

EXPLANATORY MEMORANDUM TO THE HOUSE OF LORDS SELECT COMMITTEE ON MERITS OF STATUTORY INSTRUMENTS

1. Title of the instrument:

The Ship and Port Facility (Security) Regulations 2004 No.1495 (the "Regulations")

This explanatory memorandum is laid before Parliament by Command of Her Majesty. It contains information for the Joint Committee on Statutory Instruments. These Regulations and the memorandum have been prepared by the Department for Transport.

The Regulations are subject to annulment in pursuance of a resolution of either House of Parliament.

2. Brief description of the Regulations

The Regulations contain provisions which supplement Regulation (EC) No 725/2004 of 29 April 2004 on enhancing ship and port facility security (the EC Regulation). The EC Regulation provides for the harmonised implementation of the new international maritime security regime agreed by the International Maritime Organization (IMO) in December 2002. Although the EC Regulation is directly applicable, certain of its provisions require UK legislation to make them fully effective.

The Regulations designate the Secretary of State as the UK's competent authority, designated authority and focal point for maritime security for the purposes of the EC Regulation and IMO regime.

They establish an enforcement regime and impose criminal sanctions against companies, ships and port facilities for non-compliance with the EC Regulation and the IMO regime. In particular, the Regulations provide that an enforcement notice may be served upon particular persons and individuals. There is a right to object to an enforcement notice. It is an offence to fail to comply with an enforcement notice but only where a person who has received such a notice fails to comply without reasonable excuse.

The Regulations also establish an inspection regime for monitoring compliance with the EC Regulation and IMO requirements and impose criminal sanctions for unlawful presence in a restricted area of a ship or port facility, and the obstruction of a duly authorised officer acting in exercise of his powers under the security regime.. They also lay down requirements for the issue and revocation of detention notices for ships that fail to comply with the security regime.

3. Enabling powers and requisite consultation

These Regulations are made under powers conferred by section 2(2) of the European Communities Act 1972. Consultation with interested parties was

undertaken during the drafting of the Regulations and the comments of respondents have been taken into account in the final version.

4. Policy background

The UK has had a maritime security regime in place since 1990 under the Aviation and Maritime Security Act 1990 (AMSA 1990). Following the events in the United States on 11 September 2001, the international maritime community agreed that a new security regime was necessary to protect the maritime sector. This new international ship and port facility security regime was agreed by the IMO in December 2002. This takes the form of a new Chapter XI-2 in the Convention on the Safety of Life at Sea 1974 (the SOLAS Convention) and a new International Ship and Port Facility Security Code, which come into force on 1 July 2004. The UK participated fully in the IMO discussions and supports the new security regime.

5. Legislative background

The existing maritime security regime under AMSA 1990 applies to international cruise and ferry operations from UK ports, as well as Irish Sea and Channel Islands ferry routes. The key elements of the regime are the searching of passengers and their vehicles, the establishment of restricted zones, pass systems to identify authorised personnel and the preparation of appropriate security and contingency plans. The principles of AMSA 1990 are similar to the new IMO and EU requirements, but they will be extended to encompass all ships and port facilities within the definitions of the SOLAS Convention and the scope of the EC Regulation. Although many of the IMO and EU requirements could be implemented under AMSA 1990, there are differences in approach and terminology. Separate and comprehensive domestic regulations were considered the most effective means of implementing the requirements. However, many of the provisions, particularly in relation to enforcement, offences and sanctions are based on those contained in AMSA 1990.

6. EU Legislation

The European Commission was concerned to ensure consistent and timely application of the IMO security regime across the EU and proposed an EC Regulation to achieve this, since it would be directly applicable in Member States' national law. The EC Regulation extends the IMO security requirements to Member States' domestic traffic and creates a regime of inspections which will be undertaken by the Commission, to monitor compliance by Member States. The EC Regulation, was agreed in March 2004 and came into force on 19 May 2004.

7. Extent

This instrument applies to the whole of the UK.

8. The effect of the Regulations

In line with existing transport security regimes, the costs of implementing the measures required of a maritime security regime would fall on those the measures

are designed to protect, in this case UK ships and port facilities. However, these costs will most likely be passed on to their customers. Implementing a maritime security regime will not involve any compliance costs for charities and voluntary organisations.

9. Compatibility with Convention Rights

It is the Minister's view that the provisions of the Regulations are compatible with the European Convention on Human Rights.

10. Financial impact

In implementing the EC Regulation, the UK has taken a risk-based and proportionate approach. Implementation of the EC Regulation within the UK maritime transport system will inevitably result in greater resource implications for both the Government and UK port and ship operators. However, these resource and cost implications have to be viewed in the light of the costs of non-compliance. The ability of UK ships and ports to continue to trade internationally relies on compliance with the requirements of the EC Regulation. Although difficult to precisely quantify it seems likely that the costs of non-compliance would outweigh the costs of implementing the EC Regulation.

A regulatory impact assessment has been produced for the Regulations.

11. Contact

The official within the Department for Transport who can be contacted with any queries in relation to these Regulations is Andrew Crawford, TRANSEC, tel: 020 7944 5169, e-mail: andrew.crawford@dft.gsi.gov.uk

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Department for Transport