulations") have effect as if made under section 142 of the Merchant Shipping Act 1995, by virtue of section 17(2) of the Interpretation Act 1978. The 1972 Regulations require the masters of certain ships to keep records both of discharges or escapes of oil from the ship, and of specified operations carried out on or in connection with the ship. The 1972 Regulations were revoked, except in relation to oil tankers of less than 150 gross registered tonnage and other ships of less than 400 gross registered tonnage, by S.I. 1983/1106 (see above). Larger vessels are now regulated under the 1996 Regulations (see paragraph 7.3), and industry regulators have not been applying the requirements in the 1972 Regulations to such smaller craft for a number of years. This is as a result of Government policy of self regulation for small vessels, combined with enhanced requirements for ports to provide facilities to receive waste oil, most recently through the Merchant Shipping and Fishing Vessels (Port Waste Reception Facilities) Regulations 2003 (S.I. 2003/1809). The combination of these regulations and the effect of self-regulation (for example, the joint industry/government development of Codes of Practice for Workboats) is considered to have mitigated the risk of unrecorded discharges which were previously addressed by the 1972 Regulations. Compared to the 1970's small vessels do not commonly carry oil in bulk, limiting the need for detailed record keeping, and improvements in the tools available to identify oil pollution (for example, satellites and surveillance aircraft) have reduced the opportunity for vessels to discharge illegally. The enforcement provisions contained in the 2005 Regulations (see paragraph 7.3) also allow DECC to obtain evidence, including any records maintained by a vessel, if relevant to a potential oil release/unpermitted oil discharge arising from offshore oil and gas activities. Government has therefore decided that those provisions in the 1972 Regulations which remain in force are no longer required. None of the consulted parties considered that revocation would have any adverse impact.

7.5 *The Merchant Shipping (Safety Convention) (Transitional Provisions) Regulations 1981* have effect as if made under section 86(2) of the Merchant Shipping Act 1995, by virtue of section 17(2) of the Interpretation Act 1978. These regulations contain transitional provisions arising from amendments made to the International Convention for the Safety of Life at Sea 1974 ("SOLAS Convention") by the Protocol of 1978 ("the 1978 Protocol"). These include provision for countries to which the SOLAS Convention applied to be recognised as countries to which the 1978 Protocol applied, and the recognition of certificates issued under the SOLAS Convention in relation to countries to which the 1978 Protocol did not apply. These transitional provisions expired at the end of April 1982 (see regulations 2 and 4). The regulations also provided for the continued acceptance of certain certificates issued under the SOLAS Convention (see regulations 3 and 5). Such certificates had to be in force at the time these regulations were made in order to be subject to these provisions, and had a maximum duration of five years (SOLAS Convention, regulation 14). This means that no such certificates remain in force. These Regulations are therefore spent.

7.6 *The Prevention of Oil Pollution Act 1971 (Application of Section 1) Regulations 1984* ("the 1984 Regulations") implemented obligations on the United Kingdom arising under the Convention for the Prevention of Marine Pollution from

Land-Based Sources of 1974 (now replaced by the Convention for the Protection of the Marine Environment of the North-East Atlantic, known as the "OSPAR Convention", which entered into force on 25 March 1998) by applying section 1 of the Prevention of Oil Pollution Act 1971 ("the 1971 Act") to any oil produced directly or indirectly from crude oil. Section 3 of the 1971 Act makes it a criminal offence for any oil to which section 1 of that Act applies, or any mixture containing such oil, to be discharged into the sea from pipe-lines or as the result of exploration of the seabed and subsoil or the exploitation of their natural resources in a designated area. The effect of the 1984 Regulations is therefore to make it a criminal offence to discharge oil to which those regulations apply in certain circumstances. The discharge of oil from offshore installations, which includes oil to which the 1984 Regulations apply, is now prohibited by regulation 3 of the 2005 Regulations (see paragraph 7.3), save for discharges made in accordance with a permit granted under those regulations, or in the circumstances prescribed in regulation 3(2) of those regulations. Contravention of the requirements prescribed in the 2005 Regulations is a criminal offence (see regulation 16), and regulation 18 provides that provisions in the 1971 Act (including sections 1 and 3) do not apply to emissions subject to the 2005 Regulations. Consultation with DECC and the Marine Management Organisation has confirmed that the provisions contained in S.I. 1984/1684 have now been superseded and are redundant.

- ***Consolidation***

7.7 This instrument revokes four sets of regulations and no consolidation is required.

8. Consultation outcome

8.1 Limited consultation has been undertaken between the UK oil industry, the British Chamber of Shipping, the Marine Management Organisation and the Department for Energy and Climate Change with regard to S.I. 1957/358, 1972/1929 and 1984/1684. All those consulted were content that these regulations have been superseded and raised no objection to the proposed revocations.

8.2 No consultation has been undertaken in respect of the revocation of SI 1981/584 because, as described in paragraph 7.5, the provisions are time-expired and no longer apply.

9. Guidance

No publicity or guidance is required as all the instruments revoked are either spent or have been superseded.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

There is no requirement for monitoring and reviewing these regulations due to the nature of revocation.

13. Contact

Alison Leighton at the Maritime and Coastguard Agency, (telephone 02380 329260 or email: Alison.Leighton@mcga.gov.uk) can answer any queries regarding this instrument.