EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (PREVENTION OF OIL POLLUTION AND PREVENTION OF POLLUTION BY SEWAGE FROM SHIPS) (AMENDMENT) REGULATIONS 2022

2022 No. 1234

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. Purpose of the instrument

2.1 This instrument implements amendments to Annex I (prevention of pollution by oil) and Annex IV (prevention of pollution by sewage from ships) to the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL) ("the Convention"). The instrument amends the Merchant Shipping (Prevention of Oil Pollution) Regulations 2019 (S.I. 2019/42) ("the 2019 Regulations") and the Merchant Shipping (Prevention of Pollution by Sewage from Ships) Regulations 2020 (S.I. 2020/620) ("the 2020 Regulations"). The amendments comprise exemptions for unmanned non-self-propelled barges ("UNSP barges") from the survey and certification requirements in Annexes I and IV and require a specified exemption certificate to be issued for each UNSP barge.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument 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:

(a) in the case of the amendments to Annex I, to all UNSP barges which are United Kingdom ships wherever they may be in the world, and to all UNSP barges which are non-United Kingdom ships in United Kingdom waters or controlled waters;

(b) in the case of the amendments to Annex IV, to all UNSP barges which are either United Kingdom ships, wherever they may be in the world, engaged on international voyages, non-United Kingdom ships within United Kingdom waters or controlled waters and engaged on international voyages, and to United Kingdom ships in polar 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 Amendments to Annexes I and IV of the Convention make provision for the exemption of UNSP barges from certain survey and certification requirements in those Annexes. The amendments were adopted by the International Maritime Organization's (IMO) Marine Environment Protection Committee on 17th June 2021 and are contained in Resolution MEPC.330(76). These amendments were accepted internationally on 1st May 2022 with an in force date of 1st November 2022.

6.2 As a party to the Convention, the United Kingdom is obliged to implement these amendments to Annexes I and IV into UK law. This is achieved by way of amendments to the 2019 Regulations and the 2020 Regulations.

6.3 Similar provision has also been adopted by the IMO for UNSP barges in relation to Annex VI of the Convention (prevention of air pollution by ships) and will be implemented separately into UK law.

6.4 The Convention, and the Protocol of 1978 that modifies the Convention, and the amendments to it, may be obtained in copy from the IMO, 4 Albert Embankment, London SE1 7SR and are available on the Foreign, Commonwealth and Development Office (FCDO) treaties database (https://treaties.fcdo.gov.uk/responsive/app/consolidatedSearch). The text of Resolution MEPC.330(76) can also be obtained from the IMO or be found on the FCDO treaties database.

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 Annex I and Annex IV to the Convention.

7.2 This is a deregulatory measure and is designed to reduce the administrative burden of survey and certification of UNSP barges on IMO Member States. A UNSP barge is an unmanned non-self-propelled barge. UNSP barges are generally cargo carrying vessels which are pushed or towed by another vessel and do not operate under their own power.

7.3 Provision for exemptions for UNSP barges from the survey and certification requirements in Annex I and Annex IV to the Convention was considered to be appropriate by IMO Member States as those survey and certification provisions are designed primarily for ships that operate under propulsion, are crewed and are capable of generating and discharging pollutants into the water.

7.4 These new exemptions recognise that UNSP barges do not have on board engines, machinery, oil fuel, crew or other arrangements that would necessitate frequent survey and certification for oil or sewage pollution prevention purposes. To be eligible for an exemption from survey and certification requirements, UNSP barges cannot carry on board any oil or sewage. Therefore, UNSP barges that meet the exemption criteria represent little or no oil or sewage pollution risk to the marine environment, and continued application of the existing oil and sewage pollution prevention requirements may be unnecessarily burdensome for such UNSP barges.

7.5 The amendments to Annex I will enable the replacement of the International Oil Pollution Prevention (IOPP)/United Kingdom Oil Pollution Prevention (UKOPP) survey and certification regime with a single exemption certificate for a UNSP barge.

There will be an initial survey to confirm that the barge meets the criteria for the exemption and then five-yearly renewals to confirm continued compliance. The criteria for a UNSP barge in Annex I is reproduced in the amendments made to the 2019 Regulations. An exemption will not be available where a barge has any means of generating oil residues, even if this is only temporary.

7.6 The amendments to Annex IV also mean that the International Sewage Pollution Prevention (ISPP) survey and certification regime can be replaced with a single exemption certificate for a UNSP barge, with an initial survey to confirm the barge meets the criteria for the exemption and followed by five-yearly renewals to confirm continued compliance. The criteria for a UNSP barge in Annex IV is reproduced in the amendments made to the 2020 Regulations. An exemption will not be available where a barge has any means of generating sewage, even if this is only temporary.

7.7 Both the Annex I and Annex IV exemption certificates and the five-yearly renewal of those certificates will be issued by the Maritime and Coastguard Agency (MCA). On behalf of the Secretary of State, the MCA has authorised Recognised Organisations (ROs) to whom it delegates statutory survey functions, to issue the exemption certificates and the five-yearly renewal of those certificates on its behalf. This is an exception to the usual position that ROs do not issue exemptions on behalf of the MCA. This is because exemptions are issued at the discretion of the Secretary of State and with appropriate conditions specific to the individual vessel or group of vessels. For these new exemptions for UNSP barges, the amendments to the MARPOL convention set out internationally prescribed criteria against which the applicability of the exemption is assessed and require that a standard format exemption certificate be used for the purposes of the exemption. As the MCA is not determining conditions on a case-by-case basis, but rather is implementing a prescribed international standard, it is appropriate that this function may be delegated to the ROs.

7.8 No new offences or penalties are being made in respect of the 2019 Regulations or the 2020 Regulations. The amendments to both instruments provide for a power to grant the new exemptions. Where a ship has been granted an exemption, but is subsequently found not to meet the criteria for the exemption, the exemption may be cancelled by the MCA on behalf of the Secretary of State. In these circumstances, all the requirements of the 2019 Regulations or the 2020 Regulations, as the case may be, will apply, including all existing offences and penalties.

7.9 It is not mandatory for owners and operators of UNSP barges to seek exemption from the survey and certification requirements and, as such, owners and operators are able to maintain the status quo, should they choose to do so.

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 The Department currently has no plans to consolidate this legislation.

10. Consultation outcome

10.1 The Department carried out an informal targeted consultation, in the form of a letter sent by email to thirteen stakeholders who are owners or operators of UNSP barges

registered in the United Kingdom. The letter explained the intention to amend the 2019 Regulations and 2020 Regulations to make provision for the exemptions for UNSP barges from survey and certification requirements, in line with the Convention. In particular, consultees were asked to comment on the proposed approach and on the potential costs and/or benefits of the amendments.

10.2 No responses were received, and it was therefore reasonable to conclude that there was no opposition to the measures proposed. As this was an informal consultation process, there are no plans to publish the full results; however, further details may be obtained from the relevant policy lead (see section 15).

11. Guidance

11.1 The Department has published Marine Guidance Note (MGN) 676, which contains guidance on the application of the exemption in the 2019 Regulations and 2020 Regulations. This MGN is available on https://www.gov.uk/government/collections/marine-guidance-notices-mgns and from the MCA at 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 An Impact Assessment has not been prepared for this instrument because the direct impacts on business have been assessed at under £5 million per annum. 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. The intervention is deregulatory, narrow in scope and largely cost-neutral. The intended outcome is to reduce administrative burdens and, in some cases, reduce costs on owners and operators of UNSP barges. It will also facilitate the more effective use of marine surveyor time and resource. It will do this by reducing the number of surveys that UNSP barges must be subject to. For UNSP barges that only trade domestically in the UK, and for UNSP barges that operate internationally and qualify for the sewage pollution prevention exemption, this intervention will be cost-neutral as owners and operators can swap their existing certification for the new exemptions, but the survey regime for both the exemptions will be the same. For UNSP barges that operate internationally and qualify for the oil pollution prevention exemption, a small cost saving may be realised as the exemption requires one survey in every five-year period whereas the IOPP Certificate requires a survey every year. This cost saving is likely to impact on a maximum of about 30 United Kingdom registered UNSP barges.

13. Regulating small business

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

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

13.3 The basis for the final decision on what action to take to assist small businesses is that the legislative provision being made is deregulatory in nature. The informal consultation did not identify any disproportionate costs to small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to review the amendments made by this instrument when the 2019 Regulations and the 2020 Regulations are reviewed in accordance with the statutory review provision contained in each of those instruments.

15. Contact

15.1 Lorraine Weller at the Maritime and Coastguard Agency Telephone: 020 3817 2448 or email: Lorraine.Weller@mcga.gov.uk can be contacted with any queries regarding the instrument.

15.2 Gwilym Stone, Deputy Director for Regulations and Standards 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.