EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (PREVENTION OF POLLUTION FROM NOXIOUS LIQUID SUBSTANCES IN BULK AND PREVENTION OF OIL POLLUTION) (AMENDMENT) REGULATIONS 2021

2021 No. 818

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 Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument amends the Merchant Shipping (Prevention of Pollution from Noxious Liquid Substances in Bulk) Regulations 2018 (S.I. 2018/68) ("the 2018 Regulations") to implement new requirements for offshore support vessels carrying noxious liquid substances in bulk built or adapted on or after 1st July 2018 and to permit the cargo record book required to be kept by all ships subject to the 2018 Regulations to be kept in an electronic format as an alternative to a paper version.

2.2 This instrument also amends the Merchant Shipping (Prevention of Oil Pollution) Regulations 2019 (S.I. 2019/42) ("the 2019 Regulations") to permit an oil record book to be kept in an electronic format as an alternative to a paper version and makes a number of incidental amendments to the 2018 Regulations.

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, included further correspondence from the Department which described steps it was taking to address the backlog. This instrument is not one of the statutory instruments identified in correspondence with the Committee, which implement outstanding international obligations, but it does amend the 2019 Regulations, which is one of those listed instruments (as further explained in sections 6 and 7 of this memorandum).

3.2 In its 17th Report of 2017-19, the Joint Committee on Statutory Instruments reported regulations 27, 41 and 42 in the 2018 Regulations for requiring elucidation with respect to the lack of a definition of "flag state" in the instrument. The Department provided a memorandum in response, in which it undertook to adopt a consistent approach in future maritime instruments and accordingly a definition of "flag state" is inserted into the 2018 Regulations by regulation 2(2)(a)(ii).

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.3 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

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 is 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. 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 2018 Regulations implement the revised version of Annex II of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 ("MARPOL"), and prescribe a framework for the control of pollution by noxious liquid substances which are carried in bulk on ships.

6.2 Parts 2 and 3 of the 2018 Regulations contain requirements regarding the survey, certification and operation of ships carrying noxious liquid substances in bulk ("NLS ships"). They include requirements relating to the structure, equipment, systems etc. applicable to the different categories of NLS ships (regulation 8) and a prohibition on the discharge into the sea from ships of noxious liquid substances or any ballast water, tank washings or other mixture containing a noxious liquid substance (regulation 24).

6.3 This instrument amends the 2018 Regulations in relation to one category of NLS ship, namely offshore support vessels ("OSVs"). It amends regulation 8 to the effect that OSVs built or adapted before 1st July 2018 must comply with the Offshore Support Vessel Guidelines ("the OSV Guidelines") (as adopted by International Maritime Organization ("IMO") Resolution A.673(16)), whilst those built or adapted on or after 1st July 2018 must comply with the Code for the Transport and Handling of Hazardous and Noxious Liquid Substances in Bulk on Offshore Support Vessels (as adopted by IMO Resolution A.1122(30) ("the OSV Chemical Code"). This gives effect to the obligation in regulation 11.2 of Annex II of MARPOL to establish appropriate measures in respect of ships other than chemical tankers and liquefied gas carriers certified to carry noxious liquid substances in bulk identified in chapter 17 of the International Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk ("IBC Code"), based on the guidelines developed by the IMO.

6.4 This instrument amends regulation 24 of the 2018 Regulations (which, subject to limited exceptions, prohibits the discharge of noxious liquid substances from ships into the sea) in order to make it clear that this prohibition applies to OSVs in all circumstances (unless there are reasons of particular necessity for the discharge, such as to save life).

6.5 The instrument also amends the 2018 Regulations to give effect to IMO Resolution MEPC.314(74) to the extent that it amends regulation 15 in Annex II of MARPOL to allow for a cargo record book ("CRB") to be in an electronic format as an alternative to a paper version. MEPC.314(74) came into force on 1st October 2020.

6.6 The 2019 Regulations implement the revised version of Annex I of MARPOL and prescribe a framework for the prevention of pollution by oil from ships. Part 2 of the 2019 Regulations contains requirements governing the survey, certification and record keeping in relation to oil tankers. This instrument amends the 2019 Regulations to give effect to IMO Resolution MEPC.314(74) to the extent that it amends regulation 17 in Annex I of MARPOL to allow oil record books ("ORBs") to be in an electronic format as an alternative to a paper version.

6.7 This instrument also makes a number of incidental amendments to the 2018 Regulations.

7. Policy background

What is being done and why?

7.1 This instrument amends the 2018 Regulations in order to allow UK registered OSVs and non-UK OSVs operating in UK waters to comply with the OSV Chemical Code instead of complying with the IBC Code.

7.2 The IBC Code is a mandatory international standard for ships carrying noxious liquid substances ("NLS") in bulk and is implemented in the 2018 Regulations in respect of the carriage by chemical tankers of NLS in bulk. However, it has long been recognised that some ships, other than chemical tankers, also carry some NLS products in bulk but generally in smaller quantities and for specific purposes. In particular, some OSVs are used to carry NLS products in bulk for the use of the offshore oil and gas industry. In these circumstances, full adherence to the IBC Code may be unnecessarily burdensome given the size, types of operations and limited range of cargoes that is likely to be relevant for these vessels. For this reason, the IMO developed the OSV Guidelines in 1989, providing an alternative standard to the IBC Code and a more tailored approach to the specific construction and operational requirements of OSVs. The OSV Guidelines were generally welcomed by industry and have been implemented as the certification standard for OSVs in the UK by the 2018 Regulations (and preceding legislation).

7.3 To accommodate the evolution of the offshore oil and gas industry since the 1980s, the IMO developed and adopted the OSV Chemical Code, which superseded the OSV Guidelines and took effect on 1st July 2018. The OSV Chemical Code has more stringent construction requirements than the OSV Guidelines but allows compliant OSVs to carry a wider variety and larger quantity of chemical cargoes than is permitted under the OSV Guidelines. This instrument amends the 2018 Regulations in order to include the OSV Chemical Code as the certification standard for OSVs (constructed or adapted on or after 1st July 2018) carrying NLS in bulk, rather than requiring full compliance with the IBC Code. OSVs constructed before 1st July 2018 can continue to comply with the OSV Guidelines but may, as an alternative, comply with the OSV Chemical Code if they are adapted to meet the requirements of the Code.

7.4 Although the OSV Chemical Code provides greater flexibility with a wider variety and quantity of permitted cargoes, because it did not revoke the OSV Guidelines no

change was required to be made to any existing OSVs and none of the existing OSVs on the UK flag has so far been adapted in order to comply with the OSV Chemical Code. However, recent amendments to the categorisation of NLS products and their carriage requirements in the IBC Code (which were implemented in the 2018 Regulations, as the reference to the IBC Code is ambulatory) have resulted in a reduced list of permitted cargoes for vessels certificated under the OSV Guidelines, making compliance with the OSV Guidelines less advantageous than it previously was and potentially increasing the benefits for OSVs which can be converted to meet the requirements of the OSV Chemical Code.

7.5 By implementing the OSV Chemical Code in addition to the OSV Guidelines in the 2018 Regulations, the amendment allows existing OSVs to either remain compliant and certificated in accordance with the OSV Guidelines or be upgraded to meet the requirements of the OSV Chemical Code. The amendments also mean that new-build OSVs can comply with the OSV Chemical Code and are not required to comply with the full requirements of the IBC Code.

7.6 For OSVs operating under a certificate issued in accordance with the OSV Guidelines, an exemption is available under the 2018 Regulations to allow them to continue to carry the cargoes listed in their certificates, which the recategorisation of NLS products and carriage requirements by the IBC Code would otherwise have prevented. The exemption will be available until 1st January 2022; after that date, it will be possible for an OSV to comply only with the OSV Guidelines, although the range of NLS products that may be carried will be correspondingly limited. Further information is available in Marine Guidance Note (MGN) 649[1].

7.7 This instrument also makes amendments to regulation 24 of the 2018 Regulations which, subject to limited exceptions, prohibits the discharge of noxious liquid substances from ships into the sea. OSVs are not permitted to discharge any NLS cargo into the sea; the OSV Guidelines and OSV Chemical Code both expressly prohibit this, and their design generally does not include underwater discharge outlets, which comprises a principal exception for NLS ships in relation to discharges of NLS products into the sea. Therefore, this exception cannot apply to OSVs. The amendments made by this instrument make it clear that an OSV is prohibited from making any discharge into the sea and that there are no exceptions other than where there is a particular necessity, such as to save life. The OSV Guidelines and OSV Chemical Code require OSVs to discharge all tank washings, ballast water etc. containing any NLS products to a shore reception facility.

7.8 The amendment to the MARPOL record keeping requirements provides ship owners and operators with a choice to either continue to use paper copy ORBs and CRBs or to implement an approved electronic record-keeping system. The acceptance of electronic systems for MARPOL record-keeping requirements and the process for approving these systems is set out in MIN 644 (M+F)[2], which was published in October 2020. This instrument makes amendments to permit electronic record keeping by directly referencing regulation 15 of MARPOL Annex II in regulation 29

[1]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/947087/MGN649.pdf

[2]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/932479/MIN_644_-_Final.pdf

of the 2018 Regulations and regulation 17 of MARPOL Annex I in regulation 20 of the 2019 Regulations.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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 e-mail to 19 stakeholders. This explained the intention to implement the OSV Chemical Code in addition to the OSV Guidelines in the 2018 Regulations (as amended by this instrument) and included links to documents which had already been published on this subject (MGN 649(M)[3] and MIN651(M)[4] as well as related IMO Resolutions). In particular, consultees were asked to comment on the approach to implementation and the potential costs of adapting vessels so as to comply with the OSV Chemical Code, should an operator choose to do so. The consultees included Recognised Organisations, OSV owners/operators, industry groups and other flag administrations.

10.2 Five responses were received, none of which opposed the implementation of the OSV Chemical Code. These raised a number of technical details relating to the operation of the OSV Chemical Code e.g. P/V valve pressure settings and controlled ventilation requirements, a suggested list of existing Marine Guidance Notes that may need updating once the Code is implemented, the provision of guidance etc. on the requirements for the carriage of backloads on existing OSVs and potential limitations on the availability of shipyards given the impacts of the coronavirus pandemic. 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).

10.3 The Department also engaged with other IMO Member States (e.g. Norway) on this matter to try to ensure that the UK's policy approach did not differ to such an extent that UK flagged OSVs would be unfairly impacted or disadvantaged in comparison to international competitors and also to ensure that, as far as is possible, the UK's certification approach would be acceptable to other States, allowing UK flagged OSVs to operate outside of UK waters, in particular in the North Sea area.

11. Guidance

11.1 In December 2020, the Department published a Marine Guidance Note (MGN 649: Application of MARPOL Annex II to Offshore Support Vessels), which sets out the policy approach and arrangements for OSVs carrying NLS cargoes in bulk for 2021

[3]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/947087/MGN649.pdf

[4]https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/947631/MIN651.pdf

and on or after 1st January 2022. The amendments to the 2018 Regulations made by this instrument are in line with the information published in MGN 649. This MGN sets out detailed guidance on the application of the OSV Guidelines during 2021 and from 1st January 2022, and the OSV Chemical Code from the coming into force date of this instrument.

11.2 The outcome of the informal consultation demonstrated that there is likely to be a need for additional guidance on the application of the technical detail of the OSV Chemical Code. As there are currently no OSVs built to the standards of the OSV Chemical Code on the UK flag, and no OSVs which have converted, or made significant progress towards converting, to the standards of the OSV Chemical Code, it is not yet possible to determine fully what areas of the Code will require the provision of additional guidance. The areas highlighted during the informal consultation process are being addressed through direct contact with the relevant stakeholders and guidance will be published at a point where it can reflect practical experience. In any event, guidance will be published before the end of the transitional period set out in MGN 649 (31st December 2021).

12. Impact

12.1 There is no, or no significant, impact on 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 of the low level of impact per business and the number of businesses affected. The impacts and potential compliance costs arising from this instrument are related only to the amendment to the 2018 Regulations which will implement the OSV Chemical Code. These largely comprise the costs of the physical conversion of vessels to meet the requirements of the OSV Chemical Code (where owners/operators choose to do so). Although these costs may not be insubstantial (depending on the needs of each individual vessel), there are fewer than 40 OSVs on the UK flag and industry information suggests that few are considering conversion at this time. It is not considered that the £5m threshold (Equivalent Annual Net Direct Cost to Business) will be met or exceeded. As such, a proportionate consideration of costs and benefits has been carried out through a de minimis assessment.

12.4 Of the OSVs currently on the UK flag, these are owned by approximately 10 different companies. All of these existing OSVs are certificated in accordance with the OSV Guidelines and may remain compliant with, and certificated under, this standard after the amendments made by this instrument come into force; they may choose to rely on the exemption to allow them to continue to carry cargoes recategorised by the IBC Code, although from 1st January 2022 they will only be able to carry the reduced NLS cargo list. Upgrading to meet the requirements of the OSV Chemical Code, once this instrument comes into force, will be a matter for each OSV owner to determine based on their own business needs. The intention behind not requiring the conversion of existing OSVs to meet the standards of the OSV Chemical Code at this time, is in part to keep potential impacts as low as is practicable.

12.5 The other amendments made to the 2018 and 2019 Regulations by this instrument will have no, or no significant, impact.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. It affects any business which operates an OSV carrying NLS in bulk. The informal consultation did not identify disproportionate costs to any small businesses and an assessment of OSV owners and operators on the UK flag suggests that these companies own or operate multiple vessels and none is likely to be categorised as small or micro businesses. No exemptions have been made for small and micro businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is to review the amendments made by this instrument when the 2018 Regulations and the 2019 Regulations are reviewed in accordance with the statutory review provision contained in each of those instruments.

15. Contact

15.1 Peter Boden at the Cargoes Policy Team, Maritime and Coastguard Agency Telephone: 0203 81 72942 or email: peter.boden@mcga.gov.uk can be contacted with any queries regarding the instrument.

15.2 Gwilym Stone, Assistant Director for Ship Standards, at the Maritime and Coastguard Agency can confirm that this Explanatory Memorandum meets the required standard.

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