EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (MISCELLANEOUS SAFETY) (REVOCATIONS) REGULATIONS 2015

2015 No. 68

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

These Regulations revoke two sets of Rules and two sets of Regulations. They are being revoked because they have been superseded or no longer have any practical effect.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Context

4.1 These Regulations revoke (in chronological order):

- The Merchant Shipping (Pilot Ladders) Rules 1965 (S.I. 1965/1046);
- The Merchant Shipping (Pilot Ladders) (Amendment No. 2) Rules 1972 (S.I.1972/531);
- The Merchant Shipping (Means of Access) Regulations 1988 (S.I. 1988/1627);
- The Merchant Shipping (Safe Movement on Board Ship) Regulations 1988 (S.I. 1988/1641).

4.2 These Regulations form part of the implementation of the Government's 'Red Tape Challenge' initiative. More information about this programme of work, and the instruments revoked by these Regulations, is provided below.

5. Territorial Extent and Application

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the 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 In November 2011 the Government launched, as part of its Red Tape Challenge programme, the wholesale review of all the maritime statutory instruments. Following a rigorous process of challenge, stakeholder engagement and public consultation 63% of the instruments were identified as being suitable for either revocation or improvement.

7.2 *The Merchant Shipping (Pilot Ladders) Rules 1965 (the Rules)* (and one amending instrument) are saved by virtue of Schedule 14, paragraph 7 to the Merchant Shipping Act 1995 following the repeal of the legislation under which the rules were made and subsequent enabling legislation. The saving provides that the Rules continue in force "until superseded by safety regulations" (which under current legislation means regulations made under section 85 of the Merchant Shipping Act 1995). The Rules require pilot ladders to be carried in respect of ships engaged on international voyages and ships encountering conditions similar to those prevailing on international voyages. Pilot ladders, under the topic of pilot transfer arrangements, are now regulated by Chapter V of the International Convention for the Safety of Life at Sea 1974 ("SOLAS") as enacted in UK law by the Merchant Shipping (Safety of Navigation) Regulations 2002 (S.I. 2002/1473). Following earlier revocations the Rules now only apply to the British Overseas Territories. SOLAS applies so as to regulate those territories which maintain a shipping register, and the Rules have no practical application in those which do not. The Rules are therefore being revoked because they have been superseded by subsequent legislation and no longer have any practical effect.

7.3 *The Merchant Shipping (Means of Access) Regulations 1988* ("the Means of Access Regulations") have effect as if made under section 85 of the Merchant Shipping Act 1995, and replaced and re-enacted earlier regulations on access. They implement in part the Merchant Shipping (Minimum Standards) Convention (International Labour Organisation Convention no. 147 ("ILO 147")). They place various duties on the employer and master of a UK ship to ensure provision of a safe means of access between the ship and the shore. The access equipment must be fit for purpose, properly rigged and maintained in a safe condition for use. Failure to comply with the requirements is a criminal offence. The regulations do not apply to fishing vessels, pleasure craft, offshore installations while within 500m of their working stations or ships on which there is for the time being no master or crew.

7.4 *The Merchant Shipping (Safe Movement on Board Ship) Regulations 1988* ("the Safe Movement Regulations") have effect as if made under section 85 of the Merchant Shipping Act 1995 and also implemented, in part, ILO 147. They place duties on the employer and master of a UK ship to ensure that a safe means of access is provided to any place on a ship where persons may go, including requirements for deck surfaces to be kept free from slip or trip hazards, and for the provision of lighting, safety signs, guardrails and ladders. Failure to comply with the requirements is a criminal offence.

7.5 These two sets of regulations are being revoked because ILO 147 has been superseded by the Maritime Labour Convention, 2006 (Cm 7049). The relevant implementing Regulations for the United Kingdom are the Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.) Regulations 2014 (S.I. 2014/1613) and the Merchant Shipping (Maritime Labour Convention) (Health and Safety) (Amendment) Regulations 2014 (S.I. 2014/1616).

7.6 The Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (S.I. 1997/2962, as amended by S.I. 2014/1616) require ship-owners and employers to ensure, so far as is reasonably practicable, the health and safety of seafarers, workers and others, by application of general principles of health and safety. Ship-owners are required, in performing that duty, to include in particular—

- provision and maintenance of plant, machinery and equipment and systems of work that are, so far as is reasonably practicable, safe and without risk to health (regulation 5(2)(a)); and

- provision and maintenance of an environment for persons aboard ship that is, so far as is reasonably practicable, safe and without risk to health (regulation 5(2)(g)).

7.7 Both the principles of health and safety and the particular areas for attention are applicable to the provision of a safe means of access and safe movement on board ship.

7.8 In addition, the International Safety Management (ISM) Code requires shipowners to put in place safe procedures for all key activities on board, which includes embarking and disembarking, and movement around the ship. The ISM Code (or for domestic passenger ships a national derivative) applies to high speed craft, passenger ships and to all cargo ships over 500GT operating internationally, and is implemented for UK registered ships by the Merchant Shipping (International Safety Management (ISM) Code) Regulations 2014 (S.I. 2014/1512).

7.9 The Maritime and Coastguard Agency is therefore able to enforce safe means of access and safe movement on board ship effectively without reference to the Means of Access and Safe Movement Regulations. These alternative requirements did not exist in 1988.

7.10 In addition, the Means of Access and Safe Movement Regulations mirrored provisions in the Docks Regulations 1988, made under the Health and Safety at Work etc. Act 1974 for the protection primarily of those working ashore, which were revoked in April 2014. Revoking these two statutory instruments for shipping ensures that the legislation for ships and for shore remains compatible.

- Consolidation

7.11 The instrument revokes two sets of Rules and two sets of Regulations and no consolidation is required.

8. Consultation outcome

8.1 There is no statutory duty to consult under section 86(4) of the Merchant Shipping Act 1995 about the revocation of the Rules because, as they have been superseded by more recent legislation and no longer have any practical application, no persons will be affected by the revocation.

8.2 A targeted eight week consultation was held on the two sets of Regulations. Twenty-five trade organisations, unions and companies were directly notified of the consultation exercise, including the UK Chamber of Shipping which represents a broad cross section of UK shipping companies in all sectors, the British Marine Federation and International Marine Contractors Association. Ten responses were received, mostly from significant players in the industry.

8.3 The majority supported the proposed revocations. One organisation raised concerns about the loss of clear cut standards and the need for enforceability, and three organisations opposed on the grounds that enforcement of the current standards for means of access and safe movement on board ship would be difficult without the prescriptive regulations in place. The MCA has considered these issues, and is satisfied that it will still be entirely possible to enforce agreed best practice standards. The Marine Guidance Notes (MGNs), which will contain the standards have been modified to address this concern.

9. Guidance

All the instruments revoked have been superseded. The MCA has published guidance in MGN 532(M) and MGN 533(M) to ensure industry is aware of the expected safety standards to be applied for safe movement on board ship and means of access. MGNs are published by the Maritime and Coastguard Agency. Copies may be downloaded from the MCA's website https://www.gov.uk/government/organisations/maritime-and-coastguard-agency or by e-subscription from mnotices@ecgroup.co.uk with 'Subscribe' in the subject heading, or obtained from M-Notices Subscriptions, PO Box 362, Europa Park, Grays Essex RM17 9AY, tel 01375 484548, fax 01375 484556. Guidance on Pilot Transfer Arrangements can be found at https://mcanet.mcga.gov.uk/public/c4/solasv/index.html, regulation 23.

10. Impact

10.1 An Impact Assessment is attached to this memorandum in respect of the revocation of the Means of Access and the Safe Movement Regulations and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

10.2 A full regulatory impact assessment has not been produced for the two Rules revoked by this instrument as no impact on the private, public or voluntary sector is foreseen.

11. Regulating small business

The legislation will have no significant adverse impact on small business.

12. Monitoring & review

12.1 There is no requirement for monitoring and reviewing the Rules due to the nature of the revocation.

12.2 The impact of revoking the Means of Access and Safe Movement Regulations will be reviewed through the Maritime and Coastguard Agency's stakeholder fora, the Domestic Passenger Ship Steering Group and the National Maritime Occupational Health and Safety Committee (a bilateral industry stakeholder group, which the Maritime and Coastguard Agency is regularly invited to attend as an observer).

13. Contact

Julie Carlton at the Maritime and Coastguard Agency Tel: 02380 329216 or email: Julie.Carlton@mcga.gov.uk can answer any queries regarding the instrument.