EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (COUNTING AND REGISTRATION OF PERSONS ON BOARD PASSENGER SHIPS) (AMENDMENT) REGULATIONS 2023

2023 No. 787

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 This instrument makes amendments to the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) Regulations 1999 (S.I. 1999/1869) ("the 1999 Regulations"). A key purpose of this instrument is to address defects in the Merchant Shipping (Counting and Registration of Persons on Board Passenger Ships) (Amendment) Regulations 2021 (S.I. 2021/81) ("the 2021 Regulations") and extend the deadline by which seagoing passenger ships are obliged to report data concerning persons on board electronically through the National Single Window ("NSW") or the Automatic Identification System. This instrument also corrects defects in the Merchant Shipping (Life-Saving Appliance and Arrangement) Regulations 2020 (S.I. 2020/501) ("the 2020 Regulations") and makes provision for the charging of fees for applications for exemptions.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 An explanatory memorandum on this subject was first laid on 19 July 2023, and was updated with a correction on 24 July 2023. This amended explanatory memorandum is being laid in response to feedback from the House of Lords Secondary Legislation Scrutiny Committee. The Legislative context section has been expanded in paragraph 6.2, and the Policy Background in 7.2 and 7.3.

3.2 The Joint Committee on Statutory Instruments, in its 1st Report of Session 2021-22 reported regulation 2(7)(c) of the 2021 Regulations for defective drafting. The Department agreed that the reported provision relating to data erasure required further clarity and undertook to address this defect at the next legislative opportunity.

3.3 This instrument also amends the 2020 Regulations to remove a duplicate obligation on the owner of a passenger ship to have a system capable of counting all persons on board and collecting specified information in case of an emergency. For the purposes of the 2020 Regulations, Part B of Chapter III of the Annex to the International Convention on the Safety of Life at Sea ("the Convention") will no longer include regulation 27 because this obligation is implemented through the 1999 Regulations.

3.4 As this instrument corrects defects in the 2021 and 2020 Regulations, hard copies will be issued free of charge to all known recipients of those instruments.

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 the whole of the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is to the whole of the United Kingdom. It also applies to UK registered ships ("UK ships") wherever they may be in the world and non-UK 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 This instrument is made under sections 85, 86, 302 and 306A of the Merchant Shipping Act 1995 to provide domestic legislation setting standards for the safety of passenger ships.

6.2 The 1999 Regulations implemented Directive 98/41/EC which required seagoing passenger ships to record data about persons on board and for it to be retained ashore by the shipowner for accessibility. The 1999 Regulations applied the obligations to non-seagoing passenger ships as well as seagoing ones, which was considered an important safety feature.

6.3 The 1999 Regulations were updated from time to time as the European Community (and later the European Union) issued amending Directives, the latest being Directive 2017/2109/EU which was implemented by the 2021 Regulations. The requirement to report data electronically by 20 December 2023 was inserted into the 1999 Regulations by the 2021 Regulations. An amendment has been made to the electronic data reporting provisions of the 1999 Regulations to postpone the deadline for ships to report persons' data through the prescribed electronic methods by two years, to 20 December 2025. Consequently, from 20 December 2025, all passenger ships operating within UK waters and UK flagged passenger ships wherever they may be, will be required to use a harmonised method of collecting and reporting prescribed information concerning persons on board electronically. This information will be accessible to search and rescue authorities if there is an incident on, or involving, the ship thereby reducing the risk to lives at sea.

6.4 Regulation 27 of Chapter III in the Annex to the Convention provides for the counting and registration of all persons on board all passenger ships sailing on international voyages. This instrument amends the 2020 Regulations so that references to Part B of Chapter III of the Annex to the Convention in those Regulations no longer include regulation 27 as this obligation is implemented through the 1999 Regulations.

6.5 This instrument also provides for the correction of defects in the 2021 Regulations identified by the JCSI and amends the exemption provision in the 1999 Regulations. The amendment to the exemption provision provides the Secretary of State the power

to exempt passenger ships on non-international voyages from any of the obligations in the 1999 Regulations. The amendment also provides the Secretary of State the power to exempt passenger ships on international voyages from the requirement to report specific data concerning persons on board (such as their name, gender, nationality, date of birth, information concerning special assistance and emergency contact numbers) where the voyage would make it impracticable for the ship owner to comply.

6.6 Additionally, the instrument makes provision for the charging of fees for applications for exemptions.

6.7 This instrument is compliant with Article 2 of the Northern Ireland Protocol.

7. Policy background

What is being done and why?

7.1 In addition to the correction of defects as explained in section 3, the Department reviewed the 1999 Regulations and decided that this instrument was a suitable opportunity to make other policy changes.

7.2 One policy change is to delay the implementation of the electronic reporting requirement for two years, until 20 December 2025. As the UK has now left the EU, it is no longer bound by the deadline of 20 December 2023 as set by Directive 2017/2109/EU. The postponement of this deadline is simply delaying the automation of the existing system where data is collected and made accessible in an emergency, which has existed in various forms since 1999, and therefore does not reduce safety levels. This will provide industry the necessary additional time to prepare for the practical arrangements required to meet the electronic reporting obligation. It will also allow more time for the necessary functionality to be incorporated in the United Kingdom's electronic systems to allow ships to report persons data electronically. In the meantime, the collection of the same passenger data and its retention in an accessible place ashore, e.g., with the company registrar who will make it available to HM Coastguard in an emergency, will continue.

7.3 The other policy change is the widening of the scope of the exemption provision (Regulation 9 in the 1999 Regulations) to remove the restrictions on the issuing of exemptions. Regarding passenger ships on international voyages, the amendment provides the Secretary of State the power to exempt those passenger ships from the requirement to report specific data concerning persons on board where the voyage would make it impracticable for the ship owner to comply. The amendment inserted by this instrument provides the Secretary of State with the powers to exempt passenger ships on non-international voyages from any of the requirements in the 1999 Regulations. The decision to exempt will be made only in situations where safety is not compromised. An example of where an exemption may be granted would include where a passenger ship makes an occasional voyage outside its normal pattern of operation which would bring it under different obligations, but it may be considered disproportionate to impose the normal requirements of such a voyage for those odd occasions. There may also be situations where there are connectivity issues, but data can still be made available as at present, but not through the new systems. There is of course no guarantee that exemptions will be granted simply because they are requested or theoretically possible. The Secretary of State's discretion to grant an

exemption will only be exercised when safety and applicable international law is not compromised.

7.4 Additionally, this instrument removes a duplication of provisions in the 2020 Regulations and in the 1999 Regulations which implement the requirements of regulation 27 of Part B of Chapter III in the Annex to the Convention.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does relate to withdrawal from the European Union and does not trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 The Department has no plans to consolidate this legislation.

10. Consultation outcome

10.1 A public consultation was carried out between 28 February and 28 March 2023. It was posted on GOV.UK, was communicated to passenger ship groups comprising government and industry representatives, including representative groups, and the link was e-mailed to industry stakeholders.

10.2 Seven responses were received, and the measures were substantially supported. Operators welcomed the additional flexibility which the instrument provides. The government deemed that no change was necessary following the consultation.

10.3 This legislation falls under the maritime policy areas, which is a reserved matter, but contacts in devolved administrations were copied for information.

10.4 A summary of the responses to the consultation is contained in the Consultation Outcome Report at https://www.gov.uk/government/consultations/the-merchant-shipping-counting-and-registration-of-persons-on-boards-amendment-regulations-2023.

10.5 The Devolved Administrations were notified of the public consultation, and none provided a response.

11. Guidance

11.1 The guidance regarding the changes introduced by this instrument is incorporated into Merchant Shipping Notice 1794(M) Amendment 2, which may be obtained free of charge at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1139578/Annex_B_-_MSN_1794M_Amendment_2.pdf. A hard copy version can be obtained from the Maritime and Coastguard Agency, Ship Standards Branch, Spring Place, 105 Commercial Road, Southampton SO15 1EG (telephone 020 3817 2000 and email infoline@mcga.gov.uk).

12. Impact

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

12.2 There is no impact on the public sector. There are potential benefits on certain passenger vessel operators which may benefit from the delayed cost in meeting the postponed deadline for electronic reporting and/or the expanded exemption provision.

12.3 A full Impact Assessment has not been prepared for this instrument because the MCA has produced a De Minimis Assessment certifying that there is no cost to business, and therefore falls below the Better Regulations threshold of £5m per year.

13. Regulating small business

13.1 The applies to activities that are undertaken by small businesses.

13.2 No action is proposed to minimise the regulatory burdens on small businesses (employing up to 50 people) as the measures do not impose any costs on any business, only benefits.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to review the Regulations and publish a report no later than 22 February 2026, and every five years thereafter.

14.2 A statutory review clause is included in the instrument.

15. Contact

15.1 Matt Giacomini at the Maritime and Coastguard Agency, Telephone 020 381 72379 or email: matt.giacomini@mcga.gov.uk can be contacted with any queries regarding this instrument.

15.2 Gwilym Stone, Deputy Director: Regulations & Standards, of the UK Maritime Services Ship Standards can confirm that this Explanatory Memorandum meets the required standard.

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