

**EXPLANATORY MEMORANDUM TO THE  
MERCHANT SHIPPING (AMENDMENTS TO REPORTING  
REQUIREMENTS) REGULATIONS 2005**

**2005 No.1092**

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 amend 1995 Regulations and 2004 Regulations.

2.2 The provisions deal with reporting measures to be taken in the event of incidents and accidents at sea.

2.3 The Regulations remove the requirements to make reports contained in the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004 (the “2004 Regulations”) affecting fishing vessels, traditional ships, recreational craft having a length of less than 45 metres and bunker fuel of less than 5000 tonnes for use on board ships. These were outside the scope of Directive 2002/59/EC (Establishing a Community vessel traffic monitoring and information system), (the “Directive”) which was implemented by the 2004 Regulations.

2.5 Reporting requirements to make reports affecting traditional ships, recreational craft having a length of less than 45 metres and bunker fuel of less than 5000 tonnes for use on board ships, distinct from those required by the Directive, are by these amendments now contained in the Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods Regulations 1995 (the “1995 Regulations”), as amended.

2.6 It is necessary to maintain a reporting requirement in the 1995 Regulations so that the United Kingdom continues to comply with the International Convention for the Prevention of Pollution from Ships 1973 as modified by the Protocol of 1978 relating thereto (the MARPOL Convention) and including the provisions of Protocol I to that Convention.

2.6 The effect of the legislation is to remove some of the reporting requirements in the case of vessels of less than 15 metres in length formerly in the 2004 Regulations.

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

There are none.

**4. Legislative background**

4.1 The 2004 Regulations implement into UK law the provisions of Directive 2002/59/EC (“the Directive”) 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.

4.2 The 1995 and 2004 Regulations as amended 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 During late preparation of the 2004 Regulations, changes were made to take into account provisions in existing Regulations which needed to continue to have effect in order to meet the requirements of MARPOL. Some types of incidents that under MARPOL would apply only to vessels of 15 metres in length and above were extended to ships irrespective of their size. In response to a Parliamentary question in the House of Lords on 28 October 2004 Lord Triesman gave an undertaking on behalf of the Government to consult on changes to the 2004 Regulations. The Regulations implement those changes.

4.4 The Royal Yachting Association (RYA) expressed concerns about the 2004 Regulations, believing this provision would require their members to report frequent routine occurrences, such as groundings and collisions by dinghies and other small recreational craft. The RYA challenged the 2004 Regulations by way of an application for judicial review on 5 November 2004. The Regulations address the concerns expressed by the RYA.

4.5 The Regulations do not affect implementation of the Directive by the 2004 Regulations.

## **5. Extent**

5.1 This instrument applies to all of the United Kingdom.

## **6. European Convention on Human Rights**

Not applicable.

## **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 were 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. The 2004 Regulations reflect the package of provisions contained in the Directive including the reporting provisions in the event of incidents and accidents at sea.

7.3 The principal Regulations also implement Protocol 1 to the Convention for the Prevention of Pollution from Ships 1973 (MARPOL). Protocol 1 of MARPOL was

amended by IMO's Marine Environment Protection Committee Resolution MEPC.68(38) adopted on 10th July 1996. In addition to drafting amendments, including amendments to clarify the application of the Regulations to fixed and floating installations. 1999 amendments to the 1995 Regulations implemented the MARPOL amendment, in particular by requiring a report to be made in certain circumstances involving damage, failure or breakdown of a ship of 15 metres in length or above.

7.4 No special political or legal considerations apply.

7.5 Industry was involved in the development of the Directive and the 2004 Regulations through the agenda of the MCA United Kingdom Safety of Navigation Committee. They have been consulted on the 2005 Regulations.

## **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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The Department for Transport

24 March 2005

## REGULATORY IMPACT ASSESSMENT

### 1. The Merchant Shipping (Amendments to Reporting Requirements) Regulations 2005

#### 2. Purpose and intended effect of measure

##### (i) Objective

The purposes are to:

- remove the reporting requirements contained in the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004 (the “2004 Regulations”), and hence the Directive requirements, as they apply to fishing vessels, to traditional ships, to recreational craft having a length of less than 45 metres and to ships’ bunker fuel of less than 5000 tonnes for use on board;
- apply the reporting requirements in the Merchant Shipping (Reporting Requirements for Ships Carrying Dangerous or Polluting Goods Regulations 1995 (the “1995 Regulations”) to those same ships and conditions, to ensure compliance with the reporting requirements contained in Protocol 1 of the international MARPOL Convention.

The objectives are de-regulatory to those groups and to smaller craft in particular, in that the legislation will remove some of the reporting requirements. The benefits are principally legal and in the interest of public relations, with minimal if any economic impacts.

##### (ii) The background

The 2004 Regulations entered into force on 20 September 2004. They were primarily intended to give effect to EC Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system.

In addition to implementing the Regulations it was necessary to give effect to the provisions of MARPOL and SOLAS. After public consultation was completed on the draft, changes had to be made to take full account of these provisions. The time frame for implementing the Directive did not permit MCA to consult again.

In making the changes, some of the reporting requirements on types of incidents that under the 1995 Regulations would apply only to vessels of 15 metres in length and above were extended to ships irrespective of their size. The 2004 Regulations have been interpreted by owners of smaller recreational craft as requiring them to report all accidents and incidents, whether or not the safety of a ship is or could be affected. They are concerned that relatively safe routine occurrences experienced by sailing dinghies, such as capsizing and collisions with craft of similar size have to be reported. The extent of their concern is such that the Royal Yachting Association (RYA) is making a legal challenge to this aspect of the 2004 Regulations.

##### (iii) Risk assessment

Environmental consequences from an accident at sea, which can also occur outside areas of high traffic density (as in the Erika case), can be disastrous for the economy and the environment of all coastal EU Member States. The United Kingdom must therefore maintain the means to take effective action in the event of critical situations arising at sea.

### **3. Options**

#### Option 1: do nothing

This is not a viable option given the concerns which have been expressed by the RYA on the 2004 Regulations and risk of increased frequency of inappropriate reports. Though an individual recreational craft respondent called for increased MCA intervention in a dispute, it is not the focus of the Regulations or resources for MCA to become involved in private disputes.

#### Option 2: to agree the amendments as proposed

The amendments alter the circumstances in which incidents and accidents should be reported. Though likely impacts will be minimal, it will be more acceptable to the RYA and owners of smaller craft. Requirements and procedures that implement the Directive will be unaffected. This option is recommended.

#### Option 3: Extend the deregulation amendment further, by taking non-Directive ships and ships own bunker fuel out of reporting regulations

Though the RYA and majority of small recreational craft owners would support this move it is not a viable option, as the United Kingdom would be in breach of international responsibility to implement MARPOL including Protocol I. It would also encourage ships to neglect reporting incidents, accidents and pollution at sea.

### **4. Benefits**

- Economic  
Minimal, but if RYA perceptions are accepted; the Regulations would reduce the risk of increased reporting to HM Coastguard from small vessel sectors. Additional workload that would be imposed would be reduced, particularly for vessels under 15 metres in length and use of Coastguard infrastructure to receive and manage these reports. Of the risk from increased reports, based principally upon RYA perceptions, there is currently no evidence of this materialising; but the changes are still considered to be a necessary safeguard.
- Environmental  
None are anticipated as international obligations will be maintained. The additional safeguard will ensure that MCA resources remain focussed upon reports with genuine safety and environmental elements.
- Social  
The Regulations will address the concerns expressed by the RYA about the 2004 Regulations.

### **5. Costs**

- Economic  
Negligible, as in the target sectors, there is little experience of reporting other than as part of marine accident or incident, where an action or response is required. There would be costs imposed on MCA/HM Coastguard time and resources if RYA perceptions were to materialise across the small vessel sectors.
- Environmental  
None are anticipated.

- Social  
None.

## **6. Equity and Fairness**

The Regulations will not have any racial equality impacts.

## **7. Consultation with small business: the Small Firms' Impact Test**

There are no likely impacts from as demonstrated by the low response in consultation. Without the regulatory amendments in the Regulations, the RYA case would strongly suggest risk of minor impacts from increasing the levels of reports from operators of small commercial vessels. There are no negative impacts with the proposed changes as they are deregulatory.

## **8. Competition Assessment**

There are no elements of competition.

## **9. Enforcement and Sanctions**

The MCA will enforce the requirements. They may also be enforced by competent harbour authorities within authority limits. In all cases enforcement is dependent upon detection. There is scope for cooperation between authorities both national and international. Criminal sanctions are applicable for non-compliance.

## **10. Monitoring and Review**

The date for review of these Regulations is set under the terms for monitoring implementation and evaluation under the Directive and under further review of Chapter V of the SOLAS Convention.

## **11. Consultation**

i) Within government

Limited due to the very minor impact of the Regulations.

ii) Public Consultation

A full 12 weeks in accordance with good practice, contacting major stakeholders including major shipping and recreational craft associations, with the relevant documents including the draft Regulations being made available from the main MCA website.

## **12. Summary and Recommendation**

Option 2 is recommended. The amendments will alter the circumstances in which incidents and accidents should be reported and will resolve the substance of concerns raised by the RYA, reflected in their claim for a judicial review and hence will be acceptable to owners of small craft. The group of small vessels will be taken out of regulations implementing the Directive, but are still captured by regulations implementing MARPOL, which they will find more acceptable, particularly owners of those craft of under 15 metres in length.

RYA concerns, aggravated if the effects were to materialise and were extended into the commercial small craft sectors, would imply a risk of MCA/HM Coastguard time and resources being unnecessary employed receiving reports of minor incidents. However, the low interest shown by these groups in the consultation; and the HM Coastguard experience since the 2004 Regulations first entered into force,

demonstrates that in practice either with or without the amendments, the impacts will be minimal and difficult to distinguish.

<b>Option</b>	<b>Total cost per annum Economic, environmental, social</b>	<b>Total benefit per annum Economic, environmental, social</b>
1 Do nothing	None anticipated	None anticipated
2 Agree the Regulations	None anticipated	None anticipated
3 To extend the deregulation	None anticipated	None anticipated

### **13. Declaration**

*I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs*

**Signed ...David Jamieson.....**

***Date 4th April 2005***

**David Jamieson  
Parliamentary Under Secretary of State for Transport  
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