EXPLANATORY MEMORANDUM TO

THE MERCHANT SHIPPING (SAFETY OF NAVIGATION) REGULATIONS 2020

2020 No. 673

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 These Regulations implement the latest version of Chapter V of the International Convention for the Safety of Life at Sea, 1974 ("SOLAS"), relating to the safety of navigation of ships, including amendments to Chapter V made since 1st January 2011. These Regulations revoke and replace the Merchant Shipping (Safety of Navigation) Regulations 2002 (S.I. 2002/1473) ("the 2002 Regulations"), and prescribe technical requirements governing the safety of navigation; subject to specified exceptions, they apply to all United Kingdom ships and non-United Kingdom ships in United Kingdom waters.

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. 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.

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)

3.2 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 These Regulations implement outstanding amendments to the international regime for the safety of navigation of ships contained in Chapter V of SOLAS. These amendments to Chapter V took effect since its most recent implementation in the 2002 Regulations, which are revoked by this instrument. The outstanding amendments are MSC.282(86), MSC.308(88), MSC.325(90) and MSC.350(92), which are available from the International Maritime Organization of 4 Albert Embankment, London SE1 7SR or found on the Foreign and Commonwealth Office treaties database (https://treaties.fco.gov.uk/responsive/app/consolidatedSearch/). Chapter V of SOLAS applies to all ships on all voyages, subject to certain exceptions and including the right of Contracting States to derogate from certain requirements of Chapter V (the Contracting States include the United Kingdom and account for approximately 98.8% of total merchant shipping tonnage). Other amendments and partial revocations are also made by this instrument.

6.2 The requirements in Chapter V that create obligations for ships are incorporated by direct references to those requirements in these Regulations (regulation 5). Regulation 4 operates to make the application of these requirements to ships ambulatory so that all future amendments are automatically given direct effect in the United Kingdom by these Regulations. The remaining requirements in Chapter V are obligations on States, which do not require implementation in domestic law, and are set out in Marine Guidance Note (MGN) 610 (M+F), which is available from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG and on https://www.gov.uk.

6.3 Although the ambulatory reference provision in regulation 4 will allow future amendments to the requirements in Chapter V to be incorporated automatically into domestic law, the United Kingdom will, nevertheless, be able to continue to scrutinise (and, if necessary, object to) proposed changes in an international arena (in the International Maritime Organization (IMO)), and assess their impact well before any amendment is due to come into force, which will inform decision making. United Kingdom industry and workers' representatives will also be involved at the stage that the United Kingdom negotiating strategy is being formulated and will be able to influence it. If an amendment is objected to by the United Kingdom but will come into force internationally, the Secretary of State will make amending secondary legislation to prevent that amendment coming into force domestically. An amendment that is accepted will be publicised in advance of its in force date by means of a Parliamentary Statement to both Houses of Parliament and by way of a Marine Guidance Note, which will be available from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG and on https://www.gov.uk.

6.4 Once a future amendment to SOLAS comes into force it can be obtained in copy from the IMO of 4 Albert Embankment, London SE1 7SR, or found on the Foreign and Commonwealth Office online treaties database: http://treaties.fco.gov.uk/treaties/treaty.htm. 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 1EG and on https://www.gov.uk.

6.5 These Regulations contain provision in regulations 9 to 11 for offences. A ship may also be detained under regulation 12 where it does not comply with these Regulations. These sanctions are applicable in respect of both United Kingdom ships and foreign ships visiting United Kingdom ports.

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 respect of Chapter V of SOLAS, thereby ensuring that the most up-to-date provision for the safety of navigation of ships is put in law.

7.2 Implementing the amendments to Chapter V requires United Kingdom flagged vessels to comply with the latest requirements agreed by the international maritime community, enabling them to operate freely throughout the world. All foreign ships within the scope of Chapter V and which enter United Kingdom waters are also bound by these Regulations.

7.3 These Regulations are framed in terms that take into account new technological developments, attitudes and events to reduce the number of human elements that may lead to accidents occurring. The amendments relate to:

- the carriage of bridge navigation watch alarm systems;
- the use of electronic chart display and information systems (ECDIS) and the acceptance of ECDIS as a requirement for the carriage of nautical charts and publications;
- annual performance testing of automatic identification systems (AIS);
- revised pilot transfer arrangements;
- the adoption of transparent safe manning procedures; and
- the extension of scope to when ballast water exchange may be undertaken.

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 2018.

9. Consolidation

9.1 As the 2002 Regulations are replaced by this instrument, there is no need for consolidation.

10. Consultation outcome

10.1 The Maritime and Coastguard Agency informally engaged with key players throughout the process of negotiating amendments to Chapter V in the IMO. A public consultation on the draft of these Regulations took place between 24th September and 19th November 2018.

10.2 Notification of the consultation was sent to more than 200 shipping and marine industry companies, as well as maritime bodies with professional and specialist functions.

10.3 A total of five responses were received, from the UK Chamber of Shipping (the main representative body for United Kingdom shipowners), the Royal Yachting Association, UK Maritime Pilots Association, Nautilus International Seafaring Officers' Trade Union and Helix Offshore. Not all respondents answered all the questions posed. Some additional comments have been received; these have been fully considered.

10.4 The safety of navigation consultation and post consultation report can be found at https://www.gov.uk/government/consultations/.

11. Guidance

11.1 Further guidance on implementation to supplement legislation is available in Marine Guidance Note (MGN) 610 (M+F), which is available from the MCA of Spring Place, 105 Commercial Road, Southampton SO15 1EG and on www.gov.uk/topic/ships-cargoes/m-notices.

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 instrument relates to the updating and maintenance of existing regulatory standards 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 was to analyse the companies owning UK registered ships in order best to determine any impact. It is estimated that around 3% of ships (approximately 25 ships) on the UK Shipping Register are owned by companies which may employ less than 50 people. The vast majority of companies owning UK registered ships are large multinational, or subsidiaries of multinational, companies and would therefore fall outside of 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 the Chapter V amendments are primarily concerned with the carriage and use of navigation safety systems, pilot transfer arrangements, adoption of transparent safe manning procedures and the extension of scope to when ballast water exchange may be undertaken. In the interests of safety, it is not possible to justify different requirements in these areas 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 and 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 these Regulations.

15. Contact

15.1 Rakesh Pandit at the Maritime and Coastguard Agency Telephone: 020 381 72432 or e-mail: rakesh.pandit@mcga.gov.uk can be contacted with any queries regarding the instrument.

15.2 Katy Ware, Director for Maritime Safety and Standards, at the Maritime and Coastguard Agency can confirm that this Explanatory Memorandum meets the required standard.

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