EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (CARRIAGE OF CARGOES) REGULATIONS 2024

2024 No. 637

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. Declaration

2.1 Lord Davies of Gower, Parliamentary under Secretary of State at the Department for Transport, confirms that this Explanatory Memorandum meets the required standard.

2.2 Fraser Heasley, Director of UK Maritime Technical Services at the Maritime and Coastguard Agency confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Alison Kentuck at the Maritime and Coastguard Agency Telephone: 0203 81 7000 or email: alison.kentuck@mcga.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 These Regulations implement the latest version of Chapter VI of the Annex to the International Convention for the Safety of Life at Sea, 1974 ("the Convention"), relating to the carriage of cargoes and oil fuels by ships engaged on international voyages, to include all amendments made since 1 July 2002.

4.2 These Regulations revoke and replace the Merchant Shipping (Carriage of Cargoes) Regulations 1999 (S.I. 1999/336) ("the 1999 Regulations"). Subject to specified exceptions, they apply to all seagoing United Kingdom ships wherever they are and seagoing non-United Kingdom ships in United Kingdom waters.

Where does the legislation extend to, and apply?

4.3 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.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England and Wales, Scotland and Northern Ireland and 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. Policy Context

What is being done and why?

5.1 These Regulations are being made to ensure that the United Kingdom meets its international obligations in relation to Chapter VI of the Annex to the Convention.

5.2 The Convention is the main international treaty governing the safety of merchant ships engaged on international voyages and the United Kingdom is a signatory to the Convention. Chapter VI sets out requirements generally for the carriage of cargoes and oil fuels, making clear that the proper notification, handling, stowage and securing of any cargo is key to its safe carriage. Chapter VI makes provision for cargoes in general, but more detailed requirements for the carriage of dangerous cargoes such as hazardous solid bulk cargoes, liquids and gases in bulk and provisions for the carriage of packaged dangerous goods are covered by Chapter VII of the Annex to the Convention, thereby limiting the application of Chapter VI to aspects of the carriage of cargoes by sea which are not included in Chapter VII.

5.3 The Convention applies to the carriage of cargoes on ships engaged on international voyages but, like the 1999 Regulations, these Regulations apply to all ships engaged on seagoing voyages. In the United Kingdom, this may therefore include ships engaged on domestic voyages (i.e. voyages between only United Kingdom ports) but which operate outside United Kingdom categorised waters[1].

5.4 The provisions of Chapter VI have been implemented in the United Kingdom by Statutory Instrument, the most recent prior to this instrument being the 1999 Regulations. Chapter VI has been amended by the International Maritime Organization ("the IMO") on several occasions since the 1999 Regulations came into force. To meet the United Kingdom's obligations under the Convention, the unimplemented amendments have been consolidated with the existing requirements in the 1999 Regulations and set out in a new Statutory Instrument, these Regulations, which revoke and replace the 1999 Regulations.

5.5 Specifically, these unimplemented amendments include IMO Resolutions MSC.269(85) and MSC.325(90).

5.6 IMO Resolution MSC.269(85) amends Chapter VI and made the International Maritime Solid Bulk Cargoes (IMSBC) Code mandatory on an international basis in respect of the carriage of solid bulk cargoes by sea. The IMSBC Code replaced the IMO's previous Code of Safe Practice for Solid Bulk Cargoes ("the BC Code"), which was implemented by the 1999 Regulations, and contains a more comprehensive set of requirements.

5.7 IMO Resolution MSC.325(90) amended Chapter VI by introducing a new regulation 5-2 which provides a general prohibition on at-sea blending and processing of bulk liquid cargoes on cargo ships. Specialist ships engaged in the search and exploitation of seabed mineral resources are excluded from the prohibition, as are cargo transfers undertaken for the safety of the ship or protection of the marine environment. These Regulations implement Chapter VI regulation 5-2 in United Kingdom legislation.

5.8 These Regulations have a concise format that points directly to the relevant requirements in Chapter VI rather than replicating them in full. These Regulations also include ambulatory reference provision, a legislative tool developed since the

[1] Categorised waters are inland waters including canals, rivers and estuaries, and their extent is set out in detail in Merchant Shipping Notice 1837 (M) Amendment 3 which was published on 22nd April 2024 and is available on https://www.gov.uk/government/publications/msn-1837-m-amendment-3-categorisation-of-waters.

1999 Regulations[2] which enables amendments to mandatory international standards to be more efficiently transposed into domestic law. This will help to manage the United Kingdom's implementation of Chapter VI and to keep up to date with these international obligations going forward.

5.9 As both a deterrent and a proportionate means of managing compliance with the Convention requirements from Chapter VI, these Regulations contain offences and penalties. Most of the offences relate to requirements imposed on the owner and master but there are bespoke offences applying to either the owner or master individually, or to shippers, forwarders or terminal representatives. In each case, it is a defence for a person charged with an offence to prove that the person charged took all reasonable steps to avoid the commission of the offence.

What was the previous policy, how is this different?

5.10 The policy has always been to implement international obligations which have been agreed (with the involvement of the United Kingdom) in the IMO and the purpose of these Regulations is to ensure that the United Kingdom is up to date with these international maritime safety requirements. Previously, the 1999 Regulations, in tandem with Merchant Shipping Notices issued by the MCA, have been used to give effect to, or alert industry to amendments to international standards and the inclusion of ambulatory reference provisions in these Regulations aims to provide a more efficient means of ensuring that the United Kingdom stays up to date in the future.

6. Legislative and Legal Context

How has the law changed?

6.1 These Regulations implement outstanding amendments to the requirements in Chapter VI of the Annex to the Convention but, like the 1999 Regulations which they revoke, these Regulations apply to all ships engaged on seagoing voyages. Chapter VI also gives effect to mandatory requirements contained in the International Maritime Solid Bulk Cargoes Code ("the IMSBC Code") and the International Code for the Safe Carriage of Grain in Bulk ("the International Grain Code"), as well as a specified requirement in the Code of Safe Practice for Cargo Stowage and Securing.

6.2 These amendments to Chapter VI (and the underlying Codes) took effect since its last implementation in the 1999 Regulations. The outstanding amendments to Chapter VI are MSC.123(75), MSC.194(80), MSC.239(83), MSC.269(85), MSC.282(86), MSC.325(90) and MSC.380(94); these are available from the IMO 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 VI applies (subject to certain exceptions) to all seagoing United Kingdom ships, and seagoing non-United Kingdom ships in United Kingdom waters.

6.3 The requirements in Chapter VI and the International Grain Code which prescribe obligations in relation to ships are incorporated by direct references to those requirements in these Regulations (in regulation 5 and in other regulations). The requirements in the IMSBC Code and Code of Safe Practice for Cargo Stowage are given effect by virtue of the reference to them in Chapter VI. In relation to the safe use of pesticides in ships, the high-level requirements in Regulation 4 of Chapter VI are combined with more specific measures from IMO circulars and previous Maritime

[2] The relevant power was inserted into the Merchant Shipping Act 1995 in 2015.

and Coastguard Agency ("MCA") guidance and are prescribed as specific requirements in Merchant Shipping Notice 1917(M) which is given effect in regulations 9 and 10. The Merchant Shipping Notice is available from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG and on https://www.gov.uk/government/collections/merchant-shipping-notices-msns.

6.4 Regulation 5 makes the application of these requirements to ships and others ambulatory so that all future amendments are automatically given direct effect in the United Kingdom by these Regulations. Regulation 5 refers specifically to Chapter VI and the International Grain Code, and on the basis that regulations 1-2 and 2.2.1 of Chapter VI make ambulatory reference to the IMSBC Code and sub-chapter 1.9 of the Code of Safe Practice for Cargo Stowage and Securing respectively, regulation 5 also gives ambulatory effect to those Codes.

6.5 There are further matters in Chapter VI (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 Notes MGN 699(M) and MGN 700(M), and 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.

6.6 Although the ambulatory reference provision in regulation 5 will allow future amendments to the requirements in Chapter VI and in the Codes 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.

6.7 Once a future amendment to Chapter VI or any of the Codes 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: http://treaties.fcdo.gov.uk/treaties/treaty.htm. 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 amendments to the IMSBC Code are adopted on a biennial amendment cycle as part of a standing work item for the IMO's Sub-Committee on the Carriage of Cargoes and Containers ("CCC") meaning that every two years a new edition of the Code is published. Amendment (06-21) was adopted by IMO Resolution MSC.500(105) and came into force internationally on 1 December 2023.

6.8 These Regulations contain provision in regulations 14 to 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 in United Kingdom waters.

Why was this approach taken to change the law?

6.9 The Department considers that this is the most appropriate means of legislating to make these changes. The need to implement the recent international amendments to the Convention presented an opportunity to replace the 1999 Regulations and introduce ambulatory reference provision to consolidate the existing law into a single instrument.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Department carried out a formal consultation on the proposals which are given effect by these Regulations. This took place between 8th December 2023 and 28th January 2024. The MCA published the consultation and specifically brought it to the attention of more than 500 stakeholders. This explained the proposals to update the United Kingdom's implementation of Chapter VI and the underlying mandatory codes by revoking the existing 1999 Regulations and replacing them with a new instrument, these Regulations, in a clear and usable format with accompanying guidance. Specifically, those consulted were asked to comment on the approach to implementation and whether the assessment of costs and impacts was appropriate.

7.2 The consultees included Recognised Organisations, vessel owners/operators, shippers, marine surveyors, consultants, industry groups and other flag administrations, and the devolved administrations. Nine responses were received, none of which opposed the implementation of the Chapter VI requirements. Respondents also agreed that the likely impact and costs to industry would be low. The responses were from ship operating companies, trade associations, government agencies, cargo specialists and marine surveyors. The responses raised a number of points relating to the intended application of these Regulations when compared to the existing 1999 Regulations. These points have been fully considered and are reflected in the post consultation report.

7.3 The consultation document and post consultation report can be found at www.gov.uk[3].

8. Applicable Guidance

8.1 The Department has published further guidance on the implementation of Chapter VI to supplement these Regulations and this is available in Marine Guidance Notes MGN 699(M) and MGN 700(M). These respectively contain guidance on the application of Chapter VI generally and specifically in relation to the requirements on the use of pesticides. These Marine Guidance Notes are available on the basis set out in paragraph 6.5.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the direct impacts on business have been assessed at under £5m per year. Instead, light-touch internal analysis has been conducted and these have found that the impacts and potential compliance costs arising from this instrument are low.

[3] Consultation on the Merchant Shipping (Carriage of Cargoes) Regulations 2024 can be found on gov.uk: https://www.gov.uk/government/consultations/consultation-on-the-merchant-shipping-carriage-of-cargoes-regulations-2024

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because costs arising from these Regulations such as familiarisation costs, cargo test training for shipper employees, code expenses and cargo test expenditure have been assessed as low and have also been weighed against benefits.

9.3 One of the main benefits to businesses will be reducing the risk for the United Kingdom of losing "low risk status" under the IMO audit scheme, maintaining the frequency of United Kingdom ships inspections to low levels and a level-playing field. Generally, the regulations will also improve the safety of seafarers and the environment, especially by improving the safety standards of the handling of cargoes. The inclusion of ambulatory referencing and consolidation of the legislation will reduce familiarisation costs and lead to small cost savings.

9.4 The legislation does impact small or micro businesses.

9.5 No specific action is proposed to minimise burdens on small or micro businesses. Any small, micro or medium businesses in scope would have to comply with the regulations in the same way large businesses do.

9.6 The basis for the final decision on what action to take to assist small or micro businesses is that, since costs are related to the number of ships a company possesses or the tonnage of cargoes handled, the costs on small, micro and medium businesses are not likely to be disproportionate. Moreover, business exemptions would not be compliant with the international regulation on carriage of cargoes and the same safety and environmental standards need to be met regardless of firm size.

9.7 There is no, or no significant, impact on the public sector because the familiarisation and training costs for MCA surveyors have been assessed as low.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 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.

10.2 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.

10.3 A statutory review clause is included in the instrument.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 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.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").