

**EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING AND FISHING VESSELS (HEALTH AND SAFETY AT
WORK) (ARTIFICIAL OPTICAL RADIATION) REGULATIONS 2010**

2010 No. 2987

1. This explanatory memorandum has been prepared by the Maritime and Coastguard Agency and is laid before Parliament by Command of Her Majesty.

2. Purpose of Instrument

2.1 These Regulations do what is necessary to complete implementation of Directive 2006/25/EC of the European Parliament and Council of 5 April 2006 on the introduction of measures to protect workers from risks related to exposure to physical agents (artificial optical radiation) at work, by extending to the maritime sector the duty on employers to reduce the risk to their employees' health resulting from exposure to artificial optical radiation at work. Regulations introduced by the Health and Safety Executive and the Health and Safety Executive (Northern Ireland) have already implemented the Directive for land based workers.

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

3.1 The European Commission are aware that the implementation deadline of 27 April 2010 has been missed in relation to the maritime sector and a Reasoned Opinion has been issued.

4. Legislative Context

4.1 Council Directive 89/391/EEC (the "Framework Directive") introduced general measures to encourage improvements in the safety and health of workers at work and was implemented by the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 (SI 1997/2962) (the "General Duties" Regulations).

4.2 Directive 2006/25/EC of 5 April 2005 (the nineteenth individual directive within the meaning of Article 16(1) of the Framework Directive) introduced minimum health and safety requirements regarding the exposure of workers to risks arising from physical agents (artificial optical radiation).

4.3 The requirements of Directive 2006/25/EC build on the general safety and health provisions contained in the Framework Directive, and are implemented for workers in the maritime sector by means of the Merchant Shipping and Fishing Vessel (Health and Safety at Work) (Artificial Optical Radiation) Regulations 2010. Regulations to implement Directive 2006/25/EC for land-based workers have been introduced by the Health and Safety Executive (HSE) and the Health and Safety Executive (Northern Ireland) (HSE(NI)) and the Merchant Shipping and Fishing Vessel (Health and Safety at Work) (Artificial Optical Radiation) Regulations 2010 complete the United Kingdom's implementation of this Directive.

5. Territorial Extent and Application

- 5.1 This instrument applies to all United Kingdom ships whether in the United Kingdom or anywhere else in the world, and to all seafarers on such vessels irrespective of nationality, ethnic origin, religion, gender etc. They also apply to non-UK ships when in UK waters.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

- 7.1 The Merchant Shipping and Fishing Vessel (Health and Safety at Work) (Artificial Optical Radiation) Regulations 2010 will, together with the related HSE and HSE(NI) Regulations, fully implement, for workers in the UK, Directive 2006/25/EC concerning the introduction of minimum safety and health requirements for the protection of workers from risks related to exposure to artificial optical radiation at work. A Transposition Note is at Annex 1. As mentioned above, corresponding Regulations have already been introduced for land based workers. It is therefore necessary to make these Regulations to ensure application of the Directive to workers in the Merchant Shipping and Fishing Sectors to avoid disparity of regulatory coverage between land based workers and those working on ships. This is especially the case at the water margin, i.e. in dock and port areas, where land based workers (e.g. stevedores and other dock workers) could be working on board a ship alongside members of the crew.

- 7.2 The policy objective of Directive 2006/25/EC is to protect the health of workers from the risks arising from exposure to artificial optical radiation. Artificial optical radiation in this context effectively means light in any artificially produced form as opposed to that occurring naturally such as sun light. However not all artificial optical radiation is hazardous and the Directive's purpose is to protect workers from the hazardous forms of artificial optical radiation such as that occurring when welding is undertaken or lasers are used.

- *Consolidation*

- 7.3 No legislation, other than a general requirement to safeguard health and safety contained in the General Duties Regulations, previously existed to protect of workers in the maritime sector from the risks to their health and safety arising from exposure to asbestos at work. There is therefore no scope for consolidation of existing legislation.

8. Consultation outcome

- 8.1 Formal consultation was undertaken between late March and 30 June 2010. Some 339 individuals, companies and organisations in the maritime, fishing, yachting and coded vessel sectors were consulted on the likely costs and any potential benefits of the introduction of the new regulations. Included in the consultation were the UK Chamber of Shipping who, in turn, would have forwarded details to their 140+ members. The consultation documents were also placed on the MCA website. Despite this, only 4 responses were received of which only 1 offered comments on the Regulations. The other

responses raised issues regarding the guidance provided in the MGN. The responses have as far as possible been addressed in the final version of the Regulations and the associated guidance.

9. Guidance

- 9.1. In line with usual practice a Marine Guidance Note, produced by the Maritime and Coastguard Agency, will be issued to industry and will provide guidance on the requirements of the Merchant Shipping and Fishing Vessel (Health and Safety at Work) (Artificial Optical Radiation) Regulations 2010. Further guidance will be included in the “Code of Safe Working Practices for Merchant Seamen published by The Stationery Office. The EC are also in the process of producing a “Non-Binding Guide to the Artificial Optical Radiation Directive” which will contain detailed guidance on the requirements of the Directive and how to meet them.

10. Impact

- 10.1 Whilst virtually all workers in the maritime sector are likely to be exposed to artificial optical radiation in some form or other, the overall impact on business, charities or voluntary bodies is considered likely to be low as the existing Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 already require risk assessments to be undertaken, and appropriate measures to be taken to alleviate any risks identified. The Merchant Shipping and Fishing Vessel (Health and Safety at Work) (Artificial Optical Radiation) Regulations 2010 build on the requirements of those earlier Regulations by introducing provisions specifically relating to Artificial Optical Radiation.
- 10.2 The impact on the public sector is considered to be minimal as reviewing the application of the provisions of the Regulations on ships will be carried out as part of MCA’s normal survey regime.
- 10.3 In addition to the above, only situations where exposure to hazardous levels of artificial optical radiation occurs will require to be addressed in detail. On most vessels such levels are considered unlikely to be reached or will already have been addressed.

11. Regulating small business

- 11.1 The legislation applies to small business.
- 11.2 There is little scope for minimising the impact of the requirements on firms employing up to 20 people because EC Health and Safety Directives are required to be applied to all workers irrespective of the size of the company employing them. However, when implementing an EC Directive it is Government policy to do no more than is necessary to implement the provisions of that Directive. In addition it is not envisaged that the Artificial Optical Radiation Regulations will have significant effects on small businesses as they are considered unlikely to operate the types of vessel where the more hazardous forms of artificial optical radiation are likely to occur. More information on this aspect was sought as part of the formal consultation process but, as can be seen by the small number of responses received, nothing was forthcoming.

12. Monitoring & review

- 12.1 The Maritime and Coastguard Agency will evaluate how the regulations have changed working practices. This will be assisted by any relevant data collected as a result of the implementation by the UK of the ILO Maritime Labour Convention 2006 which will require the Maritime and Coastguard Agency to be notified of any occupational seafarer injuries/diseases.
- 12.2 All health and safety Directives are also subject to a regular review by the EC to which MCA will contribute as appropriate. In addition it is proposed to monitor compliance to see if any problems arise which need to be resolved by amending the regulations, or associated guidance, to make matters clearer to those organisations/persons covered by the Directive's provisions.

13. Contact

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