

**EXPLANATORY MEMORANDUM TO**  
**THE MERCHANT SHIPPING (PORT STATE CONTROL) REGULATIONS 2011**

**2011 No. 2601**

**1.** This explanatory memorandum has been prepared by the Maritime and Coastguard Agency (MCA) an executive agency of the Department for Transport and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 The purpose of the Regulations, which implement Directive 2009/16/EC on port State control, is to strengthen control of foreign flagged ships calling at UK ports in order to reduce the risk they pose to health, safety or the environment. Port State control is a well established regime of ship inspection for compliance with international safety standards. The new Directive introduces a risk based scheme of inspection, strengthens powers to exclude ships which are persistently sub standard and requires port authorities to provide information on actual times of ship arrivals and departures to support the European Commission in setting and monitoring inspection activity.

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

3.1 None

**4. Legislative Context**

4.1 Directive 2009/16/EC on port State control is part of the Third Maritime Safety Package which completes a programme of European legislation following the loss of two oil tankers in waters of member States resulting in severe marine pollution. It replaced Directive 1995/21/EC from 1 January 2011 with the objective of drastically reducing substandard shipping in waters of member States.

4.2 The UK Government is required to bring in regulations and procedures to transpose Directive 2009/16/EC into national law.

4.3 The proposed regulations contain provisions of the Directive which place obligations on persons other than the State. They apply to ship owners, operators, agents, masters, seafarers, pilots and port authorities.

4.4 Duties placed by the Directive on the State for which powers to do what is required (to inspect ships) already exist and can be applied by the Secretary of State are set out in non legislative procedure MCA 814 as evidence of transposition.

4.5 The proposal which resulted in Directive 2009/16/EC was the subject of an Explanatory Memorandum (EM) 5632/06, submitted to Parliament by the Department for

Transport on 8 February 2006. The House of Commons Scrutiny Committee considered the EM on 1st March 2006. The Committee recommended that the proposal was politically important and did not clear it (Report 20, Session 2005-2006, 27238). The House of Lords Select Committee on the European Union referred the EM to Sub-Committee B at the 1242nd sif of 14th February 2006. The Sub-Committee considered the EM on 27 February 2006 and held the proposal under scrutiny pending further update after the June Transport Council and the European Parliament 1st Reading. Ministerial letters were sent to both Committees on 13th July 2006, 5th December 2006, 10th May 2007 and 10th July 2008. On 6th December 2006 the House of Commons European Scrutiny Committee cleared the proposal from scrutiny (Report No 3, Session 2006-2007). The House of Lords Select Committee on the European Union cleared it on 22nd May 2007.

4.6 The other Directives of the Third Maritime Safety Package deal with Ship Inspection and Survey Organisations (2009/15/EC), Vessel Traffic Monitoring (2009/17/EC), Investigation of Accidents in the Maritime Sector (2009/18/EC), Insurance of Shipowners for Maritime Claims (2009/20/EC) and Compliance with flag State Requirements (2009/21/EC). They are being implemented separately.

## **5. Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

## **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 market in international shipping is competitive, and shipowners and operators seek to minimise their private costs, which do not reflect the full societal costs of their actions wherever the ships trade. International safety, pollution prevention and seafarer welfare standards have therefore been introduced. However some States registering ships (flag States) do not, for whatever reasons, enforce these standards on their ships. States whose ports are visited by foreign flag ships (port States) may inspect them against these standards, require deficiencies to be rectified, and in the case of serious deficiencies may detain the ship in port until they are put right. The standards are contained in Conventions of the International Maritime Organization and the International Labour Organization.

7.2 Self regulation or a voluntary code of compliance is not appropriate where the ship owner and the State registering the ship have failed to ensure compliance. Inspections carried out by States at whose ports ships call is a defence against this failure. Therefore Europe-wide rules for control of foreign ships have been adopted and the recast

Directive takes account of the experience of the Paris Memorandum of Understanding on Port State Control (Paris MoU).

7.3 The UK, which is committed to regional cooperation on port State control for greater effect, is a signatory to the Paris MoU, an administrative agreement concerning port inspections dating back to 1982. The UK agrees to share inspection data, apply common procedures and take decisions in the framework of the Paris MoU Committee. The Directive, which draws heavily on the experience of the Paris MoU, requires member States to carry out port State inspections.

- Consolidation

7.4 The Regulations replace the Merchant Shipping (Port State Control) Regulations 1995 and all amendments to them.

## **8. Consultation outcome**

8.1 As consultation was addressed to a specialist sector, the shipping industry, it could be held for a period of 6 weeks in view of delay in transposition and the risk of a financial penalty imposed by the European Court of Justice (noting that the statutory obligation to consult does not specify the length of the consultation period.). It included bodies representing ship owners, ship masters, seafarers, maritime trade organisations and welfare missions, classification societies, port authorities, ship pilots, maritime training and legal bodies.

8.2 Six organisations responded, five with comments. The main concern was raised by the UK Maritime Pilots' Association, whose use by shipowners is voluntary. They said that extending the obligation to report deficiencies on board ship to deep sea pilots, without protecting the source of a pilot report leading to an inspection, could result in shipowners no longer using their services. The MCA, whilst noting that the Directive does not provide for confidentiality, proposes to use operational procedures to achieve confidentiality so far as is consistent with legal requirements.

8.3 Details of comments received and MCA's response have been published at <http://www.dft.gov.uk/mca> under headings ships and cargoes, consultations, closed consultations.

## **9. Guidance**

9.1 The introduction of a risk based inspection scheme from 1 January 2011 was widely publicised by the Paris MoU over several years of its development. The MCA issued more detailed guidance prior to implementation, and informed the industry of the effects of delay in making regulations on other provisions of the Directive.

9.2 The European Maritime Safety Agency publicised new reporting requirements placed on pilots in respect of ship safety; and on port authorities in respect of information to support European Commission monitoring.

9.3 A Merchant Shipping Notice provides guidance for the industry on how to comply with requirements of the regulations.

## **10. Impact**

10.1 The impact on business is (best estimate) £0.59m.

10.2 The impact on the public sector is (best estimate) £2.34m.

10.3 An Impact Assessment will be published alongside the Explanatory Memorandum on [www.legislation.gov.uk](http://www.legislation.gov.uk).

## **11. Regulating small business**

11.1 The legislation applies to port authorities and commercial deep sea pilots which may be small businesses.

11.2 To minimise the impact on port authorities of the requirements to report ship arrivals within a 'reasonable' time, this term has been interpreted as within 72 hours of the event to allow for the fact that smaller ports may be unmanned at weekends. Paragraph 8.2 refers to the consultation response from deep sea pilots.

11.3 The basis for the final decision on what action to take to assist small business is as set out in 11.2. Representatives covering small businesses were included in the consultation but no other comments on their interests were received.

## **12. Monitoring & review**

12.1 The regulations contain a statutory duty of Ministerial review every five years and for conclusions of the review to be set out in a report and published.. The review is intended as a proportional check on the implementation of the Directive.

12.2 Success criteria will include inspections carried out on ships due for inspection according to the risk based selection scheme and the UK's contribution to carrying out a 'share' of inspections due in the Paris MoU, allowing for flexibility provided in the Directive. The review will take account of the European Commission's findings in respect of the number of port State inspectors, the number of inspections carried out and compliance with annual inspection commitments of each member State. The Commission is required by the Directive to conduct a review by 30 June 2012 to determine the need for amending or further legislation.

12.3 The European inspection database monitors precisely the number and type of inspections carried out by each member State against records for ship arrivals and inspection commitments, the number of ships detained, the number refused access, and information provided by port authorities and member States on port calls.

### **13. Contact**

Pat Dolby at the Maritime and Coastguard Agency, Department for Transport Tel: +44 (0)2380 329 343 or email: [Pat.Dolby@mcga.gov.uk](mailto:Pat.Dolby@mcga.gov.uk) can answer any queries regarding the instrument.



## ANNEX

### TRANSPOSITION TABLE

Relating to Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control

The Merchant Shipping (Port State Control) Regulations 2011 give effect to those parts of the Directive requiring legislative provisions for effect.

Document MCA 814 sets out administrative procedures needed where the Directive is given effect by such procedures without the need for new legislative provisions.

Port State Control Directive 2009/16/EC	The Merchant Shipping (Port State Control) Regulations 2011; regulation number	Procedure MCA 814; paragraph number
Article 1 introductory words	Not required	
Article 1(a)	Not required	
Article 1(b)	Not required	
Article 1(c)	Not required	
Article 2 introductory words	2(1)	
Article 2(1) introductory words	2(1)	
Article 2(1) (a)-(h)	2(1)	
Article 2(2)	2(1)	
Article 2(3)		2.4
Article 2(4)	2(1)	
Article 2(5)	2(1)	
Article 2(6)	2(1)	
Article 2(7)	2(1)	
Article 2(8)	2(1)	
Article 2(9)		3
Article 2(10)		2.4
Article 2(11)	2(1)	
Article 2(12)	2(1)	
Article 2(13)	2(1), 6(3)	
Article 2(14)	2(1)	
Article 2(15)	9(2)	
Article 2(16)	2(1)	
Article 2(17)	2(1)	
Article 2(18)	2(1)	
Article 2(19)	2(1)	
Article 2(20)	2(1)	
Article 2(21)	2(1)	
Article 2(22)	2(1)	
Article 3(1) first subparagraph	3(1)	
Article 3(1) second subparagraph	Not required	
Article 3(1) third subparagraph	3(4)	
Article 3(1) fourth subparagraph	Not required	
Article 3(1) fifth subparagraph	Not required	
Article 3(1) sixth subparagraph	Not required	
Article 3(2)	3(3)	
Article 3(3)		15.3

Port State Control Directive 2009/16/EC	The Merchant Shipping (Port State Control) Regulations 2011; regulation number	Procedure MCA 814; paragraph number
Article 3(4)	3(2)	
Article 4(1)	Not required	
Article 4(2)	Not required	
Article 5(1)		6.1
Article 5(2) introductory words		7.2
Article 5(2)(a)		7.2(a)
Article 5(2)(b)	4(1), 4(2)	
Article 5(3)	Not required	
Article 6 introductory words		8.1
Article 6(a)		8.1
Article 6(b)		8.1
Article 6 second subparagraph		8.2
Article 6 third subparagraph		8.2
Article 7(1)		9.2
Article 7(2)		9.3
Article 7(3)	Not required	
Article 8(1) introductory words		10.1
Article 8(1)(a)		10.2
Article 8(1)(b)		10.2
Article 8(1) second subparagraph		10.1
Article 8(1) third subparagraph		10.4
Article 8(2) introductory words		11.1
Article 8(2)(a)		11.1
Article 8(2)(b)		11.1, 11.3
Article 8(3) introductory words		12.1
Article 8(3)(a)		12.1
Article 8(3)(b)		12.1
Article 8(3)(c)		12.1
Article 8(4)	Not required	
Article 9(1)	6(1) – 6(2)	
Article 9(2)	Not required	
Article 9(3)	6(2)	
Article 9(4)	Not required	
Article 10(1)	Not required	
Article 10(2)(a)	Not required	
Article 10(2)(b)	Not required	
Article 10(3) introductory words	Not required	
Article 10(3)(a)	Not required	
Article 10(3)(b)	Not required	
Article 10(3) final words	Not required	
Article 11 introductory words		6.1
Article 11(a)		6.2 – 6.3
Article 11(b) introductory words		6.2 – 6.3
Article 11(b) first indent		6.2
Article 11(b) second indent		6.3
Article 12 first subparagraph		6.1
Article 12 second subparagraph		6.1
Article 12 second subpara (a)		6.2
Article 12 second subpara (b)		6.3



Port State Control Directive 2009/16/EC	The Merchant Shipping (Port State Control) Regulations 2011; regulation number	Procedure MCA 814; paragraph number
Article 13 first subparagraph	5(1), 5(3)	
Article 13(1) introductory words	2(1), 5(1)	
Article 13(1)(a)	2(1), 5(1)	
Article 13(1)(b)	2(1), 5(1)	
Article 12(1)(c)	2(1), 5(1)	
Article 13(2)	5(2)	
Article 13(3) first subparagraph	2(1), 5(3)	
Article 13(3) second subparagraph	5(4)	
Article 13(3) third subparagraph	5(4)	
Article 14(1) introductory words	6(1)	
Article 14(1) first indent	6(1)	
Article 14(1) second indent	6(1)	
Article 14(1) third indent	6(1)	
Article 14(1) fourth indent	6(1)	
Article 14(2) first subparagraph	6(4)	
Article 14(2) second subparagraph	6(5)	
Article 14(3)	6(6)	
Article 14(4)	2(1)	
Article 15(1)		19.1
Article 15(2)		19.2
Article 15(3) first subparagraph		18.1
Article 15(3) second subparagraph		18.2
Article 15(3) third subparagraph		18.3
Article 15(4)	Not required	
Article 16(1) introductory words	10(1)	
Article 16(1) first indent	10(2)	
Article 16(1) second indent	10(2)	
Article 16(1) following words	10(1), 13	
Article 16(1) second subparagraph	12(1)	
Article 16(2) first subparagraph	12(2)	
Article 16(2) second subparagraph	12(2)	
Article 16(3) introductory words	11, 12(3)	
Article 16(3) first indent	12(3)	
Article 16(3) second indent	12(3)	
Article 16(3) third indent	12(3)	
Article 16(3) fourth indent	12(3)	
Article 16(3) second subparagraph	12(4)	
Article 16(4)	12(5)	
Article 16(5)		23.7
Article 17	7	
Article 18 first subparagraph	21(1)	
Article 18 second subparagraph	21(2)	
Article 18 third subparagraph	21(3)	
Article 18 fourth subparagraph	21(4), 21(5)	
Article 18 fifth subparagraph	21(2)	
Article 19(1)	9(1)	
Article 19(2)	9(2), 9(4)	
Article 19(3)	9(5)	
Article 19(4) first subparagraph	9(6)	

Port State Control Directive 2009/16/EC	The Merchant Shipping (Port State Control) Regulations 2011; regulation number	Procedure MCA 814; paragraph number
Article 19(4) second subparagraph	9(7)	
Article 19(5)	9(8)	
Article 19(6)	9(9) – 9(11)	
Article 19(7)	9(12)	
Article 19(8)	9(13)	
Article 19(9) first subparagraph		22.9
Article 19(9) second subparagraph	Not required	
Article 19(10)		22.7
Article 20(1)	14 – 16	
Article 20(2)	14 – 16	
Article 20(3)		24.3
Article 20(4) introductory words		27.2
Article 20(4)(a)		27.2
Article 20(4)(b)		27.2
Article 21(1)	18	
Article 21(2)		25.2
Article 21(3) first subparagraph		25.4
Article 21(3) second subparagraph		25.5
Article 21(4) introductory words	17(1), 17(2)	
Article 21(4)(a)	17(1)	
Article 21(4)(b)	17(1)	
Article 21(4) second subparagraph	17(1)	
Article 21(5) first subparagraph		26.2
Article 21(5) second subparagraph		26.2
Article 21(5) third subparagraph		26.4
Article 21(6)	13	
Article 22(1)	8(1)	
Article 22(2)	8(2)	
Article 22(3)	8(3)	
Article 22(4)		4.3
Article 22(5)	Not required	
Article 22(6)	Not required	
Article 22(7)	Not required	
Article 23(1)	19(1) – 19(3)	
Article 23(2)	19(4)	
Article 23(3) introductory words	19(5)	
Article 23(3) first indent	19(5)	
Article 23(3) second indent	19(5)	
Article 23(3) third indent	19(5)	
Article 23(4)		31.2
Article 23(5)	Not required	
Article 24(1) first subparagraph	Not required	
Article 24(1) second subparagraph	Not required	
Article 24(2)	20(1), 20(2)	
Article 24(3) first subparagraph		27.1
Article 24(3) second subparagraph		27.1
Article 24(4) first subparagraph	Not required	
Article 24(4) second subparagraph	Not required	
Article 24(4) third subparagraph	Not required	

Port State Control Directive 2009/16/EC	The Merchant Shipping (Port State Control) Regulations 2011; regulation number	Procedure MCA 814; paragraph number
Article 25 introductory words	20(3)	
Article 25 first indent	Not required	
Article 25 second indent	20(3)	
Article 25 third indent	20(3)	
Article 25 fourth indent	20(3)	
Article 25 fifth indent	19(4)	
Article 26	Not required	
Article 27 first subparagraph	Not required	
Article 27 second subparagraph	Not required	
Article 28(1)	22(2)	
Article 28(2)	22(1)	
Article 28(3)	22(2)	
Article 28(4)	22(3)	
Article 29		35
Article 30	Not required	
Article 31(1)	Not required	
Article 31(2) first subparagraph	Not required	
Article 31(2) second subparagraph	Not required	
Article 31(3)	Not required	
Article 32 introductory words	Not required	
Article 32(a)	Not required	
Article 32(b)	Not required	
Article 32 second subparagraph	Not required	
Article 32 third subparagraph	Not required	
Article 33	Not required	
Article 34	23	
Article 35 first subparagraph	Not required	
Article 35 second subparagraph	Not required	
Article 36(1) first subparagraph	Not required	
Article 36 (1) second subpara	Not required	
Article 36 (2)	Not required	
Article 36 (3)	Not required	
Article 36 (4)	Not required	
Article 37 first subparagraph	Not required	
Article 37 second subparagraph	Not required	
Article 38	Not required	
Article 39	Not required	