EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (PREVENTION OF OIL POLLUTION) (AMENDMENT) REGULATIONS 2024

2024 No. 1296

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.

2. Declaration

2.1 Mike Kane MP, 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: 0203 81 72420 or email: Cargoes@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 This instrument amends the Merchant Shipping (Prevention of Oil Pollution) Regulations 2019 (S.I. 2019/42) ("the 2019 Regulations") in order to implement an amendment to Annex I (prevention of pollution by oil) to the International Convention for the Prevention of Pollution from Ships, 1973 ("MARPOL"). The amendment prohibits the use of heavy fuel oil (HFO) by ships operating in Arctic waters and the carriage of HFO for use as fuel by the ship. Ships operating in, or transiting through, Arctic waters will still be permitted to carry HFO as a cargo but will not be able to use it as a fuel for the ship or carry it in their fuel tanks for use by the ship. Where ship operations prior to entering Arctic waters have included the use of HFO as a fuel for the ship, or the carriage of HFO for use by the ship, there must be no HFO fuel left on board but the cleaning and flushing of pipelines and tanks is not required.

Where does the legislation extend to, and apply?

4.2 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.

4.3 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.

5. Policy Context

What is being done and why?

5.1 The instrument is being made to ensure that the United Kingdom meets its international obligations under Annex I of MARPOL for the protection of the marine environment from the risk of pollution by oil from ships.

5.2 MARPOL is the primary international convention dealing with the prevention of pollution by ships. MARPOL has six technical annexes, each of which makes provision for a specific type of ship-source pollution. Annex I of MARPOL makes provision for the prevention and control of pollution by oil from ships. This includes oil that is carried as fuel for the ship and oil carried as a cargo (i.e. oil tankers).

5.3 Annex I contains mandatory requirements for the carriage of oil by ships and includes specific requirements aimed at preventing pollution by oil, including provision for:

- the protection of oil fuel tanks and double hull and double bottom requirements for oil tankers to reduce the risk of spills in the event of hull damage;
- equipment, including oil filtering equipment and automatic stopping devices, to prevent discharges of oil above permitted levels;
- a survey and inspection regime to confirm continued compliance and identify non-compliance;
- mandatory documentation to aid verification and control, including an Oil Record Book, International Oil Pollution Prevention Certificate and Shipboard Oil Pollution Emergency Plan; and
- the designation of certain geographic areas where the particular sensitivities of the marine environment are such that special mandatory methods for the prevention of sea pollution by oil are required.

5.4 The especially sensitive nature of the Arctic and Antarctic environment is recognised in Annex I; the discharge of oil or oily mixtures in these waters is prohibited. Annex I also prohibits all carriage of heavy grade oils by ships, both as a cargo and as a fuel, in the **Antarctic**, but, until now, this prohibition had not been extended to **Arctic** waters.

5.5 Members States in the International Maritime Organization ("IMO"), which include the United Kingdom, agreed that this prohibition on the carriage and use of heavy grade oil should be extended, in a limited way, to Arctic waters. IMO Resolution MEPC.329(76)[1] contains the agreed amendment to Annex I, which prohibits the use, and carriage for use, of heavy fuel oil (HFO) as a fuel for ships in Arctic waters, but does **not** prohibit the carriage of such oil as cargo in Arctic waters. The amendment provides that the prohibition applies, except in certain specified cases, from 1st July 2024. This instrument therefore amends the 2019 Regulations in order to implement the prohibition in United Kingdom domestic law.

[1] MARPOL, the Protocol of 1978 modifying MARPOL and the amendments to it including Resolution MEPC.329(76), may be obtained in hard copy from the IMO, 4 Albert Embankment, London SE1 7SR, and may be found on the Foreign, Commonwealth and Development Office (FCDO) treaties database (https://treaties.fcdo.gov.uk/responsive/app/consolidatedSearch). Until such publication of Resolution MEPC.329(76) is made on the treaties database, the amendment will be available from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG (https://www.gov.uk/government/organisations/maritime-and-coastguard-agency). Resolution MEPC.329(76) is also available at https://wwwcdn.imo.org/localresources/en/KnowledgeCentre/IndexofIMOResolutions/MEPCDocuments/MEPC.329(76).pdf.

5.6 HFO is at the lower end of the fuel oil market. It is thick, viscous and less refined than other marine fuel oils, making emissions from HFO potentially more polluting and spills of HFO in the marine environment more of a threat to flora and fauna than distillate fuel, and this can be exacerbated by the low temperatures in Arctic waters. This prohibition aims to reduce the likelihood of an HFO spill in Arctic waters.

5.7 There are certain exceptions to the prohibition for particular types of ship. Ships which are already subject to oil fuel tank protection requirements in Annex I (under regulation 12A) and ships operating in severe ice conditions in polar waters which are subject to oil fuel tank separation requirements under the International Code for Ships Operating in Polar Waters (known as the "the Polar Code"), are excepted from this prohibition until 1st July 2029. Additionally, States with coastlines bordering on Arctic waters may waive the requirements for ships flying the flag of that State and operating only in the waters of that State up until 1st July 2029. On or after 1st July 2029, these exceptions and waivers cease to apply and all ships to which Annex I applies must comply with the prohibition.

5.8 This instrument also makes a minor correction to regulation 27 of the 2019 Regulations (control of discharge of oil in certain special areas) which refers to paragraph 38.6.1 of Annex I to MARPOL, when in fact the correct reference is 38.8.1. The instrument replaces the existing paragraph reference with the correct reference. As this was an error in the 2019 Regulations, the Department has decided to publish the instrument free of charge

What was the previous policy, how is this different?

5.9 United Kingdom policy relating to prevention of pollution of the marine environment by oil from ships has always been to implement into domestic law the international requirements in this area. The purpose of this instrument is to ensure that the United Kingdom continues to comply with its international obligations, consistent with longstanding policy on the protection of the marine environment, and sensitive polar waters in particular, from ship-source pollution.

5.10 Annex I of MARPOL has prohibited the carriage of heavy grade oils both as a cargo and as a fuel for ships when operating in, or transiting through, **Antarctic** waters since 2011. This prohibition on the carriage and use of heavy grade oils in the Antarctic is implemented in the United Kingdom by the 2019 Regulations (regulation 28). New regulation 28A operates to prohibit the carriage and use of heavy **fuel** oil (HFO) in the **Arctic**. HFO is a narrower category of oil than that permitted in the Antarctic and the prohibition only applies to use of the oil as fuel; a wider range of heavy grade oils is prohibited in the Antarctic, for both fuel and cargo. This instrument is therefore a continuation of existing policy to implement international standards for the prevention of pollution of the marine environment by oil from ships.

6. Legislative and Legal Context

How has the law changed?

6.1 The 2019 Regulations implement Annex I of MARPOL into United Kingdom law (except in relation to provision for the ship-to-ship transfers of oil, which are implemented in the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2020 (S.I. 2020/94)). This instrument implements amendments to Annex I, which provide for a prohibition on the use of specified HFO, and the carriage of HFO for use as fuel, by ships when in Arctic waters. The amendments to Annex I, which insert new regulation 43A into Annex I, are given effect by regulation 2(3) of the instrument,

which inserts new regulation 28A into the 2019 Regulations. Amendments to regulations 38 and 39 of the 2019 Regulations to allow a ship to be detained in relation to a contravention of the new prohibition are made by regulation 2(4) and (5) of the instrument. Provision for contravention of the new prohibition to be an offence is inserted in regulation 42 of the 2019 Regulations by regulation 2(6) of the instrument. Consequential amendments are also made to the enforcement provisions in regulations 44 to 47 of the 2019 Regulations to ensure they apply to the new prohibition (by regulations 2(7) to (10) of the instrument).

Why was this approach taken to change the law?

6.2 The Department considers that amendment of the 2019 Regulations is the most appropriate means of implementing these changes as related provision in Annex I, in particular the prohibition on the use and carriage of HFO in the Antarctic, is also implemented in the 2019 Regulations. Legislation is the only suitable mechanism for implementation of international requirements that impact on individuals because it ensures that the requirements can be enforced. As a party to MARPOL, the United Kingdom is required to provide for sanctions under its law, which are sufficiently severe to discourage violations of the convention requirements.

6.3 In implementing the prohibition on the use of HFO, and its carriage for use as fuel, by ships when in Arctic waters, regulation 28A provides that the HFO in scope is the oil referred to, and defined in, regulation 43.2.1 in MARPOL Annex I. Regulation 28A also identifies the ships that need not comply with the prohibition until 1st July 2029 as those ships to which regulation 12A of Annex I and paragraph 1.2.1 of Chapter I of part II-A of the Polar Code apply.

6.4 The 2019 Regulations include an ambulatory reference provision (in regulation 4) to ensure that future amendments to provisions of MARPOL and the Polar Code referenced in the 2019 Regulations are automatically incorporated into United Kingdom law. As such, the international references in new regulation 28A of the 2019 Regulations will be ambulatory and United Kingdom law will automatically update if amendments are made to those referenced provisions. Ambulatory references in secondary legislation made under the Merchant Shipping Act 1995 are an established mechanism for implementing amendments to the international instruments referenced in the legislation and such references have been made regularly in merchant shipping legislation since 2016.

6.5 The United Kingdom will continue to be able to scrutinise and, if necessary, object to, any proposed changes in an international arena (that is, in the International Maritime Organization (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, 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.

6.6 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 & Coastguard

Agency (MCA) of Spring Place, 105 Commercial Road, Southampton, SO15 1EG, and on the relevant page on gov.uk2.

6.7 Once an amendment comes into force by way of ambulatory reference, it can be obtained in hard copy from the IMO of 4 Albert Embankment, London SE1 7SR, or found on the Foreign, Commonwealth and Development Office online treaties database3. 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 1EG4.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Department carried out targeted stakeholder engagement, in the form of a questionnaire sent by email to over 100 stakeholders, including ship owners, ship operators, ship managers, classification societies, Recognised Organisations, industry bodies and other government departments. As a post implementation review (PIR) of the 2019 Regulations was also being conducted and the stakeholders for this review included many of those also likely to be impacted by this instrument, this was merged into one engagement process in order to reduce the administrative burden on those stakeholders. In addition to more general evidence gathering for the purposes of the PIR, the intention to amend the 2019 Regulations to make provision for the prohibition on the use, and carriage for use, of HFO as fuel in Arctic waters in line with MARPOL Annex I was explained and stakeholders were asked to comment on the proposed approach and on the potential costs and/or benefits of the amendment.

7.2 Eight responses were received. No objections were raised to the proposed approach and respondents generally agreed that this would be low impact. Three respondents identified experience of operating vessels in Arctic waters; however, none of these vessels used HFO as a fuel, meaning that they would not be subject to this prohibition. No unintended consequences were identified by any of the respondents. This was a targeted stakeholder engagement and further details may be obtained from the relevant policy lead (see section 3).

8. Applicable Guidance

8.1 The Department has published further guidance on the implementation of this amendment to Annex I of MARPOL to supplement this instrument and this is available in Marine Guidance Note (MGN) 704 (M+F). MGN 704 (M+F) is available from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG and at gov.uk[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 £10m per year. Instead, internal

[2] https://www.gov.uk/government/collections/marine-guidance-notices-mgns
[3] https://treaties.fcdo.gov.uk/responsive/app/consolidatedSearch/
[4] https://www.gov.uk/government/organisations/maritime-and-coastguard-agency
[5] https://www.gov.uk/government/collections/marine-guidance-notices-mgns

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 pollution prevention instrument, such as familiarisation, training costs and alternative fuel costs, have been assessed as low given the number of vessels that it is likely to impact, and have also been weighed against benefits, such as the likelihood of fewer inspections in the ports of other States as a result of full implementation of the HFO prohibition.

9.3 The legislation does impact small or micro businesses. They are not disproportionately impacted by this instrument as international standards for the prevention of pollution by ships must be met regardless of the size of the business.

9.4 To minimise the impact of the requirements on small or micro businesses (employing up to 50 people), the approach taken is to analyse the companies owning United Kingdom registered ships in order to determine any impact. It is estimated that around 3% of 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 of the scope of the small firms' impact test. In all cases, these companies must comply with the new requirements as they are international requirements with no discretion provided to a State party to vary them.

9.5 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 this legislation is to review the amendment made by it in the 2019 Regulations in accordance with the review provision in the 2019 Regulations. This review will be published.

10.2 The instrument does not include a statutory review clause because it is an amending instrument and the principal regulations (i.e. the 2019 Regulations) contain a review provision.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 Mike Kane MP has made the following statement regarding Human Rights:

"In my view the provisions of the Merchant Shipping (Prevention of Oil Pollution) (Amendment) Regulations 2024 are compatible with the Convention rights.".

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”).