

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (VESSEL TRAFFIC MONITORING AND
REPORTING REQUIREMENTS) REGULATIONS 2004 No.2110

Introduction

1. This Explanatory Memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Description

2.1. The Regulations contain provisions requiring the making of reports relating to ships bound for ports in the United Kingdom and other EEA States to the authorities of those ports and requiring ships to comply with rules relating to vessel traffic service areas when entering such areas.

2.2 Provision is made for the installation and operation of automatic identification systems for ships.

2.3 The Regulations also contain provision requiring the reporting of

- (a) dangerous or polluting goods carried by ships to the Marine and Coastguard Agency (in the case of the United Kingdom) and the competent authorities of other EEA States and;
- (b) incidents, accidents and events likely to result in the pollution of United Kingdom waters.

2.4 Provision is also made relating to the measures to be taken in the event of incidents and accidents at sea or exceptionally bad weather or sea conditions.

2.5 A copy of the Merchant Shipping Notice MSN 1784 (M) referred to in the Regulations is attached.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 There are none.

4. Legislative background

4.1 The Regulations implement in the UK the provisions of Directive 2002/59/EC of the European Parliament and of the Council of 27 June 2002 establishing a Community vessel traffic monitoring and information system and repealing Council Directive 93/75/EEC (“the Directive”).

4.2 The Regulations also implement in part Protocol I to the International Convention for the Prevention of Pollution from Ships 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78) (“the MARPOL Convention”) and Chapter VII regulation 7-1 of the International Convention for the Safety of Life at Sea 1974 (“the SOLAS Convention”).

4.3 Finally the Regulations amend Schedule 3A to the Merchant Shipping Act 1995 and a number of Regulations, in particular the Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods) Regulations 1995, the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997 and the Merchant Shipping (Safety of Navigation) Regulations 2002.

4.4 A Transposition Note is attached.

4.5 Details of the scrutiny by the EU Scrutiny Committees are as follows.

4.6 Lord Macdonald submitted an explanatory memorandum (EM No 14595/00) on 18 January 2001 in respect of the European Commission's Communication covering all three of the Erika 2 proposals, of which a draft of the Directive was one. The EM highlighted the Government's concerns about all three of the Erika 2 measures. Sub-Committee B of the House of Lords Select Committee on the European Communities took the EM at its meeting on 29 January but did not clear it. In the House of Commons Select Committee on European Scrutiny's Eighth Report (session 2000/01) of 14 March, the Committee indicated that it considered the document to be politically important and likewise did not clear it.

4.7 Subsequently, the Commission's amended proposal for the Directive was the subject of a further explanatory memorandum (EM 12695/01) which David Jamieson submitted on 19 November 2001. Sub-Committee B of the House of Lords Select Committee on the European Communities cleared it on 10 December 2001. At the House of Commons Select Committee on European Scrutiny's meeting on 5 December 2001, the Committee deemed it politically important and cleared it.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

David Jamieson, the Parliamentary Under Secretary of State, has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

‘In my view the provisions of the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004 are compatible with the Convention rights.’

7. Policy Background

7.1 The 1993 European Council Resolution on a Common Policy for Safe Seas included long-term aims to improve monitoring of traffic in European Community waters. Severe sea and coastal pollution associated with the loss of the tankers *Erika* and *Prestige* emphasised the need for action.

7.2 The package of measures in the Directive 2002/59/EC are designed to address accidents at sea, and were instigated in response to the loss of the tanker *MV Erika*, which broke up in bad weather and sank 40 miles off the Brittany coast, in the northern part of the Biscay Bay in December 1999. Measures include-provisions relating to –

- (a) the harmonisation and enhancement of notification of dangerous cargoes which were previously contained in Directive 93/75/EEC,
- (b) the enforcement of marine traffic measures,
- (c) the setting up of European information networks,
- (d) the extension of the carriage requirement for Automatic Identification Systems to domestic shipping and measures focussed on the reaction to and powers exercised by Member States to marine incidents or threats.

7.3 Many of the Directive measures were already in place under statute and procedures exercised by the Maritime and Coastguard Agency (MCA) and the Marine Accident Investigation Branch (MAIB). Ships and equipment affected, for instance, are currently dealt with under the UK implementation of Chapter V of the Safety of Life at Sea (SOLAS) Convention by the Merchant Shipping (Safety of Navigation) Regulations 2002.

7.4 The United Kingdom will be an important contributor and beneficiary of the information to be provided under the Directive and the Regulations as much of North European shipping passes through United Kingdom territorial waters and the Pollution Control Zone.

7.5 No special political or legal considerations apply.

7.6 Industry has been involved in the development of the Directive and the Regulations through the agenda of the MCA United Kingdom Safety of Navigation Committee. A special group, open to all interested parties, was set up to assist in the implementation of the directive and met on five occasions. There was a formal consultation on the Regulations in draft in March/April 2004 when some 84 Organisations were invited to comment and 20 responded. Comments were resolved through the special group.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 There is no additional impact on resources in the public sector.

9. Contact

The person who can answer any queries relating to this instrument is

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