EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (MARINE EQUIPMENT) REGULATIONS 2016

2016 No. 1025

1. Introduction

1.1 This explanatory memorandum has been prepared by The Department of Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument implements Directive 2014/90/EU on marine equipment ("the Directive"), which provides for the uniform application of international standards for equipment placed on ships registered in the European Union and the enforcement of those standards. This is achieved in the UK by requiring equipment placed on board UK ships to comply with international design, construction and performance standards. This instrument also provides for equipment placed on ships to which the Directive does not apply to meet specified safety requirements.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The Merchant Shipping (Marine Equipment) Regulations 1999 implement Council Directive 96/98/EC on marine equipment, which require equipment placed on board ships to comply with certain safety standards as regards design, construction and performance and set out conformity approval procedures in order to ensure such standards are met.

4.2 Directive 2014/90/EU on marine equipment recasts Council Directive 96/98/EC. The recast Directive continues to set safety standards for equipment placed on board ships and set out conformity approval procedures to ensure those standards are met, but also includes additional measures to increase the traceability of equipment placed on the market by imposing greater obligations on economic operators and to provide for uniform market surveillance.

4.3 The proposal that resulted in Directive 2014/90/EU was the subject of Explanatory Memorandum (EM) 17992/12 submitted by the Department for Transport on 28th January 2013. The House of Commons European Scrutiny Committee considered the EM on 30th January 2013. The Committee recommended that the document was politically important and retained it under scrutiny (Report 30, Session 2012-2013, 34574). The House of Lords Select Committee on the European Union referred the

EM to Sub-Committee B at the 1495th sift on 5th February 2013. The Committee Chairman wrote to the Minister on 12th March 2013 holding the document under scrutiny and seeking further information. A Ministerial reply was sent to this letter on 19th April 2013, and Ministerial letters were sent to both Committees on 30th May 2013 and 20th June 2013. The House of Commons European Scrutiny Committee cleared the document from scrutiny on 3rd July 2013 (Report 8, Session 2013-2014) and the House of Lords Select Committee on the European Union cleared it by letter to the Minister of 10th July 2013.

4.4 This instrument, along with Merchant Shipping Notice 1874, implement the provisions of Directive 2014/90/EU into UK law. The Merchant Shipping (Marine Equipment) Regulations 1999, which implemented Directive 98/96/EC, are revoked.

4.5 In addition to the transposition of the Directive, this instrument makes provision for equipment placed on domestic passenger ships and certain fishing vessels, which fall outside the scope of the Directive, to meet specific safety standards and sets out conformity approval procedures to be carried out by nominated bodies. These approval procedures were previously delegated to nominated bodies under the Merchant Shipping (Delegation of Type Approval) Regulations 1996, which are revoked by this instrument.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is all United Kingdom ships whether in the United Kingdom or anywhere else in the world.

6. European Convention on Human Rights

6.1 As this 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 The objective of Directive 2014/90/EC is to enhance safety at sea and to prevent pollution through the uniform application of the international instruments[1] relating to equipment (such as life-saving appliances, firefighting equipment, navigation equipment and pollution prevention/ reduction equipment) to be placed on board ships registered with EU Member States, and to ensure the free movement of such equipment within the European Union. This instrument achieves the objective by requiring equipment placed on UK ships that fall within the scope of the Directive to comply with the conformity approval procedures set out in the Directive. The instrument also provides for the appointment of notified bodies to carry out the conformity approval of such equipment, places specific obligations on manufacturers and other economic operators to improve the compliance and traceability of equipment, and requires the UK to undertake market surveillance to reduce the amount of defective, unsafe and fraudulent equipment supplied or put on the market in the UK.

[1] The international instruments are defined in article 2 of the Directive.

7.2 This instrument applies to all UK ships wherever they may be. It sets out safety standards for three tiers of equipment type:

7.2.1 the first tier being equipment required by the international instruments and falling within the scope of Directive 2014/90/EU, which requires approval by a notified body and is listed in Annex 1 of the Merchant Shipping Notice MSN 1874;

7.2.2 the second tier being equipment required by the international instruments, but not within the scope of Directive 2014/90/EU, which requires approval nationally by a UK nominated body (designated by the Secretary of State for independent approval of such equipment) and is listed in Annex 2 of Merchant Shipping Notice MSN 1874; and

7.2.3 the third tier being equipment on UK domestic ships that does not require approval and is listed in Annex 3 of Merchant Shipping Notice MSN 1874. Previously, such equipment was required to comply with the same safety standards as equipment placed on ships within the scope of the Directive. However, this was disproportionate, given the substantial difference in the safety risks faced by UK domestic ships. This tier imposes domestic requirements for equipment reducing some of the burdens on industry while maintaining a proportionate level of safety.

7.3 The requirements for the types of equipment described above are set out in three principle tiers, which corresponds to the type of ship on which the equipment is placed as follows:

7.3.1 for UK ships within the scope of the Directive, being those required to carry approved equipment in accordance with international instruments, equipment must be approved by a notified or nominated body (depending on equipment type (see paragraphs 7.2.1 and 7.2.2 above) to the standards required by the international instruments, which are set out in Annex 1 of Merchant Shipping Notice 1874;

7.3.2 for UK passenger ships on domestic voyages and large UK fishing vessels, equipment must:

7.3.2.1 be approved by a notified or nominated body to the standards required by international instruments as set out in Annex 1 or 2 of Merchant Shipping Notice MSN 1874,

7.3.2.2 comply with an alternative standard listed in Annex 4 of Merchant Shipping Notice MSN 1874, or

7.3.2.3 where equipment is carried voluntarily, comply with a standard accepted by the Secretary of State; and

7.3.3 For other ships, there is no requirement for the equipment to be independently approved, instead requirements for equipment are specified in Annex 3 of Merchant Shipping Notice MSN 1874.

7.4 The conformity approval of equipment by notified bodies has worked successfully for UK manufacturers with 844 products approved and marketed across the EU since the first Directive was transposed in 1999. The changes to the framework introduced by this instrument will help to remedy some weaknesses in the current framework by

improving the communication of relevant testing standards for equipment and strengthening the enforcement mechanisms available. In addition, the UK has the largest proportion of notified bodies undertaking conformity and this instrument maintains a framework for these bodies to continue such approval work.

7.5 While UK passenger ships and large fishing vessels fall outside the scope of the Directive and therefore the EU conformity approval procedures, the nature of operation of such vessels means that it is proportionate for them to carry equipment that has been independently approved as compliant with the standards of international instruments or equivalent alternatives.

7.6 The market surveillance provisions of the Directive are a relatively new concept with regards to equipment placed on board ships. The Department receives regular reports from ship surveyors, seafarers and the public expressing concerns regarding such equipment, especially fraudulent or counterfeit equipment. The market surveillance functions provided for in this instrument will dramatically reduce these occurrences.

7.7 The instrument is unlikely to draw attention from the general public but will be of interest to commercial ship operators and UK manufacturers.

Consolidation

7.8 This instrument consolidates the Merchant Shipping (Marine Equipment) Regulations 1999 and the Merchant Shipping (Delegation of Type Approval) Regulations 1996.

8. Consultation outcome

8.1 A public consultation was held for 6 weeks from the 26th May 2016 to the 6th July 2016. During public consultation, a range of equipment manufacturers and ship operators of varying sizes were consulted along with member organisations, such as the UK Chamber of Shipping, British Marine and the British Marine Equipment Association, and members of larger international manufacturing associations, such as the International Life-Saving Appliances Manufacturers Association and Sea Europe. Those consulted were informally consulted throughout the development of the policy through a variety of UK stakeholder meetings hosted by the Department including, but not limited to, the Maritime and Coastguard's Safety Equipment Advisory Committee, and the Maritime and Coastguard's UK Radiocommunications Navigation Equipment & Standards Committee to target those most affected by the policy (manufacturers, approval bodies and ship operators) as well as being formally consulted on for 6 weeks. At the end of the formal consultation period, 2 formal responses were received from a large UK based ship builder and a Notified Body. These comments resulted in a minor amendment to the Regulations, which clarified the conformity marking required on marine equipment after being granted approval.

9. Guidance

9.1 As the main users of the instrument will be manufacturers, approval bodies and ship surveyors as opposed to the general public, and those bodies are familiar with the relevant UK Regulatory Framework (having worked with the existing framework for the past 16 years) and with the Directive text directly (which is referred to in the instrument), there is minimal guidance needed. Existing Instructions to Surveyors will be updated accordingly and a Marine Guidance Note with regards the UK Market Surveillance Programme will be published alongside this instrument to communicate

to the general public what they should do, should they have concerns with equipment to which this instrument applies.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible and the chosen policy option regarding application of the regulations to only higher risk ships sees an impact of less than £0.08M/ year through the reduced application to lessor UK ship types.

10.2 There is no impact on the public sector.

10.3 An impact assessment is published alongside this Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 No specific action is proposed to minimise regulatory burdens on small businesses.

11.3 As the international instruments, and therefore the Directive that harmonises the application of those instruments, apply equally to manufacturers and ship operators regardless of size it has not been possible to minimise the impact of this instrument on the activities of small businesses.

12. Monitoring & review

12.1 In accordance with section 28 of the Small Business, Enterprise and Employment Act, 2015, this instrument contains a review clause for a reporting period of 5 years from the date of the Regulations coming into force. The Department will keep a record of comments from those affected by the instrument and a record of certificates issued to products manufactured by UK applicants. These will be used to analyse the UK's market share across Europe, the number of products raised as non-compliant or fraudulent during market surveillance activity both in and out of the UK, and the number of approvals issued by UK Notified Bodies as an assessment of their success in market share.

13. Contact

13.1 Andy Wibroe/ Hazel Christie at the Department for Transport Telephone: 0203 817 2000 or email: marinetechnology@mcga.gov.uk can answer any queries regarding the instrument.