

**EXPLANATORY MEMORANDUM TO
THE SHIP AND PORT FACILITY (SECURITY) (AMENDMENT)
REGULATIONS 2005**

2005 No. 1434

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

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

2. **Description**

- 2.1 These Regulations amend The Ship and Port Facility (Security) Regulations 2004 (S.I. 2004/1495, “the 2004 Regulations”) by correcting drafting errors in the 2004 Regulations.

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

- 3.1 The 2004 Regulations were reported by the JCSI in its 25th Report of 2003-2004 Session (HL Paper 143, HC 82-xxv, “the Report”). These Regulations correct the errors identified by the JCSI. They are being issued free of charge to all known recipients of the 2004 Regulations.

4. **Legislative Background**

- 4.1 Following the events of September 11th 2001, the International Maritime Organisation (IMO) amended the International Convention on the Saving of Life at Sea (SOLAS) 1974 by the addition of a new Chapter XI-2. The amendments to SOLAS were supported by the introduction of a new International Ship and Port Facility Security Code (“the ISPS Code”). Certain provisions of the ISPS code were adopted by the EU and transposed into European Community law by EC Regulation 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security (“the EC Regulation”). The EC Regulation was implemented in the United Kingdom, insofar as it was necessary to do so, by the 2004 Regulations. These amending Regulations make the following changes to the 2004 Regulations:

- (a) They amend regulation 1(b) to refer to the Regulations coming into force “on” 1st July 2005 for all purposes other than those covered by regulation 1(a), which brought certain provisions into force on 1st July 2004 (see paragraph 1.3 of the Report)

(b) They correct the terminology used in regulations 6(6), 8(9), 12(2) and 15(1) for the maximum fines payable on summary conviction for offences that are triable either way (see paragraph 1.4 of the Report);

(c) They amend regulations 10 and 11 relating to restricted areas on ships and in ports (see paragraph 1.6 of the Report);

(d) They amend the grounds for objecting to an enforcement notice by substituting a new regulation 16(2)(b) (see paragraph 1.9 of the Report);

ii) EU legislation: These amending Regulations are being made under section 2(2) of the European Communities Act 1972, to amend the 2004 Regulations previously made under that Act in pursuance of implementing the EC Regulation. As stated above, the EC Regulation implemented certain provisions of the ISPS Code, and a transposition note was provided for those 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 UK has an established maritime security regime based on the Aviation and Maritime Security Act 1990. In implementing the EC Regulation and drafting the 2004 Regulations the United Kingdom adopted a risk-based and proportionate approach. The amendments made by these Regulations are technical in nature and rectify drafting defects. They do not represent an alteration in UK policy on maritime security.

8. Impact

8.1 The 2004 Regulations resulted in greater resource implications for port and ship operators and for the Government. However, as explained in the Regulatory Impact Assessment which accompanied the 2004 Regulations, these resources and cost implications had to be viewed in the light of the potential socio-economic costs of non-compliance. As these amending Regulations create no substantive change to the existing maritime security regime, a Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 There is similarly no impact on the public sector.

9. Contact

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