EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (CARRIAGE OF DANGEROUS GOODS AND HARMFUL SUBSTANCES) (AMENDMENT) REGULATIONS 2024

2024 No. 636

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport 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: 020 3817 2000 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 versions of Chapter VII of the Annex to the International Convention for the Safety of Life at Sea, 1974 ("SOLAS"), relating to the carriage of dangerous goods by ships, and Annex III to the International Convention for the Prevention of Pollution from Ships, 1973 ("MARPOL"), relating to the prevention of pollution by harmful substances carried by sea in packaged form.

4.2 These Regulations amend and substantially replace the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997 (S.I. 1997/2367) ("the 1997 Regulations") and in accordance with regulation 4 apply, with certain limited exceptions, to United Kingdom ships wherever they are and to non-United Kingdom ships when in United Kingdom waters or controlled waters[1].

4.3 These Regulations also provide for the incident reporting requirements in Chapter VII of SOLAS and Protocol I to MARPOL, and for this purpose revoke and replace existing corresponding provision in the Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995 (S.I. 1995/2498)

[1] Controlled waters means the waters falling within the United Kingdom's Exclusive Economic Zone (EEZ) as prescribed by the United Nations Convention on the Law of the Sea 1982. The EEZ stretches from the outer limit of the UK's territorial sea to 200 nautical miles from the UK's coast.

and certain provisions in the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004 (S.I. 2004/2110).

Where does the legislation extend to, and apply?

4.4 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.

4.5 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 and, in relation to the application of obligations under MARPOL, such ships while in controlled waters.

5. Policy Context

What is being done and why?

5.1 These Regulations are being made to ensure that the United Kingdom continues to meet its international obligations in relation to SOLAS Chapter VII, MARPOL Annex III and Protocol I of MARPOL.

5.2 SOLAS Chapter VII and MARPOL Annex III make provision for the carriage by sea of cargoes which have a particular hazard, whether that be dangerous goods which have a safety hazard, harmful substances which have a pollution hazard or substances which have both a safety and a pollution hazard and are therefore covered by both SOLAS and MARPOL regulations. Protocol I of MARPOL, alongside specific provision in SOLAS Chapter VII, makes provision for reporting incidents such as the loss of dangerous goods overboard.

5.3 The requirements of SOLAS Chapter VII, MARPOL Annex III and Protocol I of MARPOL have previously been implemented in the UK by a number of Statutory Instruments, primarily by the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997 (S.I. 1997/2367) ("the 1997 Regulations") but also the Merchant Shipping (Gas Carriers) Regulations 1994 (SI No.1994/2464), the Merchant Shipping (Carriage of Packaged Irradiated Nuclear Fuel etc.) (INF Code) Regulations 2000 (SI No.2000/3219) and certain provisions of the Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995 (SI No.1995/2498) and the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004 (SI 2004/2110).

5.4 SOLAS Chapter VII and MARPOL Annex III have been amended a number of times since the regulations described in paragraph 5.3 above came into force. Whilst efforts have been made to keep UK implementation of the relevant international obligations up to date, most notably in the case of the 1997 Regulations, some amendments remain outstanding.

5.5 To meet the UK's obligations under SOLAS and MARPOL and to provide a more streamlined approach to the regulation of dangerous goods and harmful substances transported by sea, the unimplemented requirements from those amendments have been consolidated with the existing requirements in the regulations listed in paragraph 5.3 into a new Statutory Instrument, these Regulations, which amend and substantially replace the 1997 Regulations as well as revoking and replacing the other instruments or provisions described in paragraph 5.3.

5.6 These Regulations have a concise and consolidated format which points directly to the relevant requirements in SOLAS Chapter VII, MARPOL Annex III and MARPOL Protocol I rather than replicating them in full. These Regulations also include ambulatory reference provision, a legislative tool which has been introduced since the 1997 Regulations, which enables amendments to mandatory international standards to be more efficiently transposed into domestic law. This will help to manage the UK's implementation of Chapter VII, Annex III and Protocol I and to keep up to date with these international obligations going forward.

5.7 Chapter VII gives effect to a number of international codes containing mandatory requirements which are implemented in the UK by these Regulations. These are the International Maritime Dangerous Goods Code ("the IMDG Code"); the International Maritime Solid Bulk Cargoes Code ("the IMSBC Code") (for certain solid bulk cargoes that are also categorised as dangerous); the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk ("the IBC Code"); the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk ("the IGC Code"); and the International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships ("the INF Code").

5.8 The IMDG Code sets out international requirements for the transport by sea of packaged dangerous goods and marine pollutants. The IMDG Code makes provision for all aspects of the transport of dangerous goods including the classification of dangerous goods, documentation, packaging, labelling, and the stowage and segregation of dangerous goods on board the ship. These Regulations make provision which is aligned with the requirements for other modes of transport to ensure, as far as is possible, a consistent international and multi-modal approach to the transport of dangerous goods. These Regulations amend and substantially replace the 1997 Regulations with the intention of providing a clearer and more direct implementation of the IMDG Code in the UK along with ambulatory reference provisions which ensure that the UK remains up to date with future amendments to the Code particularly given that the Code (and the UN Model Regulations on the Transport of Dangerous Goods from which it flows) has a two-year amendment cycle in the International Maritime Organization ("IMO").

5.9 The IMSBC Code makes provision for the transport of solid bulk cargoes by sea (other than grain). The IMSBC Code is implemented in the UK predominantly by the Merchant Shipping (Carriage of Cargoes) Regulations 2024. These Regulations implement the IMSBC Code to the extent that some solid bulk cargoes are also categorised as dangerous goods and make ambulatory reference to it. The inclusion of ambulatory reference provisions to ensure that the UK remains up to date with future amendments to the Code are particularly relevant given that the Code (similar to the IMDG Code) has a two-year amendment cycle in the IMO.

5.10 The IBC Code provides the mandatory international standard for ship design, construction, equipment and operational procedures for the carriage of dangerous and noxious liquid substances in bulk by sea. SOLAS Chapter VII requires that cargo ships carrying a bulk liquid product listed in Chapter 17 of the IBC Code must operate in accordance with the IBC Code. Chapter VII of SOLAS was implemented in the UK by the 1997 Regulations. These Regulations amend and substantially replace those Regulations and include ambulatory reference provision in respect of the IBC Code to ensure timely implementation of future amendments to it.

5.11 The IGC Code provides the mandatory international standard for ship design, construction, equipment and operating procedures for the carriage of liquefied gases in bulk by sea. The IGC Code was implemented in the UK by the Merchant Shipping (Gas Carriers) Regulations 1994 ("the 1994 Regulations"). These Regulations revoke and replace the 1994 Regulations, give effect to the latest version of the IGC Code and consolidate the gas carrier requirements with those governing the carriage of other categories of dangerous goods in order to provide as far as possible a single instrument for the transport of dangerous goods and harmful substances by sea. These Regulations implement outstanding amendments to the IGC Code which have come into force on an international basis since the 1994 Regulations were last amended (in particular the 2016 revision of the Code). These Regulations also introduce ambulatory reference provision in respect of the IGC Code to ensure timely implementation of future amendments to it.

5.12 The INF Code provides the mandatory international standard for the carriage of irradiated nuclear fuel, plutonium and high-level radioactive waste by sea. The INF Code was implemented in the UK by the Merchant Shipping (Carriage of Packaged Irradiated Nuclear Fuel etc.) (INF Code) Regulations 2000 ("the 2000 Regulations"). These Regulations revoke and replace the 2000 Regulations and consolidate the irradiated nuclear fuel etc. requirements with those governing the carriage of other categories of dangerous goods with the aim of providing a single instrument for the transport of dangerous goods and harmful substances by sea as far as is possible. These Regulations also implement a number of minor outstanding amendments to the INF Code which have come into force on an international basis since the 2000 Regulations were made. These Regulations introduce ambulatory reference provision in respect of the INF Code to ensure timely implementation of any future amendments to the Code.

5.13 Protocol I of MARPOL sets out the reporting requirements for incidents involving harmful substances whilst regulations 6 and 7-4 of SOLAS Chapter VII set out the requirements for the reporting of incidents involving packaged dangerous goods and dangerous goods in bulk. These requirements were in part implemented in the UK by two separate instruments: the Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995 and the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004. However, these Regulations will for the first time fully implement the reporting requirements in relation to incidents involving dangerous goods in packaged form (regulation 6 of SOLAS Chapter VII) and incidents involving dangerous goods in solid form in bulk (regulation 7-4 of SOLAS Chapter VII). These Regulations therefore revoke and replace the 1995 Regulations and the relevant provisions of the 2004 Regulations.

5.14 As both a deterrent and a proportionate means of managing compliance with the various SOLAS and MARPOL requirements described in preceding paragraphs, these Regulations contain offences and penalties which in broad terms replicate those in previous regulations. 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 other persons. 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?

5.15 The policy has always been to implement international obligations with regard to the carriage of dangerous goods and harmful substances by sea which have been agreed (with United Kingdom input) in the IMO. The purpose of these Regulations is to ensure that the United Kingdom is up to date with the implementation of these international maritime safety and pollution prevention requirements. Previously, a suite of Statutory Instruments and Merchant Shipping Notices have been used to give effect to international standards whereas these Regulations are intended to provide a clear, consolidated and streamlined instrument which brings together all maritime dangerous goods and harmful substance provisions into a single Statutory Instrument as far as is possible. The previous approach to the implementation of updates and amendments to the international maritime safety and pollution prevention requirements covered by these Regulations was to publish a Merchant Shipping Notice where possible and, where implementation could not be achieved through publication of a Merchant Shipping Notice, an amending Statutory Instrument was required. In these Regulations, use is made of ambulatory reference provisions to ensure the timely implementation of any future amendments to the international requirements.

6. Legislative and Legal Context

How has the law changed?

6.1 These Regulations implement outstanding IMO amendments to the requirements in Chapter VII of the Annex to SOLAS and Annex III to MARPOL as at the date on which this instrument comes into force. Chapter VII also gives effect to the International Maritime Dangerous Goods Code ("the IMDG Code"), the International Maritime Solid Bulk Cargoes Code ("the IMSBC Code") (to the extent that solid bulk cargoes are categorised as dangerous), the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk ("the IBC Code"), the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk ("the IGC Code") and the International Code for the Safe Carriage of Packaged Irradiated Nuclear Fuel, Plutonium and High-Level Radioactive Wastes on Board Ships ("the INF Code"). These Regulations also therefore give effect to the requirements in those Codes, including previously unimplemented requirements in the IMSBC and IGC Codes.

6.2 These amendments to Chapter VII (and the underlying Codes) and Annex III took effect since their last implementation in the 1997 Regulations. The outstanding amendments to Chapter VII are MSC.69(69), MSC.87(71), MSC.117(74), MSC.123(75), MSC.170(79), MSC.269(85) and MSC.325(90). The outstanding amendments to Annex III are MEPC.246(66) and MEPC.257(67). These amendments 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 VII and Annex III apply (subject to certain exceptions) to all United Kingdom ships, and non-United Kingdom ships in United Kingdom waters.

6.3 The requirements in Chapter VII (including the requirements in the Codes) and Annex III (as well as the incident reporting requirements in Chapter VII of SOLAS and Protocol I to MARPOL) which prescribe obligations in relation to ships are incorporated by direct references to those obligations in these Regulations (regulation 5). Regulation 5 makes the application of these obligations in respect of ships

ambulatory so that all future amendments are automatically given direct effect in the United Kingdom by these Regulations.

6.4 Regulation 5 refers to SOLAS Chapter VII, the IBC Code, IGC Code, IMDG Code, IMSBC Code and INF Code, MARPOL Annex III and MARPOL Protocol I and therefore gives ambulatory effect to the requirements in the Codes as well as the matters in SOLAS Chapter VII and MARPOL Annex III and Protocol I.

6.5 There are further matters in Chapter VII (including in the Codes) and Annex III which do not require implementation in domestic law but are the subject of guidance; these matters are set out in Marine Guidance Notes MGN 697(M) and MGN 698(M). These Marine Guidance Notes are available from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG and at www.gov.uk[2].

6.6 Although the ambulatory reference provision in regulation 5 will allow future amendments to the requirements in Chapter VII, the Codes described in paragraph 6.4, Annex III and Protocol I 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 can 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 www.gov.uk.

6.7 Once a future amendment to Chapter VII, any of the Codes, Annex III or Protocol I 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 www.gov.uk.

6.8 These Regulations contain provision in regulations 32 and 33 for offences. A ship may also be detained under regulation 34 where it does not comply with these Regulations. These sanctions are applicable in respect of both United Kingdom ships and non-United Kingdom ships when 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 SOLAS and MARPOL (including the Codes) presented an opportunity to substantially replace the 1997 Regulations and the other instruments described in section 5 above, and introduce ambulatory reference provision, to consolidate the existing law into a single instrument.

[2] Active Marine Guidance Notes can be found here: https://www.gov.uk/government/collections/marine-guidance-notices-mgns#mgn-600s

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 26th January 2024. The Maritime and Coastguard Agency published the consultation (see link below) and specifically brought it to the attention of more than 500 stakeholders. This explained the intention to update the UK's implementation of SOLAS Chapter VII and MARPOL Annex III and the associated mandatory Codes by revoking the existing 1997 Regulations alongside certain other instruments and replacing them with a new instrument 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, dangerous goods safety advisors, marine surveyors, consultants, industry groups and other flag administrations, and the devolved administrations. Seventeen responses were received, none of which opposed the implementation of these specific SOLAS and MARPOL 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, dangerous goods specialists and marine surveyors. All points raised by respondents 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 VII and Annex III to supplement these Regulations and this is available in Marine Guidance Notes MGN 697(M) and MGN 698(M). These respectively contain guidance on the application of Chapter VII and Annex III. 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 this has found that the impacts and potential compliance costs arising from this instrument are low.

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 this merchant shipping safety instrument such as familiarisation or training costs have been assessed as low and have also been weighed against benefits.

[3] Consultation on the Merchant Shipping (Carriage of Dangerous Goods and Harmful Substances) (Amendment) Regulations 2024 can be found at: https://www.gov.uk/government/consultations/consultation-on-the-merchant-shipping-carriage-of-dangerous-goods-and-harmful-substances-regulations-2024

9.3 Costs to businesses include familiarisation costs, test training for shipper employees, code expenses and total tests spending. 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 dangerous goods. 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. They are not disproportionately impacted by these Regulations.

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 these 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 requirements for the carriage of dangerous goods 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").