EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (NUCLEAR SHIPS) REGULATIONS 2022

2022 No. 1169

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 implements Chapter VIII in the Annex to the International Convention for the Safety of Life at Sea, 1974 ("the Convention"), which contains safety standards for commercially operated nuclear-powered ships ("nuclear ships"). The instrument also incorporates the provisions of International Maritime Organization (IMO) Resolution A.491, "Code of Safety for Nuclear Merchant Ships" ("the Nuclear Code").

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 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.

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 England and Wales, Scotland and Northern Ireland.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is all United Kingdom merchant nuclear ships, wherever they may be in the world. It also applies to non-United Kingdom merchant nuclear ships while they are 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 The Regulations implement Chapter VIII in the Annex to the Convention and incorporate the provisions of the Nuclear Code. Together, Chapter VIII and the Nuclear Code provide a regulatory framework for the safety of merchant nuclear ships. Nuclear ships are not yet widely used in merchant shipping, so Chapter VIII and the Nuclear Code have had little practical relevance as at the date of this memorandum. However, as a party to the Convention, the United Kingdom is obliged to implement the requirements of Chapter VIII into UK law.

6.2 The Convention and the Nuclear Code are available in hard copy from the IMO of 4 Albert Embankment, London SE1 7SR. The Convention can be found on the Foreign, Commonwealth and Development Office treaties database at https://treaties.fcdo.gov.uk/awweb/pdfopener?md=1&did=79786 and the Nuclear Code can be found at https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/AssemblyDocuments/A.491(12).pdf.

6.3 The Regulations include an ambulatory reference provision in regulation 4 to ensure future amendments to the Convention referenced in the Regulations are automatically incorporated into United Kingdom law. This ensures that United Kingdom domestic law remains in line with the requirements of the Convention. The United Kingdom will continue to be able to scrutinise and, if necessary, object to, any proposed changes in an international arena (in the IMO), and to assess the impact of the changes well before any amendment is due to come into force. This will inform decision making. United Kingdom industry and workers' representatives will also be involved at the stage at which the United Kingdom negotiating strategy is being formulated and will be able to influence it. If the United Kingdom objects to an amendment that is due to come into force internationally, and which is referenced in the Regulations, then the Secretary of State will make amending secondary legislation to prevent that amendment from becoming incorporated into domestic law by way of ambulatory reference. An amendment that is accepted by the United Kingdom will be publicised in advance of its in force date by a Parliamentary Statement to both Houses of Parliament, and by a Marine Guidance Note, which will be available from the Maritime and Coastguard Agency (MCA) of Spring Place, 105 Commercial Road, Southampton, SO15 1EG, and on https://www.gov.uk.

6.4 Amendments to the Nuclear Code will be published in a Merchant Shipping Notice in accordance with regulation 2(2) of the Regulations.

6.5 The instrument also requires that any reference in the Nuclear Code to a matter that is expressed as a matter that "should" be discharged, must be read as an obligation to discharge. Although the Nuclear Code was written as non-mandatory guidance it was, at the same time, developed for the purpose of creating a global standard for nuclear ships and it is therefore appropriate that those standards are implemented in UK law as obligations.

6.6 Merchant nuclear ships must hold a Nuclear Ship Safety Certificate, issued in accordance with Chapter VIII of the Convention, or for ships from non-Convention

countries, a certificate issued in accordance with the requirements of that country for the purpose of operating as a nuclear ship. It is a criminal offence for any merchant nuclear ship to proceed on any voyage unless its certificate is in force (regulation 27). United Kingdom merchant nuclear ships are subject to a survey regime, which is intended to ensure that these ships comply with the Regulations; however, the Secretary of State may suspend or cancel a ship's Nuclear Ship Safety Certificate in cases of non-compliance (regulations 24 and 25). Non-United Kingdom nuclear ships are also subject to inspections by port State control officers, on behalf of the Secretary of State, and the Regulations contain provision for the special control of merchant nuclear ships (regulation 32).

6.7 The Regulations contain provision in regulation 31 for offences and penalties. A ship may also be detained under regulation 33 where it does not comply with the Regulations. These sanctions are applicable in respect of both United Kingdom merchant nuclear ships and non-United Kingdom merchant nuclear ships visiting United Kingdom ports. The Maritime & Coastguard Agency is a prosecuting authority, acting on behalf of the Secretary of State; it has the power to investigate potential offences and, where necessary, bring prosecutions.

7. Policy background

What is being done and why?

7.1 This legislation is being made to ensure that the United Kingdom meets its international obligations in relation to Chapter VIII in the Annex to the Convention, therefore ensuring that there is in place a regulatory regime for the safety of merchant nuclear ships in United Kingdom domestic law that is a global standard, with appropriate powers of enforcement. There was no legislation regulating commercially operated nuclear ships in UK law before this instrument was made.

7.2 The Nuclear Code was adopted by the IMO on 19th November 1981 and is based upon established and accepted ship building, marine and nuclear engineering principles. The Nuclear Code is currently restricted to conventional types of ships propelled by nuclear propulsion plants with pressurised light water type reactors. As at the date of this memorandum, there is no scheduled review of the Code in the IMO, but it is expected that the Code will require updating in due course to take into account technological advances.

7.3 To date, the MCA has had no direct engagement with nuclear ships as there are no commercially operated ships using nuclear-powered propulsion operating under the United Kingdom Flag, and there are very few nuclear-powered merchant vessels currently operating in the global commercial fleet. However, it is recognised that nuclear propulsion could be used to mitigate against climate change and proposals may be made in the future to use this technology in order to help achieve the necessary reduction of greenhouse gas emissions from shipping.

7.4 There is general focus on decarbonisation in the marine industry which focuses on exploring alternative fuels and power sources. It is expected that within the next decade there could be a significant number of ships using alternative fuels and power sources, and it is possible during that time frame that some UK ships will do the same. In addition, it is likely that nuclear-powered ships will be seeking to trade in UK waters. Implementing the requirements of Chapter VIII, and building strong ties with

other nations, will increase the likelihood of UK flagged nuclear-powered ships and reinforce the broader maritime safety regime.

7.5 The Regulations contain a complete regulatory regime for the safety of nuclear ships and those on them, with special attention to radiation hazards. The UK regulator for the nuclear energy sector is the Office for Nuclear Regulation (ONR), whose statutory purposes under the Energy Act 2013 include protecting persons against risks of harm from ionising radiations from nuclear sites, including through the design and construction of relevant nuclear installations and their associated sites.

7.6 As the role of ONR is to ensure the safety and security of nuclear installations on sites in the United Kingdom, this means that certain aspects of the life cycle of a nuclear ship will be subject to legislation enforced by ONR rather than by the MCA. Further information on the role of ONR is available at www.onr.org.uk.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

9.1 As this instrument is implementing international obligations for the first time and there was no legislation regulating nuclear ships before the instrument was made, there is no need for consolidation.

10. Consultation outcome

10.1 The Department conducted an eight-week public consultation that ran from 9th August 2021 to 5th October 2021. Industry stakeholders, including the Devolved Administrations of Scotland, Wales and Northern Ireland, Trade Unions, Class Associations, ship owners and operators, and others, were notified of the consultation and invited to respond by a letter sent by email. The consultation was also publicised on the Maritime and Coastguard Agency's social media channels, and a press release was issued.

10.2 14 responses were received in total. Not all the questions posed in the Consultation Document were answered. The answers given have been fully and carefully considered with no resulting substantive alterations made to the Regulations. Additional information has been provided in guidance to reflect the role of ONR and the legislation for which it is responsible.

10.3 The consultation and the consultation report can be found at https://www.gov.uk/government/consultations/consultation-on-the-draft-merchant-shipping-nuclear-ships-regulations-2021. A hard copy version can be obtained from the Maritime and Coastguard Agency of Spring Place, 105 Commercial Road, Southampton SO15 1EG (telephone 020 3817 2000 and email infoline@mcga.gov.uk).

11. Guidance

11.1 The Department has published a Marine Guidance Note (MGN 679 (M)) which sets out the policy approach and explains the requirements of the Regulations. It is available on www.gov.uk/topic/ships-cargoes/m-notices and from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because there are currently no nuclear ships on the UK Flag and none is expected in the near to medium term future. Equally, to date, there have been no nuclear ships visiting UK waters and none is expected. The instrument relates to the implementation of a global regulatory regime and no, or no significant, impact on the private or voluntary sector is foreseen.

13. Regulating small business

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

13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to analyse the companies owning United Kingdom registered ships in order best to determine any impact. It is estimated that around 3% of ships (approximately 25 ships) on the United Kingdom Shipping Register are owned by companies which may employ fewer than 50 people. The vast majority of companies owning United Kingdom registered ships are large multinational, or subsidiaries of multinational, companies, and would therefore fall outside the scope of the small firms' impact test.

13.3 The basis for the final decision on what action to take to assist small businesses is that Chapter VIII is primarily concerned with safety measures for nuclear ships. In the interests of safety, it is not possible to justify different requirements just because a company has fewer employees. The benefits of lives potentially saved, even amongst smaller operators, greatly outweigh the impact. All operators are expected to comply with the same standards and, therefore, there will be no disproportionate impact upon one smaller business relative to another.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to review the Regulations. A report of that review will be published no later than five years from the coming into force of the Regulations, and every five years thereafter.

14.2 A statutory review clause is included in the instrument.

15. Contact

15.1 Klaudia Karpinska at the Maritime and Coastguard Agency Telephone: 020 381 72587 or email: Klaudia.karpinska@mcga.gov.uk can be contacted with any queries regarding the instrument.

15.2 Katy Ware, Director of UK Maritime Services at the Maritime and Coastguard Agency, can confirm that this Explanatory Memorandum meets the required standard.

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