

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (PREVENTION OF POLLUTION BY SEWAGE AND
GARBAGE FROM SHIPS)(AMENDMENT) REGULATIONS 2010

2010 No. 897

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 matters of special interest to the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

2.1 These Regulations correct the errors in the Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008 (S.I. 2008/3257). The errors were drawn to the attention of the Department by the Joint Committee on Statutory Instruments, and are being corrected at the earliest opportunity. The Regulations also make some minor adjustments to update or clarify the wording of the 2008 Regulations.

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

3.1 By a letter dated 21st January 2009, the Joint Committee on Statutory Instruments asked the Department for a memorandum on three points in the 2008 Regulations. In its memorandum in reply the Department acknowledged that the points involved three errors, and said it would correct them at the earliest opportunity.

3.2 These Regulations now correct those errors, and a further typographical error noted by the Committee in its letter of 14 August 2009 to the Department.

4. **Legislative Context**

4.1 The UK is a signatory to Annex IV (Regulations for the Prevention of Pollution by Sewage from Ships) and Annex V (Regulations for the Prevention of Pollution by Garbage from Ships) to the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978. (“MARPOL 73/78”). There are powers in the Merchant Shipping Act 1995 to make secondary legislation to give effect in the UK to that Convention and its Annexes. The 2008 Regulations implement Annexes IV and V. The enabling powers for these amending Regulations are amongst those relied on for the making of the 2008 Regulations.

5. **Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

6. **European Convention on Human Rights**

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 Annexes IV and V of MARPOL 73/78 contain provisions relating to the prevention of pollution by sewage and garbage from ships. The UK is a signatory to those Annexes, and therefore bound to ensure that these are given effect in domestic law. The 2008 Regulations implement them in the UK.

7.2 Apart from correcting the errors pointed out in the 2008 Regulations by the Joint Committee on Statutory Instruments, the Regulations also deal with the following points.

Definition of “short international voyage”

7.3 The definition of “short international voyage” in the 2008 Regulations refers to an international voyage which does not exceed 600 nautical miles between ports of call. Since the Regulations were made, officials in the Department have become aware of Resolution A.997(25) adopted by the International Maritime Organization on 29 November 2007, in the context of MARPOL and other International Conventions. This Resolution refers in its definition of “short voyage” to 1,000 rather than 600 nautical miles, and does not contain a reference to the matters dealt with in paragraph (a) of the definition of “short international voyage” in the 2008 Regulations.

7.4 For the sake of consistency with that Resolution the Department thought it appropriate to amend this definition. The only place in which this expression occurs in the 2008 Regulations is in the context of regulation 15(6), which provides for a Certifying Authority to be able to extend the period of validity of a Sewage Certificate in respect of a ship engaged solely on short international voyages.

Ships in ports and at offshore terminals and ships which are platforms

7.5 Regulation 6(4) of the 2008 Regulations relates to the application of regulation 16(6) to non UK ships which are deficient. After the 2008 Regulations were made the Department noted that the reference to ships which are at offshore terminals in UK waters or controlled waters had been omitted by mistake. (“United Kingdom waters” means the UK’s territorial sea, and “controlled waters” means the defined zone beyond the territorial sea over which the UK has jurisdiction.) It was also noted that there was a need for clarification that regulation 16(6) applies in relation to ships which are floating platforms (e.g. oil rigs) and which are in United Kingdom waters or controlled waters.

7.6 The text of regulation 6(4) has therefore been amended to clarify these points. This amendment brings the provision into line with other provisions in regulation 6.

7.7 For consistency, having amended regulation 6(4) the Department noted that it was also necessary to amend regulation 36(3) along similar lines. Regulation 36(3)(b) relates to where ships can be inspected.

7.8 Also for consistency, a similar amendment is also made in relation to regulation 38(4)(b), which relates to where ships can be detained.

Arbitration

7.9 In relation to regulation 17 on arbitration where an applicant for a survey is dissatisfied with the outcome of a survey, it was noted that in Scotland there is a default provision if the parties cannot agree on an arbitrator. But there was no default provision for the rest of the UK. This is now rectified by regulation 2(8) of these amending Regulations.

- **Consolidation**

7.10 These Regulations make only a few minor amendments to the 2008 Regulations. In view of the need to correct the errors noted by the Joint Committee at the earliest opportunity, the Regulations have not been consolidated on this occasion.

8. Consultation outcome

8.1 In view of the minor nature of the amendments being made by these Regulations, these Regulations have been consulted on for 8 weeks from 28 July 2009 to 22 September 2009.

8.2 Approximately 96 stakeholders and interested parties were sent the consultation package. These included the shipping industry, environmental groups, government and non government bodies.

8.3 Six responses were received to this consultation exercise. Summary of key points:

- Consultees were supportive of proposals; and
- One consultee suggested extending the sewage regulations to cover ships on domestic voyages as well as ships on international voyages. (This suggestion could not be adopted because there are no enabling powers to do so. The powers relate to the implementation of the Marine Pollution Convention and its Annexes, which relate to ships on international voyages.)

8.4 A summary of the comments received during the consultation, and the Maritime and Coastguard Agency's responses to them, is published on the MCAs website at; http://www.mcga.gov.uk/c4mca/mcga07-home/shipsandcargoes/consultations/mcga-consultations-archive/consultations-closed_started-2009/ep-con-sewage_and_garbage/ep-con-marpol4and5-responses.htm

9. Guidance

9.1 A Marine Guidance Note (MGN) was published with the 2008 Regulations but, in view of the minor nature of the amendments being made, no further guidance is being published to accompany these Regulations.

10. Impact

10.1 The impact on business, charities or voluntary bodies is minimal.

10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment has been prepared and is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken in the 2008 Regulations was to apply the sewage requirements only to ships which are engaged on international voyages and are either of at least 400 gross tonnage or of less than 400 gross tonnage but certified to carry more than 15 persons. These amending Regulations do not alter that approach.

11.3 The basis for the final decision on what action to take to assist small business was taken as a result of the consultation exercise.

12. Monitoring and review

12.1 The impact of the policy behind the 2008 Regulations will be kept under review. No review is considered necessary in relation to these amending Regulations.

13. Contact

13.1 Lorraine Weller of the Maritime and Coastguard Agency: Telephone 02380 329503 or e-mail: lorraine.weller@mcga.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: Maritime and Coastguard Agency	Title: Impact Assessment of the Merchant Shipping (Prevention of Pollution by Sewage and Garbage From Ships) (Amendment) Regs	
Stage: Implementation	Version: Final	Date: 17 March 2010
Related Publications: Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008 SI 2008 No.3257, MSN 1807 and MGN 385. http://www.mcga.gov.uk/c4mcga/mcga07_home/shipsandcargoes/consultations/mcga_consultations		

Available to view or download at:

<http://www.mcga.gov.uk>

Contact for enquiries: Lorraine Weller

Telephone: 02380 329 503

What is the problem under consideration? Why is government intervention necessary?
Correcting the recently published Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008 (2008 Regulations).

What are the policy objectives and the intended effects?
The main objective of amending the 2008 Regulations is to address the points raised by the Joint Committee on Statutory Instruments (JCSI); the amending Regulations are also intended to update the definition of "short international voyage" and bring into line regulation 6(4) with the other provisions in Regulation 6 "Application" and any cross referencing regulations. These amending Regulations will ensure that the 2008 Regulations are current and correct.

What policy options have been considered? Please justify any preferred option.
'Do Nothing' Option: 'Do Nothing' is not considered to be an option as it will not address the points raised by JCSI.
Option 1: To correct the errors highlighted in Regulations 36(3)(b), 38(4)(b), 42(1) and 44(a) by the JCSI. In addition, whilst undertaking this work, a few other minor adjustments were made to Regulation 2(1), definition of "short international voyage", Regulation 6(4): "United Kingdom waters or controlled waters" and Regulation 17: Arbitration, either to correct or strengthen the existing provision to correct other issues that were noted whilst reviewing JCSI comments.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? Review will take place one year after the coming into force date of the new Regulations.

Ministerial Sign-off For implementation-stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.

Signed by the responsible Minister:

Paul Clark

..... Date: 21st March 2010

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by ‘main affected groups’ No monetised costs.			
	One-off (Transition)		Yrs		
	£ 0				
	Average Annual Cost (excluding one-off)				
	£ N/A		Total Cost (PV)	£ 0	
Other key non-monetised costs by ‘main affected groups’ Potential additional cost to the Maritime and Coastguard Agency for dealing with requests from ships owners and / or operators for one-month grace periods.					

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by ‘main affected groups’ No monetised benefits.			
	One-off		Yrs		
	£ 0				
	Average Annual Benefit (excluding one-off)				
	£ N/A		Total Benefit (PV)	£ 0	
Other key non-monetised benefits by ‘main affected groups’ Potential additional benefits to owners and / or operators of ships engaged on “short international voyages” of more than 600 miles, but less than 1000 nautical miles, of deferring survey and certification costs by up to one month.					

Key Assumptions/Sensitivities/Risks 1.) No additional owners and / or operators will seek the 30 day grace period. 2.) All vessels engaged on “short international voyages” are classed, and therefore have access to survey and certification services globally. 3.) It has not been possible to monetise any of the costs and benefits in this impact assessment. 4.) The estimates of the Net Benefit do not reflect the non-monetised costs and benefits.

Price Base Year N/A	Time Period Years	Net Benefit Range (NPV) £ 0	NET BENEFIT (NPV Best estimate)
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What is the geographic coverage of the policy/option?				UK wide
On what date will the policy be implemented?				TBC
Which organisation(s) will enforce the policy?				MCA
What is the total annual cost of enforcement for these organisations?				£ 0
Does enforcement comply with Hampton principles?				Yes
Will implementation go beyond minimum EU requirements?				No
What is the value of the proposed offsetting measure per year?				£ N/A
What is the value of changes in greenhouse gas emissions?				£ N/A
Will the proposal have a significant impact on competition?				Yes/No
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium Large
Are any of these organisations exempt?		No	No	N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)			(Increase - Decrease)
Increase of £ 0	Decrease of £ 0	Net Impact	£ 0

Key: Annual costs and benefits

(Net) Present

Background

Annexes IV and V of MARPOL 73/78 contain provisions relating to the prevention of pollution by sewage and garbage from ships. These provisions were implemented into UK law by the ‘Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008’ (“2008 Regulations”).

A full consultation was undertaken in the spring of 2008 with approximately 96 stakeholders and interested parties of whom 15 minor responses were received, considered and amendments made where appropriate.

The Joint Committee on Statutory Instruments reviewed the 2008 Regulations and noted three points which needed addressing. To do this, it was agreed an amendment to the 2008 Regulations would be required.

Whilst addressing these points, it was also decided that it would be appropriate to make a few other minor adjustments to some of the other provisions in the 2008 Regulations.

Options

‘Do Nothing’ is not considered to be an option as it would not address the points that were raised by JCSI. It would also mean that the existing 2008 Regulations would continue to contain inaccurate provisions or definitions.

The only viable option is to correct the errors highlighted by the JCSI. This will rectify the 2008 Regulations.

As an amending Regulation was required to correct the errors highlighted by the JCSI, the Department of Transport lawyer reviewed the 2008 Regulations and noted that the following Regulations required updating or clarifying; regulation 2(1), definition of “short international voyage”, regulation 6(4): “United Kingdom waters or controlled waters” and regulation 17: Arbitration.

Impact of Amending the 2008 Regulations

A full Impact Assessment was undertaken before the 2008 Regulations were made, which formed part of the consultation package for these amending Regulations. The 2008 IA had already taken into consideration the following amendments to the 2008 Regulations, with the exception of the amendment to regulation 2(1), as these amendments have come about due to omission or duplication at the time of completing the drafting of the final Regulation. However, the MCA do not consider that the amendment to regulation 2(1) will have a significant impact as it only extends the length of how long a short international voyage is, and so it does not change the application requirements of survey and certification or the enforcement requirements of the 2008 Regulations. The amendments are as follows:

Definition of “short international voyage”

Regulation 2(1): the definition of “short international voyage” has been brought into line with the International Maritime Organization’s Assembly Resolution A.997(25) adopted on 29 November 2007 on survey Guidelines under the Harmonized System of Survey and Certification 2007. This definition replaced 600 nautical miles with 1000 nautical miles.

Ships in ports and offshore terminals, and ships which are platforms

Regulation 6(4): In relation to offshore terminals, the MCA noted that the reference to “United Kingdom waters or controlled waters” had been omitted in relation to offshore terminals. The MCA also noted that it ought to be clarified that this provision applies in relation to ships which are fixed or floating platforms.

The text of regulation 6(4) has therefore been changed to make it clear that regulation 16(6) (which relates to deficient ships) applies not only to ships in UK ports but also to ships which are in an offshore terminal in UK waters (i.e. the UK’s territorial sea) or controlled waters (i.e. the defined zone beyond the territorial sea over which the UK has jurisdiction). It is also now made clear that regulation 16(6) applies to ships which are fixed platforms in United Kingdom waters or controlled waters, or which are floating platforms in such waters but are not in transit. Adding in this text now brings the provision in line with the other provisions in regulation 6 (which relates to the application of the 2008 Regulations).

Regulation 36(3)(b): for consistency, having amended regulation 6(4), the MCA noted that it was also necessary to amend regulation 36(3) along similar lines. Regulation 36(3)(b) relates to where ships can be inspected.

Regulation 38(4)(b): as with regulation 36(3)(b), the MCA noted that it was also necessary to amend regulation 38(4)(b) in the same way. This regulation relates to where ships can be detained.

Arbitration

Regulation 17: in relation to arbitration where an applicant for a survey is dissatisfied with the outcome of a survey, it was noted that in Scotland there is a default provision if the parties cannot agree on an arbitrator. But there was no default provision for the rest of the UK. This is now rectified by these amending Regulations.

The opportunity is also being taken in these amending Regulations to update the definition of a “qualified person” for the purposes of arbitration in line with equivalent provisions in the Merchant Shipping Act 1995 as amended.

Offences and fines

Regulation 42(1): A reference to regulation 15(5) was omitted from the list in paragraph (a) and this is now corrected. Also, there was no need at regulation 42(1) (g) and (h) to include the references to paragraphs (1) and (2) of regulation 34, as those paragraphs are already covered under regulation 42(1) (l) and (m). This is now corrected.

Regulation 44(a): the MCA noted that there had been an omission of a reference to the “officer in charge” in this provision. The new text rectifies this.

The MCA do not consider that the above amended provisions will have an impact on competition or an impact on small firms.

Section: Race Equality

The Regulations are applicable to all seafarers on UK ships irrespective of their race, nationality or ethnic origin.

Section: Disability Equality

The UK Regulations are applicable to all seafarers on UK ships. They do not however contain any provisions relating to disability equality as the fitness or otherwise of a seafarer to work on a ship is covered by separate regulations.

Section : Gender Equality

The UK Regulations are applicable to all seafarers on UK ships irrespective of their gender.

Section : Human Rights

The UK Regulations do not raise any human rights issues.

Costs and Benefits

The cost and benefits of the 2008 Regulations were fully explored in the 2008 IA (please see the link at the top of page 1), and the MCA consider that the amendments do not significantly affect the previously documented evidence of that 2008 IA.

It is expected that all amendments, except for the amendment to regulation 2(1), will result in no costs or benefits for the UK shipping industry or the MCA, as these changes only cover clarification or omissions in the drafting of the 2008 Regulations.

The re-defining of a “short international voyage” is expected to result in both costs and benefits. Ships engaged on short international voyages are able to make an application to the Maritime and Coastguard Agency for a one-month grace period before the expiry of their international sewage pollution prevention certificate. The lengthening of the definition of short international voyage, from 600 nautical miles to 1000 nautical miles, inherently increases the number of ships which would be potentially eligible for this one-month grace period. However, the MCA does not expect an increase in the number of vessel owners or operators seeking to apply for one-month grace periods with the MCA. Survey and certification services have been fully delegated to UK-recognised Classification Societies by the MCA; these have global reach and are available in all but the very smallest flag states. Applications for grace periods are dealt with on a case-by-case basis by the MCA. To qualify, vessel owners and operators are required to provide evidence to the MCA of eligibility for a one-month grace period. Given the global reach of Classification Societies, such evidence is increasingly difficult to offer.

This suggests that as a result of these regulations, it is possible that there could potentially be negligible benefits to ship owners and / or operators of deferring survey costs by up to one month, and that there could be potentially be negligible costs to the MCA of additional applications for grace periods. Quantifying these costs and benefits is challenging because no evidence on the number of ships which are engaged on short international voyages of over 600 nautical miles but less than 1000 nautical miles is available. Therefore, it has not been possible to quantify these costs and benefits in this impact assessment.

Consultation

A full 12 week public consultation was undertaken in May 2008 on the draft Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008. The consultation comprised a covering letter providing a background and summary of the Regulations together with specific questions on the consultation package. The associated documents to the letter were the draft Merchant Shipping (Prevention of Pollution by Sewage and Garbage from Ships) Regulations 2008, Marine Guidance Note and Marine Shipping Notice and a signed Impact Assessment (IA).

As a result of consulting 96 bodies and organisations representing the shipping industry, environmental groups, government and non government bodies the Maritime and Coastguard Agency received a total of 15 replies with 4 making a specific comment on the IA. All comments were taken into consideration and where there was appropriate evidence to support the comments the IA was amended accordingly.

As the MCA do not consider that the amendments significantly change the IA and Regulations which were previously consulted on, it was considered appropriate to have a shortened consultation period of 8 weeks for these amending Regulations.

The amending Regulations and accompanying IA were sent to the original 96 bodies and organisation that the 2008 Regulations were sent to. The MCA received 6 replies to the consultation package; 4 were acknowledgements of receipt and contained no comments. One requested that the Regulations be extended to cover domestic ships (which cannot be done as there are no enabling powers for this), and the other asked for clarification between regulations 28 and 30 of the 2008 Regulations (which the MCA provided).

Therefore, no substantive comments requiring any changes were received on the amending Regulations or the accompanying IA.

Specific Impact Tests: Checklist

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	No	No