

EXPLANATORY MEMORANDUM TO
THE MERCHANT SHIPPING (VESSEL TRAFFIC MONITORING AND
REPORTING REQUIREMENTS) (AMENDMENT) REGULATIONS 2011

2011 No. 2616

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

2. Purpose of the instrument

2.1 These Regulations amend existing subordinate legislation applicable to most UK ships and non-UK ships that operate in UK waters. They implement two European Directives (2009/17/EC and 2011/15/EU), which aim to enhance maritime safety standards by introducing a number of new measures in the area of vessel traffic monitoring (VTM) as well as clarifying some elements of the original VTM Directive (2002/59/EC).

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

3.1 None

4. Legislative Context

4.1 These Regulations implement European obligations. The proposal which resulted in Directive 2009/17/EC was the subject of an Explanatory Memorandum (EM) 5171/06, submitted to Parliament by the Department for Transport on 2 February 2006. The House of Commons Scrutiny Committee considered the EM on 8 February 2006. The Committee recommended that the proposal was politically important and did not clear it from scrutiny pending further developments (Report 18, Session 2005-2006, 27218). The House of Lords Select Committee on the European Union referred the EM to Sub-Committee B at the 1241st sif of 7 February 2006. The Sub-Committee considered the EM on 13 February 2006 and held the proposal under scrutiny pending further information. Ministerial letters were sent to both Committees on 18 May 2006, and 14 May 2007, with additional letters to the Lords Committee on 5 July 2006, and to the Commons Committee on 25 May 2007. The House of Commons European Scrutiny Committee cleared the EM from scrutiny on 6 June 2007 (Report 23, Session 2006-2007). The House of Lords Select Committee on the European Union cleared it on 6 June 2006. The proposal which resulted in Commission Directive 2011/15/EU was not subject to Parliamentary Scrutiny. Transposition Notes for both Directives are attached.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom. It applies to non-UK ships whilst they are in UK waters, and to UK ships anywhere in the world. It applies to all ships over 300 gross tonnage. The provision relating to carriage of AIS also applies to fishing vessels greater than 15 metres in length irrespective of their gross tonnage.

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

7.1 The original VTM Directive and the Regulations that implement it (SI 2004/2110 and SI 1997/2367) establish and regulate a mandatory vessel traffic monitoring and information reporting system that helps prevent accidents and pollution at sea. The original VTM Directive was one of several measures introduced by the Commission following the wreck of the oil tanker *Erika* in December 1999.

7.2 Directive 2009/17/EC inserts a number of significant new articles that introduce;

- a specific reporting mechanism that centrally collates all the data gathered under the VTM Directive as amended (SafeSeaNet),
- the carriage of Long Range Identification and Tracking (LRIT) systems,
- measures to take in the event of risks posed by ice, and
- Automatic Identification Systems (AIS) for fishing vessels,

in addition to widening the scope in relation to bunkers on ships and making a number of smaller amendments, such as adding additional criteria for exemptions from notification requirements and introducing more rigorous requirements for information about polluting goods onboard ship.

AIS is a VHF-based radio transponder system that transmits the identity of the vessel, its position, course and speed, heading, and other voyage-related data.

LRIT Systems are similar to AIS but allow for a much longer range of information transmission.

7.3 The overarching aim of Directive 2009/17/EC is to update vessel traffic monitoring procedures given the advances in technology and changes in policy, and generally to improve safety. Additional elements encourage increased cooperation and communication between Member States, particularly with the exchange of data.

7.4 Directive 2011/15/EU, negotiated through comitology in the Committee of Safe Seas and the Prevention of Pollution from Ships (COSS) contains further minor amendments, notably new texts for Annexes II and IV of the original VTM Directive that tidy up the drafting, and the updating of a reference to a revoked IMO Resolution, bringing the Directive in line with requirements already in place under international law.

7.5 The provision of Directive 2009/17/EC which relates to LRIT is being incorporated into a different set of Regulations. This is because these provisions were originally introduced through the International Convention for the Safety of Life at Sea (SOLAS), negotiated in the International Maritime Organization.

7.6 The Regulations have been developed in consultation with industry representatives via the UK Safety of Navigation Group (UKSON), in addition to the formal 6 week public consultation.

7.7 There is no intention to consolidate these Regulations at this time.

8. Consultation outcome

8.1 These Regulations, the associated Merchant Shipping Notice and Marine Guidance Note, and the Impact Assessment (IA) have been consulted on over a 6 week period from June to August 2011. The consultation was over an abridged period of 6 weeks, rather than the standard 12 weeks, because the European Commission has already commenced the infraction process. Much informal consultation had already been undertaken with stakeholder and industry groups prior to the official public consultation.

8.2 The consultation package was sent out to stakeholders and interested parties, including the MAIB, The Harbour Master's Association, the General Lighthouse Authorities, the British Ports Association, the Health and Safety Executive, the Nautical Institute and the Chamber of Shipping. A full list of consultees can be found on the MCA website.

8.3 11 responses were received to this consultation. The majority of the commentators were content with the proposals as put forward. The Royal Institute of Navigation and the Scottish Fisherman's Federation both expressed the view that the costs of AIS are higher than estimated within the IA. Their observations were taken into account in drafting the final IA. The Scottish Fisherman's Federation, along with Nautilus International, also felt that the safety benefits of AIS were underappreciated in the IA and this was also taken into account. The other strong view that was expressed was from Associated British Ports, the British Ports Association and the UK Major Ports Group, all of whom, while content with the majority of the proposals, have issues with some of the new proposed ways of reporting and raise several points relating to the drafting of the Marine Guidance Note (MGN) and the Marine Shipping Notice (MSN). These have been taken into account in the drafting, as have some suggested costs in the IA.

8.4 A summary of the comments received during the consultation, and the responses to them, can be found on the MCA website at <http://mcga.gov.uk>.

9. Guidance

9.1 The MSN associated with these Regulations contains the reporting requirements and methods of reporting for the VTM data from vessels and ports. The MSN will be available on the MCA website.

9.2 There is also an associated MGN that contains details of the exemption process, through which ships can be exempted from having to notify their arrival or the fact they are carrying polluting goods. The MGN will also be available on the MCA website.

10. Impact

10.1 The impact on business, charities or voluntary bodies is considered minimal but it was noted in the Impact Assessment that Fishing Vessels bear the highest burden of the additional costs in having to install AIS.

10.2 The impact on the public sector is minimal as most of the infrastructure needed to deal with the administration and enforcement of VTM policy was put in place following the original VTM Regulations.

10.3 An Impact Assessment is attached and will be published alongside the Explanatory memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The legislation applies to small business in the form of the smaller ports and fishing vessel operators.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is as follows;

- to ease the burden on fishing vessels having to install AIS, the UK argued successfully for a phase in period to be applied in Directive 2009/17/EC, therefore giving fishing vessel operators more time to prepare for the costs of installation.
- work is continuing with the Ports concerning the new requirements for data storage in order to offer multiple solutions and reporting options. This will particularly help the smaller ports to choose an option that best suits them.

11.3 Small businesses have been involved in the consultation process and through the stakeholder groups UKSON, the Fishing Industry Stakeholder Group (FISG) and the VTM Operational Working Group and are aware of the steps taken to try and minimise costs to ports and fishing vessels.

12. Monitoring & review

12.1 The implementation of the Regulations will be monitored through the MCA's normal contact with industry and measured through the quantity and quality of data received from the vessels and Ports through the Consolidated European Reporting System (CERS).

12.2 The Regulations provide that the Secretary of State must carry out a review of both sets of regulations that are amended within 5 years, and every 5 years thereafter, and set out his conclusions in a published report. In carrying out that review, the Secretary of State must have regard to how these European obligations are implemented in other Member States.

13. Contact

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Transposition Note

Relating to Directive 2009/17/EC of the European Parliament and of the Council amending Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system

The Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) (Amendment) Regulations 2011

For the purposes of this note:

'The 2004 Regulations' means the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004.

'The 2011 Regulations' means the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) (Amendment) Regulations 2011.

'The 1997 Regulations' means the Merchant Shipping (Dangerous Goods and Marine Pollutants) Regulations 1997.

'The Directive' means Directive 2002/59/EC Establishing a Community vessel traffic monitoring and information system.

'The amending Directive' means Directive 2009/17/EC amending Directive 2002/59/EC Establishing a Community vessel traffic monitoring and information system.

The 2011 Regulations transpose the amending Directive, which updates vessel traffic monitoring procedures to account for improvements in technology and changes in policy with the overall aim to improve safety by tightening up measures in the Directive.

SafeSeaNet is a Community traffic monitoring system run by the European Marine Safety Agency (EMSA) in Lisbon whereby information about dangerous and polluting goods carried on ships and other information about ships can be exchanged between the Member States.

The table below lists each article of the Directive that has subsequently been amended by the amending Directive and describes in each case how those amendments will be implemented in the UK.

Article 1.3 introduces a new article requiring Long Range Identification and Tracking (LRIT) systems to be carried by all ships within the scope of the Directive. The requirements mirror recent amendments to the International Convention for the Safety of Life at Sea (SOLAS) and they are currently in the process of being implemented in UK law by Regulations that will implement the amendments to SOLAS in UK law. Therefore no implementation by the 2011 Regulations is required.

This instrument does not go beyond what is necessary to implement the amending Directive

Article or Paragraph of the Amending Directive	Objective	Implementation
1.1	Amends article 2(2) of the Directive to alter the exemption from bunkers below 5000 to bunkers on ships below 1000 GT	Regulation 4 (application) of the 2004 Regulations is amended so that only bunkers on ships of less than 1000 GT are excluded (Schedule 1, paragraph 5(c) of the 2011 Regulations).
1.2	Amends article 3 of the Directive to add definitions of several IMO resolutions along with SafeSeaNet, scheduled service, fishing vessel, ship in need of assistance and LRIT and to provide that the instruments referred to are those instruments in their up to date versions.	Regulation 2 (interpretation) of the 2004 Regulations is amended to refer to the latest versions of publications and the Directive as amended (Schedule 1, paragraphs 3 to 5 of the 2011 Regulations).The LRIT provisions are being implemented by a separate instrument and to insert new definitions.
1.3	Inserts a new article 6a stating automatic identification system (AIS) to be fitted and maintained by fishing vessels of more than 15 metres	The 2011 Regulations add a new regulation 8A to the 2004 Regulations so that the AIS requirement applies to fishing vessels greater than 15 metres in length Schedule 1, paragraphs 8 and 9).
1.3	New article requiring LRIT to be carried by ships under SOLAS V/19-1	Article 6b will be implemented by amending the Merchant Shipping (Safety of Navigation) Regulations 2002.
1.4	Amends article 12 of the Directive requiring a declaration for ships coming into port from outside the EU and adds the requirement for a safety data sheet and emergency numbers	Regulation 10 (declaration) of the 1997 Regulations is amended (Schedule 2, paragraphs 2 and 3) of the 2011 Regulations).
1.5	Amends article 14 of the Directive and requires Member States to send information by SafeSeaNet	This is implemented by administrative means .The UK uses CERS which is connected to SafeSeaNet. See MSN 1831.
1.6	Amends article 15 of the Directive adding additional conditions to exemptions and	Regulation 11 of the 2004 Regulations is replaced by regulation 4A which details the exemption requirements from both regulations 5 (notification

Article or Paragraph of the Amending Directive	Objective	Implementation
	allows exemption from article 4 (in addition to article 13)	requirements) and 10 (reporting of dangerous and polluting goods) (Schedule 1, paragraph 6 of the 2011 Regulations).
1.7	Amends article 16 by adding criteria for when a ship is regarded as posing a potential hazard	No implementation by Regulations is necessary.
1.8	Inserts a new article 18a introducing measures in the event of risks posed by ice	The 2011 Regulations add a new regulation 13A into the 2004 Regulations requiring the MCA to supply information (Schedule 1, paragraph 13).
1.9	Minor amendments to wording of article 19.2. Addition of 19.4 which brings attention to IMO guidelines	For these articles no implementation by Regulations is required. Article 1.9(a) is already implemented under Regulation 12 (reporting of incidents and accidents at sea) of the 2004 Regulations.
1.10 and 1.11	The amendments to article 20 and the additional articles (20a – 20d) are all related to providing places of refuge	No implementation by Regulations is necessary as these measures are already accounted for in the United Kingdom National Contingency Plan, available on the MCA website.
1.12	Amends the Directive by adding a new article 22a introducing SafeSeaNet and the requirement that information systems be compatible with it	No implementation by Regulations is necessary. It is a requirement for the MCA to provide the infrastructure to enable data exchange. The UK uses CERS which is connected to SafeSeaNet. See MSN 1831.
1.13	Amends article 23 of the Directive to develop LRIT and compatibility with SafeSeaNet	No implementation by Regulations is necessary. The MCA will cooperate with the Commission on the development of SafeSeaNet and LRIT.
1.14	Inserts a new article 23a into the Directive stating the Commission will contribute to development and operation of data collection	No implementation by Regulations is necessary.
1.15	Minor amendments to article 24 on confidentiality of information requiring information to be used in compliance with the Directive	Regulation 16 (confidentiality of information) of the 2004 Regulations is amended. (Schedule 1, paragraph 16).
1.16	Amends articles 27 and 28 to	No implementation by regulations is necessary.

Article or Paragraph of the Amending Directive	Objective	Implementation
	provide for amendment of the Directive	
1.17	Sets out the amendments to annex I as a consequence of amendments to article 2, change from bunkers of less than 5000 tons to bunkers on ships with GT of less than 1000	Appropriate amendments have been made to regulation 4 (application) of the 2004 Regulations. See paragraph 1.1.
1.18	Amends part 1 of annex II by adding timetable regarding fishing vessels of more than 15metres following addition of new article 6a	See amended article 6a and paragraph 1.3 (Schedule 1, paragraphs 8 and 9).
1.19	Amends annex III and setting out general concept and architecture of SSN, management, operation, development of SSN and technical documentation	No implementation by regulations is necessary see paragraph 1.12 regarding article 22a.

Transposition Note

Relating to Commission Directive 2001/15/EU of 23rd February 2001 amending Directive 2002/59/EC of the European Parliament and of the Council establishing a Community vessel traffic monitoring and information system

The Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) (Amendment) Regulations 2011

For the purposes of this note:

'The 2004 Regulations' means the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) Regulations 2004.

'The 2011 Regulations' means the Merchant Shipping (Vessel Traffic Monitoring and Reporting Requirements) (Amendment) Regulations 2011.

'The Directive' means Directive 2002/59/EC Establishing a Community Vessel Traffic Monitoring and Information System.

'The amending Directive' means Directive 2009/17/EC amending Directive 2002/59/EC Establishing a Community vessel traffic monitoring and information system.

'The COSS Directive' means Directive 2011/15/EU amending Directive 2002/59/EC establishing a Community vessel traffic monitoring and information system.

The proposed 2011 Regulations are intended to give effect to the amending Directive, which updates vessel traffic monitoring procedures to account for improvements in technology and changes in policy with the overall aim to improve safety by tightening up measures in the Directive.

In addition, the proposed 2011 Regulations also give effect to the COSS Directive where necessary, which contains amendments that tidy up the drafting of the Directive to make things clearer, or update the Directive in line with requirements of international law.

The table below lists each article of the Directive that has subsequently been amended by the COSS Directive and describes in each case how those amendments will be implemented in the UK.

This instrument does not go beyond what is necessary to implement the COSS Directive.

Article or Paragraph of the COSS Directive	Objective	Implementation
1.1	Article 12 of the Directive made reference to a Safety Data Sheet, the details of which were incorporated in an IMO resolution. That IMO Resolution has since been revoked and replaced. The COSS Directive updates the reference with the replacement Resolution.	Article 12 is implemented by regulation 10 (Notification by ships, regardless of size, carrying dangerous or polluting goods) in the 2004 Regulations and regulation 10 (Carriage of packaged goods) in the 1997 Regulations. The requirement for this information is specified in Annex B of the Merchant Shipping Notice.
1.2	Annex I of the COSS Directive replaces Annex II of the Directive. The first change made is a tidying up measure. In 2002/59/EC Annex II was originally divided into sections describing the carriage requirements for AIS and the carriage requirements for VDR. It is now divided into sections describing the carriage requirements for ships on international voyages and ships on non international voyages, making the requirements of Annex II a lot clearer, but not introducing any changes.	Annex II of the Directive is transposed by regulation 8 and 8A of the 2004 regulations as amended.
1.2	Annex I of the COSS Directive replaces Annex II of the Directive. The second amendment to Annex II concerns exemptions from the carriage requirements, which allows Member States to exempt more vessels than it could previously, should it wish to do so. This provision is not being included in legislation because, for safety reasons, the	No implementation required.

Article or Paragraph of the COSS Directive	Objective	Implementation
	UK is not exercising the right to make these additional exemptions.	
1.3	<p>Annex II of the COSS Directive replaces Annex IV of the Directive.</p> <p>The amendments to Annex IV clarify the measures available to a Member State in the event of a threat to maritime safety, explicitly stating that these powers also apply to any towing or salvage companies that may be involved in the event. The amendment does not require any provision in legislation.</p>	<p>No Implementation required. Annex IV relates to the measures referred to Article 19 (1) of the Directive. These are captured by administrative means in the National Contingency Plan and not in legislation.</p>