EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (CARGO AND PASSENGER SHIP CONSTRUCTION AND MISCELLANEOUS AMENDMENTS) REGULATIONS 2023

2023 No. 246

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 His 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 II-1 of the Annex to the International Convention for the Safety of Life at Sea, 1974 ("the Convention"), relating to the construction (structure, subdivision and stability, machinery and electrical installations) of ships built on or after 1st January 2009 and engaged on international voyages, and include all amendments to Chapter II-1 made since 1st July 1999 which apply to ships built before, on or after 1st January 2009. They apply to all United Kingdom ships wherever they are and non-United Kingdom ships in United Kingdom waters.

2.2 These Regulations amend the Merchant Shipping (Cargo Ship Construction) Regulations 1997 (S.I. 1997/1509) ("the 1997 Regulations") and the Merchant Shipping (Passenger Ship Construction: Ships of Classes I, II and II(A)) Regulations 1998 (S.I. 1998/2514) ("the 1998 Regulations") so that, subject to certain exceptions, those instruments cease to apply to ships engaged on international voyages which are subject to Convention requirements, and also amend four other instruments to correct defects.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 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.

3.2 These Regulations also contain provision to correct errors previously reported by the Joint Committee on Statutory Instruments.

3.3 Regulations 19 and 20 make provision to correct errors in or made by the Merchant Shipping (Radiocommunications) (Amendment) Regulations 2021 (S.I. 2021/1316) which were reported by the Committee in its 27th Report of Session 2021–22.

3.4 Regulation 21 makes provision to correct errors in the Merchant Shipping (Cargo Ship) (Bilge Alarm) Regulations 2021 (S.I. 2021/592) which were reported by the Committee in its 13th Report of Session 2021–22.

3.5 Regulation 22 makes provision to correct errors in the Merchant Shipping (Nuclear Ships) Regulations 2022 (S.I. 2022/1169) which were reported by the Committee in its 22nd Report of Session 2022-23.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is all United Kingdom ships, whether within United Kingdom waters or anywhere else in the world. It also applies to non-United Kingdom ships while in United Kingdom waters.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 These Regulations implement outstanding amendments to the construction requirements in Chapter II-1 of the Annex to the Convention which apply to ships engaged on international voyages. Chapter II-1 also gives effect to mandatory requirements contained in the International Code on Intact Stability, 2008, the International Goal-based Ship Construction Standards for Bulk Carriers and Oil Tankers, the Code on Noise Levels on Board Ships and the International Code of Safety for Ships using Gases or other Low-Flashpoint Fuels. These amendments to Chapter II-1 (and the underlying Codes) took effect since its last implementation in the 1997 Regulations and 1998 Regulations. The outstanding amendments are MSC.65(68), MSC.69(69) (Cm 5771), MSC.99(73), MSC.134(76), MSC.151(78), MSC.170(79), MSC.194(80), MSC.216(82), MSC.256(84), MSC.269(85), MSC.282(86), MSC.290(87), MSC.291(87), MSC.308(88), MSC.325(90), MSC.338(91), MSC.365(93), MSC.392(95), MSC.409(97), MSC.421(98) and MSC.436(99); these 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 II-1 applies (subject to certain exceptions) to all United Kingdom ships, and non-United Kingdom ships in United Kingdom waters, engaged on international voyages.

6.2 The requirements in Chapter II-1 (including the requirements in the Codes) which prescribe obligations for ships built on or after 1st January 2009 are incorporated by direct references to those requirements in these Regulations (regulation 6).

Regulation 6 makes the application of these requirements to ships ambulatory so that all future amendments are automatically given direct effect in the United Kingdom by these Regulations. For ships built before 1st January 2009, the requirements are set out in Merchant Shipping Notice 1907(M); these requirements are not subject to the ambulatory reference provision in regulation 6.

6.3 There are further matters in Chapter II-1 and Merchant Shipping Notice 1907(M) (including in the Codes) which do not require implementation in domestic law but are the subject of guidance; these matters are set out in Marine Guidance Note 670(M) (in relation to Chapter II-1) and Marine Guidance Note 671(M) (in relation to Merchant Shipping Notice 1907(M)). The Merchant Shipping Notices and Marine Guidance Notes are available from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG and respectively on https://www.gov.uk/government/collections/merchant-shipping-notices-msns and https://www.gov.uk/government/collections/marine-guidance-notices-mgns.

6.4 Although the ambulatory reference provision in regulation 6 will allow future amendments to the requirements in Chapter II-1 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 M-Notice, which will be available from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG and on https://www.gov.uk.

6.5 Once a future amendment to Chapter II-1 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.

6.6 These Regulations contain provision in regulation 17 for offences. A ship may also be detained under regulation 18 where it does not comply with these Regulations. These sanctions are applicable in respect of both United Kingdom ships and non-United Kingdom ships visiting United Kingdom ports.

7. Policy background

What is being done and why?

7.1 As a signatory to the Convention, the United Kingdom is obliged under international law to implement the most up to date version of the Convention, including the requirements in Chapter II-1.

7.2 These Regulations will therefore implement the latest text of Chapter II-1 of the Annex to the Convention which concerns ship structure, subdivision and stability, machinery and electrical installations; and introduce ambulatory referencing.

7.3 The intended effects are to (i) enhance existing requirements concerning the design and construction of ships, and (ii) introduce an ambulatory reference which will reduce legal uncertainty and red tape for industry by referring always to the most up to date relevant international obligations. Consequently, operators will only need to refer to one piece of legislation and therefore their familiarisation costs will be lower over time.

7.4 These Regulations apply to internationally trading UK-flagged cargo and passenger ships, and to equivalent non-UK vessels whilst operating in UK waters. As such, quantifying the number of vessels which will fall within the scope of the legislation is difficult to establish because this would require gathering data on port calls. Although UK ships on international voyages are compliant with international obligations under the Convention, the current UK legislation which applies to such vessels is over 20 years out of date.

7.5 The key benefit of Chapter II-1 requirements is that they reflect current best practice concerning design and construction. These Regulations will bring the UK legislation up to date and into line with those international requirements. As well as improving safety standards, which is likely to save lives and prevent injuries (and may reduce insurance premiums), this will also ensure a level playing field between UK-flagged vessels and non-UK flagged vessels and enable prosecution cases against those ships in accordance with the latest international standards.

7.6 There is likely to be limited public interest in what is being done outside those directly involved in the operation and management of affected ships. Because of the international nature of the shipping industry, ship operators already aim to comply with the latest international requirements in Chapter II-1. This is because of the risk of facing costly detention for non-compliance in the ports of other States which do have the necessary legislation in place.

7.7 These Regulations include provision which requires ships built before 1st January 2009 to comply with the requirements set out in Merchant Shipping Notice 1907(M) together with power enabling the Secretary of State to amend or replace those requirements through the issue of a further Merchant Shipping Notice.

7.8 Regulations 19 to 22 amend four instruments (the Merchant Shipping (Radio Installations) Regulations 1998, the Merchant Shipping (Radiocommunications) (Amendment) Regulations 2021, the Merchant Shipping (Cargo Ship) (Bilge Alarm) Regulations 2021 and the Merchant Shipping (Nuclear Ships) Regulations 2022) to correct errors in them which have been reported by the Joint Committee on Statutory Instruments.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 These Regulations make significant amendments to the 1997 and 1998 Regulations. The Department, therefore, currently has no further plans to consolidate this legislation.

10. Consultation outcome

10.1 The Department (through the MCA) held a public consultation[1] exercise which ran from 15th August to 21st October 2022. Three responses were received to the consultation from the Law Society, UK Chamber of Shipping and Lloyds Register. The comments were generally supportive, and the approach taken to bring our legislation up to date was not questioned, and neither were any of the assumptions that were included in the Impact Assessment.

10.2 The formal consultation response can be found at:

https://www.gov.uk/government/consultations/consultation-on-the-merchant-shipping-cargo-and-passenger-ship-construction-and-miscellaneous-amendments-regulations-2022.

11. Guidance

11.1 Further guidance on the implementation of Chapter II-1 to supplement these Regulations is available in Marine Guidance Note 670(M) and Marine Guidance Note 671(M) which are available from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG and on https://www.gov.uk/government/collections/marine-guidance-notices-mgns.

12. Impact

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

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

12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

12.4 The Impact Assessment was not able to quantify the impacts on business. There will be costs to business as shipbuilders and shipowners will have to change their practice compared to the status quo prior to the regulations. The changes introduced by these Regulations implement international requirements and standards and regulations, some of which have existed for many years. Although the consultation did not provide the Department with data on compliance, it is expected that many UK operators will already be complying with the requirements set out in these regulations, as they have become standard practice internationally, and failure to comply could create problems when operating in other jurisdictions. Therefore, it is unlikely that any significant costs will be incurred in future due to the changes, and the large majority of costs are to be treated as "retrospective", i.e. any costs associated with compliance will already

[1] https://www.gov.uk/government/consultations/consultation-on-the-merchant-shipping-cargo-and-passenger-ship-construction-and-miscellaneous-amendments-regulations-2022.

have been incurred. The changes are largely technical and incremental in nature, meaning that any costs are likely to be small.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by micro, small and medium businesses.

13.2 No specific action is proposed to minimise regulatory burdens on micro businesses (employing up to 10 people), small businesses (employing up to 50 people) or medium businesses (employing up to 500 people).

13.3 The basis for the final decision on what action to take to assist small businesses and medium businesses is provided by the available data about businesses which order or construct vessels, and the associated costs of those activities. Indeed, ordering or constructing a new build vessel is a very expensive activity and it is very unlikely that any small businesses would have sufficient capital to do so. While the available data supports the conclusion that it is extremely unlikely that small businesses will be affected by the changes, it also demonstrates that a limited number of medium businesses will be impacted by the requirements of these Regulations.

13.4 There will be no exemption for small, micro or medium businesses, as the changes have been agreed by the IMO and vessels will all have to meet the safety standards, regardless of the size of any particular business.

14. Monitoring & review

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

14.2 The impacts of these Regulations will be reviewed by monitoring MCA data on ship surveys and inspections and using stakeholder meetings. This will allow the evaluation of compliance, desired effects on safety and problems encountered after implementation.

14.3 A statutory review clause is included in the instrument.

15. Contact

15.1 David Unsworth at the Maritime and Coastguard Agency, telephone: 020381 72404 or email: david.unsworth@mcga.gov.uk, can be contacted with any queries regarding the instrument.

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

15.3 Baroness Vere of Norbiton, Parliamentary under Secretary of State at the Department for Transport, can confirm that this Explanatory Memorandum meets the required standard.