EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING AND FISHING VESSELS (HEALTH AND SAFETY AT WORK) (ASBESTOS) (AMENDMENT) REGULATIONS 2013

2013 No.1473

1. This explanatory memorandum has been prepared by the Maritime and Coastguard Agency ("MCA") and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Asbestos)(Amendment) Regulations 2013 (the "Regulations") amend the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Asbestos) Regulations 2010 (the "2010 Regulations") so they fully implement Article 3.3 of Directive 83/477/EEC (as amended).

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

3.1 None.

4. Legislative Context

4.1. In 2006 a complaint was made to the European Commission alleging under implementation of Article 3 of Directive 2003/18/EC. Directive 2003/18/EC, designed to strengthen protection for maintenance workers, amended Directive 83/477/EEC whose purpose was the protection of workers from risks related to exposure to asbestos. As a result of its investigation into the associated HSE Control of Asbestos Regulations 2006 (the "2006 Regulations") covering land-based workers, on 16 February 2011 the Commission issued a reasoned opinion that the UK had failed to fully implement the Directive. The reasoned opinion relates to the omission of the terms *'non-friable'* and *'without deterioration of non-degraded material'* from Regulation 3 of the 2006 Regulations. The Directive was implemented for the maritime sector by the Merchant Shipping and Fishing Vessels (Health and Safety at Work) (Asbestos)Regulations 2010. The Government accepted the reasoned opinion in respect of HSE's 2006 Regulations and the omitted terms of the Directive were included in the Control of Asbestos Regulations 2012.

4.2. The 2010 Regulations were drafted in similar terms to the 2006 Regulations and it is therefore necessary to make changes to them to ensure compliance with the Directive The Regulations amend paragraphs (8)(c)(i) and (ii) of regulation 4 of the 2010 Regulations so they copy out the wording of paragraphs (a) and (b) of Article 3.3 of the Directive. The inclusion of these terms has the effect of narrowing the types of work to which the exemptions apply and might potentially require employers carrying out some types of low risk short duration work in future, to: i) notify the work to the relevant enforcing authority; ii) carry out worker medical examinations; and iii) maintain a register for each worker of the type and duration of work done with asbestos. However, a virtually complete ban on the use of asbestos on new build UK ships has been in place for nearly 30 years, except in the case of certain specialised uses, such as heat resistant gaskets, where alternatives were not available. It is not anticipated that the changes will result in extra costs for employers.

4.3 The changes made by these Regulations will ensure that the UK fully complies with the Commission's reasoned opinion. Directives 83/477/EC and 2003/18/EC were codified and replaced by Directive 2009/148/EC.

5. Territorial Extent and Application

5.1. The Regulations apply all UK registered ships and other vessels on which workers are employed irrespective of whether they are commercially or privately operated or are public or privately operated and irrespective of whether they operate at sea or on inland waters or where in the world they are operating. Certain provisions also apply to non-UK ships and other vessels when in UK waters.

6. European Convention on Human Rights

6.1. 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 Asbestos related disease is the single greatest cause of occupational deaths in Great Britain, resulting in approximately 4,500 deaths each year. There continues to be a high level of public and media interest in issues related to the management of asbestos risks and asbestos materials are still widespread in buildings and plant constructed before 2000 when the final prohibitions on supply and use came into force. Respirable fibres liberated to air by uncontrolled disturbance potentially present a serious long term risk to health.

7.2 In order to comply with the Commission's reasoned opinion, it was necessary to make the specific amendments to the legislation, rather than by any other means.

Consolidation

7.3 Given the minor changes being made it is not considered appropriate to produce a consolidated version of the 2010 Regulations at the present time.

8. Consultation outcome

8.1 Given that only minor changes were proposed, and the possibility, at that time, of infraction proceedings being commenced, a targeted four week consultation was undertaken between 22 October and 19 November 2012. Consultation was limited to 42 organisations representing the merchant shipping sector, including the UK Chamber of Shipping representing the major UK shipowners and the maritime Trades Unions, as well as the devolved administrations and other government departments with a perceived interest in what was proposed. 28 organisations representing the UK fishing sector were also consulted and the proposal was also placed on the MCA Website.

8.2 Only four responses were received to the consultation exercise of which one offered no comment and another indicated it was content with what was proposed. A third offered comments relating only to the 2010 Regulations, but not the proposed Regulations, current proposal and the fourth only commented in respect of the supporting guidance. This low level

of response supports the view that introduction of the 2013 Regulation should have little if any impact on UK businesses.

9. Guidance

9.1 The 2010 Regulations were supplemented by a Marine Guidance Note which provided guidance on the effects and requirements of those Regulations. A short Marine Guidance Note will be produced to provide industry with guidance on the changes being introduced by these Regulations.

10. Impact

10.1 The impact on business is considered likely to be low because of the almost total ban on the use of asbestos on UK ships it is considered unlikely that asbestos will be present except possibly on a few very old ships.

10.2 An Impact Assessment for the present changes will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The Regulations apply to small businesses.

11.2. There is little scope for minimising the impact of the requirements on firms employing up to 20 people, as EU Health and Safety Directives are required to be applied to all workers irrespective of the size of the company employing them. However as noted previously a ban on the use of asbestos on UK ships has been in place for many years and the effect on small business is therefore considered likely to be negligible.

12. Monitoring & review

12.1 The Regulations include a provision requiring a statutory review to be held no later than [**date 2018]** five years after the date on which the Regulations come into force.

13. Contact

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